

Explanatory Statement

Marine Order 27 (Safety of navigation and radio equipment) 2023 (Order 2023/9)

Authority

1. Paragraph 309(2)(a) of the Navigation Act 2012 (the Navigation Act) provides that the regulations may prescribe the entries to be made in an official logbook and the circumstances in which those entries are to be made.
2. Paragraph 309(2)(b) of the Navigation Act provides that the regulations may prescribe the period in which entries are to be made in an official logbook.
3. 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.
4. Paragraph 339(2)(b) of the Navigation Act provides that the regulations may provide for machinery and equipment to be carried on board vessels including for sending or receiving distress, urgency and other signals, radio installations, radio navigational aids and communication equipment, compasses and lights.
5. Paragraph 339(2)(c) of the Navigation Act provides that the regulations may provide for the operation, maintenance, checking and testing of and such machinery and equipment.
6. Paragraph 339(2)(g) of the Navigation Act provides that the regulations may provide for the equipment to be carried on vessels and measures to be carried out for the saving of life at sea.
7. Paragraph 339(2)(l) of the Navigation Act provides that the regulations may provide for logbooks.
8. Paragraph 339(2)(m) of the Navigation Act provides that the regulations may provide for records for compliance with the Act.
9. Paragraph 340(1)(a) of the Navigation Act provides that the regulations may give effect to SOLAS.
10. Subsection 341(1) of the Navigation Act provides that the regulations may provide for the imposition of penalties for a contravention of a provision of the regulations.
11. Subsection 342(1) of the Navigation Act allows the Australian Maritime Safety Authority (AMSA) to make orders for any matter in the Act for which provision must or may be made by regulations.
12. 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.
13. This Marine Order was made under subsection 342(1) and is a legislative instrument for the *Legislation Act 2003*.

Purpose

14. This Marine Order:
 - provides for navigation safety measures and equipment, radio equipment, safety, urgency and distress communications; and
 - gives effect to Chapter IV of SOLAS (Radiocommunications), paragraph 7 of Regulation 10 and paragraph 7 of Regulation 11 of Chapter V of SOLAS (Safety

of navigation), Regulations 15 to 21, 24, 27, 28 and 29, and 31 to 35 of Chapter V of SOLAS; and

- specifies the functional requirements of radio installations fitted and radio equipment carried on board for regulated Australian vessels to which Chapter IV of SOLAS does not apply; and
- sets out arrangements for radio installations and equipment for a regulated Australian vessel to which Chapter IV of SOLAS does not apply to meet the specified functional requirements.

15. As the purpose of the Marine Order is to give effect to Australia's international obligations in relation to implementing Chapter IV and V of SOLAS, the Marine Order is exempt from sunseting under item 1, section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015.

Overview

16. This Marine Order specifies a number of measures that implement Australia's obligations under SOLAS in relation to navigation safety. These include voyage planning, ship routing, ship reporting systems, cooperation with search and rescue services, records of navigation activities and daily reporting and requirements about steering systems. The Marine Order implements SOLAS requirements for navigational equipment, bridge design, radio installations, long range tracking of vessels, voyage data recorders, nautical charts and other equipment.

17. The Marine Order sets out the specifications for radio equipment consistent with SOLAS requirements and provides for safety, urgency and distress communications and danger messages.

18. The Marine Order also provides for life-saving signals and creates offences for the misuse of signals of distress and requires the mandatory registration of EPIRBs on regulated Australian vessels. The Order prescribes functional requirements and radio installations and equipment for regulated Australian vessels to which Chapter IV of SOLAS does not apply.

19. The Marine Order replaces *Marine Order 27 (Safety of navigation and radio equipment) 2016* following a review of the Order.

Consultation

20. A copy of the draft of Marine Order 27 was placed on AMSA's website on 11 September 2023 for public consultation with comments to be provided by 8 October 2023. Around 170 stakeholders were contacted by email and invited to comment. These included vessel operators, training organisations, port authorities, ship operating companies, classification societies, seafarer representative organisations and relevant government departments and agencies, including the Australian Communications and Media Authority. The review was also advised on social media and via the September edition of 'AMSA update' which is a newsletter with a distribution of around 27,000 people.

21. The Office of Impact Analysis (OIA) considers that the changes made by the Marine Order have regulatory impacts of a minor nature and no regulation impact statement is required. The OIA reference number is OIA 23-05525.

Documents incorporated by reference

22. This Marine Order incorporates the following documents by reference:

- International Convention for the Safety of Life at Sea (SOLAS)
- Standards of Training Certification and Watchkeeping Code (STCW Code)

- Radio Regulations, annexed to the International Telecommunication Convention, as revised from time to time by the International Telecommunications Union
- *Marine Order 1 (Administration) 2013*
- *Marine Order 21 (Safety of navigation and emergency procedures) 2012*
- *International Code of Signals*, endorsed by IMO Resolution A.80(4), as amended from time to time
- IMO Circular MSC.1/Circ.1079 *Guidelines for preparing plans for cooperation between search and rescue services and passenger ships* as revised from time to time
- *Revised Guidelines for the onboard operational use of shipborne Automatic Identification Systems (AIS)*, adopted by IMO Resolution A.1106(29), as amended from time to time
- IMO Circular MSC/Circ.891 *Guidelines for the onboard use and application of computers* as amended from time to time
- IMO Circular MSC.1/Circ.1645 *Guidance for the Reception of Maritime Safety Information and Search and Rescue Related Information as Required in the Global Maritime Distress and Safety System (GMDSS)* as amended from time to time
- IMO Circular MSC.1/Circ.1645 *Search and Rescue Related Information as Required in the Global Maritime Distress and Safety System (GMDSS)* as amended from time to time
- *International Aeronautical and Maritime Search and Rescue Manual (IAMSAR Manual) Volume III (Mobile facilities)*, endorsed by IMO Resolution A.894 (21), as amended from time to time
- ARPANSA *Standard for Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 GHz (Rev. 1) (2021)* as amended from time to time, available at the ARPANSA website <https://www.arpansa.gov.au>
- the latest edition of *Australian Global Maritime Distress and Safety System (GMDSS) Handbook* available at the Marine Orders link on the AMSA website at <https://www.amsa.gov.au>
- the latest edition of *Manual for use by the Maritime Mobile and Maritime Mobile-Satellite Services (Maritime Manual)*, published by the International Telecommunication Union, available at the Marine Orders link on the AMSA website at <https://www.amsa.gov.au>
- the latest edition of *Admiralty List of Radio Signals*, published by the Hydrographer of the Navy (UK), available at the Marine Orders link on the AMSA website at <https://www.amsa.gov.au>
- the latest edition of *List of Ship Stations and Maritime Mobile Service Identity Assignments*, published by the International Telecommunication Union, available at the Marine Orders link on the AMSA website at <https://www.amsa.gov.au>
- ISO 25862:2009 *Ships and marine technology – Marine magnetic compasses, binnacles and azimuth reading devices* (published in May 2009) with information available on the Marine Orders link on the AMSA website to either purchase or request a copy from AMSA.

23. The STCW Code is incorporated as amended and in force from time to time. The Code is in the Australian Treaties Library accessible online at the AustLII website at <https://www.austlii.edu.au> or the Australian Treaties Database at

<https://www.info.dfat.gov.au/treaties>. A link to the Australian Treaties Library is available at the Marine Orders link on the AMSA website at <https://www.amsa.gov.au>.

24. SOLAS is of treaty status and is incorporated “as amended and in force from time to time for Australia” (see definition of SOLAS in *Marine Order 1 (Administration) 2013*, and definition of Safety Convention in section 14 of the Navigation Act.). The original convention and any amendments in force can be found in the Australian Treaties Series accessible from the Australian Treaties Library on the AustLII website at <https://www.austlii.edu.au>.

25. The latest edition of the Radio Regulations and the recommendations of the ITU are available at the ITU website <https://www.itu.int> and the Marine Orders link on the AMSA website at <https://www.amsa.gov.au>.

26. Marine Orders mentioned in this Marine Order are available on the Federal Register of Legislation at <https://www.legislation.gov.au>. They are also available from the Marine Orders link on the AMSA website at <https://www.amsa.gov.au>. Paragraph 10(a) of the *Acts Interpretation Act 1901* (as applied by paragraph 13(1)(a) of the *Legislation Act 2003*) has the effect that the references in the Marine Order to Marine Orders are references to those Marine Orders as amended from time to time.

27. Information on obtaining access to other documents incorporated by reference in this Marine Order including IMO Circular MSC.1/Circ.1079, IMO Resolution A.1106(29), IMO Circular MSC/Circ.891, IMO Circular MSC.1/Circ.1645, is available on the Marine Orders link on the AMSA website at <https://www.amsa.gov.au>. AMSA provides website links or information regarding how to navigate the IMO website to download IMO documents. IMO documents may also be purchased from the IMO — see the IMO website at <http://www.imo.org/publications>.

Commencement

28. This Marine Order commenced on 1 January 2024.

Contents of this instrument

Division 1 – Preliminary

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

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

31. Section 1B provides for the repeal of *Marine Order 27 (Safety of navigation and radio equipment) 2016*.

32. Section 2 states the purpose of the Marine Order, which is to provide for navigation safety measures and equipment; radio equipment; and safety, urgency and distress communications; and to give effect to Chapter IV — (Radiocommunications) of SOLAS; paragraph 7 of Regulation 10, paragraph 7 of Regulation 11, and Regulations 15 to 21, 24, 27, 28, 29, and 31 to 35 of Chapter V of SOLAS.

33. Section 3 sets out the powers in the Navigation Act that enable the Marine Order to be made.

34. Section 4 sets out definitions of terms used in the Marine Order.

35. Section 5 explains the meaning of the term ‘Administration’.

36. Section 6 describes the application of the Marine Order to regulated Australian vessels and foreign vessels.

37. Section 7 provides a process for applications for an exemption of a vessel from a requirement of the Marine Order. An exemption may only be given if AMSA is satisfied that compliance with the requirement would be unnecessary or unreasonable, having regard to the vessel, its equipment and its intended voyage, and giving the exemption would not contravene SOLAS

38. Section 8 provides for applications for approval to use an equivalent to a requirement of the Marine Order. Approval may only be given if AMSA is satisfied that use of the equivalent would be at least as effective as compliance with the requirement to which the equivalent is an alternative and approving use of the equivalent would not contravene SOLAS.

Division 2 - Navigation Safety

39. Subdivision 2.1 provides for navigation safety measures.

40. Section 9 requires the owner of a passenger vessel to which Chapter I of SOLAS applies, to ensure that a plan for cooperation with search and rescue services in an emergency is carried on board the vessel in accordance with paragraph 3 of Regulation 7 of Chapter V of SOLAS. The plan must be developed in co-operation between the ship, the company and the search and rescue services, must be based on *Guidelines for preparing plans for co-operation between search and rescue services and passenger ships* approved by MSC.1/Circ.1079, and must include provisions for periodic exercises to be undertaken by the master to test its effectiveness.

41. Subsection 10(1) provides a strict liability offence for the master of a vessel for failure to comply with paragraph 7 of Regulation 11 of Chapter V of SOLAS which requires that the master must comply with ship reporting systems adopted by the IMO and the applicable reporting requirements for each system.

42. Subsection 10(3) clarifies that a person who contravenes subsection 10(1) is liable to civil penalty to a maximum of 50 penalty units.

43. Subsection 11(1) provides a strict liability offence for failure of a master of a vessel to comply with paragraph 7 of Regulation 10 of Chapter V of SOLAS which requires that a ship shall use a mandatory ships' routeing system adopted by the IMO as required for its category or cargo carried and in accordance with the relevant provisions in force unless there are compelling reasons not to use a particular ships' routeing system which are to be recorded in the ship's log.

44. Subsection 11(3) clarifies that a person is liable to a civil penalty, to a maximum of 50 penalty units, for contravention of the requirement.

45. Section 12 implements requirements of Regulation 24 of Chapter V of SOLAS.

46. Subsection 12(1) provides that the master of a vessel must ensure that manual control of the vessel's steering can be established immediately when heading or track control systems are in use on the vessel.

47. Subsection 12(2) provides a strict liability offence for failure of a master of a vessel to ensure that a person who has an approved steering certificate is available to immediately take manual control of the vessel's steering if the vessel is operating in hazardous navigational circumstance including an area of high traffic density, conditions of restricted visibility or other situation where navigation requires caution.

48. Subsection 12(3) provides a strict liability offence for failure of a master of a vessel to ensure that a change from automatic to manual control and from manual to

automatic control of a vessel's steering is made by the officer of the watch, or under the supervision of the officer of the watch.

49. Subsection 12(4) provides a strict liability offence in circumstances where there has been prolonged use of the heading or track control systems and the master of the vessel fails to ensure that the manual steering of a vessel is tested before entering an area where navigation requires the exercise of caution including circumstances where the vessel is operating in an area of high traffic density or conditions of restricted visibility.

50. Subsection 12(6) clarifies that a person who contravenes subsections (2), (3) or (4) is liable to a civil penalty to a maximum of 50 penalty units.

51. Section 13 implements requirements of Regulation 28 of Chapter V of SOLAS.

52. Subsection 13(1) requires that the master of a vessel must ensure that the navigational activities and incidents of importance to safety of navigation of the vessel are recorded in the vessel's logbook or other format approved by the Administration. The records must contain necessary detail to enable the restoration of a complete record of the voyage and be available for inspection on the vessel at all times.

53. Subsection 13(2) provides that the master of the vessel, to which paragraph 2 of Regulation 28 of Chapter V of SOLAS applies, being a vessel greater than (>) 500 GT engaged on international voyages exceeding 48 hours, must ensure that a daily report is provided to the vessel's owner. The report must contain specified information including as to the vessel position, the vessel's course and speed, and the details of any external or internal conditions affecting the vessel's voyage or the normal safe operation of the vessel. The report must be provided as soon as is practicable after the vessel's position is determined, that the report is recorded and in the instance that an automated reporting system is used, measures are implemented to monitor and verify the accuracy of the vessel position mentioned in the report.

54. Section 14 provides that the master of a vessel must ensure that voyage planning has been carried out in accordance with Regulation 34 of Chapter V of SOLAS. That regulation requires that the intended voyage has been planned using the appropriate nautical charts and nautical publications for the area and a route has been identified which takes into account any relevant ships' routing systems, ensures sufficient sea room for the safe passage of the ship throughout the voyage, anticipates all known navigational hazards and adverse weather conditions; takes into account the marine environmental protection measures that apply, and avoids as far as possible actions and activities which could cause damage to the environment.

55. Subsection 15(1) implements Regulation 34-1 of Chapter V of SOLAS by providing a strict liability offence for a person who prevents or restricts the master of a vessel from taking or executing any decision that in the master's professional judgement, is necessary for safety of life at sea and protection of the marine environment.

56. Subsection 15(3) clarifies that a person who contravenes subsections (1) is liable to a civil penalty to maximum of 50 penalty units.

57. Subdivision 2.2 provides for navigational safety equipment.

58. Section 16 requires that the owner of a vessel must make decisions about bridge design, bridge procedures and the design and arrangements of navigational systems and equipment in accordance with the specified principles at Regulation 15 of Chapter V of SOLAS.

59. Subsection 17(1) implements Regulation 16 of Chapter V of SOLAS by providing a strict liability offence for failure of the master of a vessel to take all reasonable steps to ensure the performance of navigational equipment required under Chapter V is maintained, and that the equipment is maintained in efficient working order.
60. Subsection 17(2) provides a strict liability offence for a master of the vessel, in circumstances where a vessel is at a place where repair facilities are not available and a defect in navigational equipment is discovered on the vessel, and the vessel proceeds to another port without AMSA's agreement.
61. Subsection 17(5) clarifies that a person who contravenes subsections (1) or (2) is liable to a civil penalty to a maximum of 50 penalty units.
62. Subsection 18(1) requires that the owner of a vessel must ensure that the electrical and electronic equipment on or near the bridge of a vessel constructed after 30 June 2002 is tested for electromagnetic compatibility in accordance with paragraph 1 of Regulation 17 of Chapter V of SOLAS.
63. Subsection 18(2) provides a strict liability offence for failure of the owner of a vessel to ensure that electrical and electronic equipment does not affect navigational systems and equipment on the vessel.
64. Subsection 18(3) provides a strict liability offence for a person who operates portable electrical or electronic equipment on a vessel that may affect navigational systems and equipment on the vessel.
65. Subsection 18(5) specifies that a person who contravenes subsection (2) or (3) is liable for a civil penalty to a maximum of 50 penalty units.
66. Subsection 19(1) provides that the owner of a vessel must ensure that a navigational system or equipment mentioned in Regulations 19 and 20 of Chapter V of SOLAS that is used on the vessel is type approved and meets performance standards in accordance with Regulation 18 of Chapter V of SOLAS.
67. Subsection 19(2) provides that the owner of a vessel must ensure that any voyage data recorder system used on the vessel including all sensors, and any automatic identification system used on the vessel, are tested in accordance with the specified requirements which include the specifications listed at paragraphs 8 and 9 of Regulation 18 of Chapter V of SOLAS which relate to specified performance standards, functionality and serviceability for the systems. A certificate of compliance for the voyage data recorder system demonstrating compliance and performance standards for the system that apply and a copy of a test report for the automatic identification system must be carried on board.
68. Subsection 20(1) requires that the owner of a vessel must ensure that navigational systems or equipment are fitted and used in accordance with Regulation 19 of Chapter V of SOLAS, and meet the functional requirements mentioned in that regulation. They must be installed, tested and maintained to minimise malfunction.
69. Subsection 20(2) requires that for a vessel carrying an electronic chart display and information system (ECDIS), the master of the vessel and all deck watchkeeping officers must have completed an approved training course in its use in accordance with Part A of Chapter II of the STCW Code.
70. Subsection 20(3) requires that the master of a vessel must ensure that any automatic identification system installed on a vessel is used, that the use of that system is in accordance with the *Revised Guidelines for the onboard operational use*

of shipborne Automatic Identification Systems (AIS) adopted by IMO Resolution A.1106(29), and that AMSA is advised if the system is turned off.

71. Subsection 20(4) provides a strict liability offence in circumstances where the owner of a vessel directs or requests any person to turn off the automatic identification system installed on the vessel.

72. Subsection 20(6) specifies that a person who contravenes subsection 20(4) is liable to a civil penalty to a maximum of 50 civil penalty units.

73. Section 21 specifies requirements for Long-range identification and tracking of vessels for vessels to which Regulation 19-1 of Chapter V of SOLAS applies.

74. Subsection 21(2) provides a strict liability offence for the owner of a vessel for failure to ensure that specified information is transmitted automatically in accordance with Regulation 19-1 of Chapter V of SOLAS including the identity of the vessel, the position (latitude and longitude) of the vessel, the date and time the position information is provided, and the vessel is fitted with the systems and equipment that meet the performance standards and functional requirements of Regulation 19-1 of Chapter V of SOLAS.

75. Subsection 21(3) provides a strict liability offence for the master of a vessel who switches off any system or equipment mentioned in Regulation 19-1 of SOLAS other than in circumstances where the operation is considered by the master to compromise the safety or security of the vessel, the Administration has been informed, and a record is made describing the reason for, and duration of, the switch off.

76. Subsection 21(6) provides that a person who contravenes subsections 21(2) or subsection 21(3) is liable to a civil penalty to a maximum of 50 civil penalty units.

77. Section 22 requires that the owner of a vessel must ensure that the vessel is fitted with a voyage data recorder or simplified voyage data recorder in accordance with Regulation 20 of Chapter V of SOLAS.

78. Section 23 requires that the owner of a vessel must ensure that the documents specified at Regulation 21 of Chapter V of SOLAS which include a copy of the International Code of Signals, and a copy of Volume III (Mobile facilities) of the IAMSAR Manual are kept on the vessel and are available for inspection.

79. Subsection 24(1) requires that the owner of a vessel must before embarking on a voyage ensure that nautical charts and nautical publications on board for the intended voyage are adequate and up to date, that any electronic version of a nautical chart or nautical publication is a version officially issued by an Administration, authorised hydrographic office or other approved organisation.

80. Subsection 24(2) requires that for an electronic nautical chart, the owner of the vessel must ensure that the chart is displayed on an ECDIS that complies with Regulation 19 of Chapter V of SOLAS, and that a backup version is available on board the vessel either as a second ECDIS that complies with Regulation 19 of Chapter V of SOLAS or as a folio of adequate and up to date paper charts relevant to the voyage.

81. Subsection 24(3) provides that for an electronic nautical publication, the owner of a vessel must ensure that a back up version is available as an up to date printout or on at least 1 other computer or in digital format that can be made available to the officer of the watch within 5 minutes.

82. Subsection 24(4) requires that for an official version of an electronic nautical publication, the owner of a vessel must ensure that all software and hardware used

for accessing it complies with the recommendations of IMO Circular MSC/Circ.891 *Guidelines for the onboard use and application of computers*.

83. Subsection 25(1) provides a strict liability offence for the master of a vessel >100 GT who contravenes requirements for a magnetic compass on board the vessels. Those requirements include that the master must ensure that a compass deviation book is kept on the vessel, that the specified information in Schedule 1 is recorded in the compass deviation book, that any deviations of the compass on any heading of more than 5° is corrected by the master or a qualified compass adjuster, that the tables or curve of residual deviations from the last adjustment, and details of subsequent changes in deviations, are retained and available for use at all times.

84. Subsection 25(3) confirms that a person who contravenes subsection 25(1) is liable to a civil penalty to a maximum of 50 penalty units.

85. Subsection 25(4) requires that if a compass is adjusted, details of the deviations in the approved form must be either given to the master by the qualified compass adjuster or prepared by the master.

86. Subsection 25(5) provides power for an inspector to direct the master of a vessel to have a compass of the vessel adjusted.

87. Subsection 25(6) requires the master of a vessel to comply with any such direction as soon as practicable.

88. Subsection 26(1) requires the owner of a vessel to ensure that equipment in good working condition is kept on board the vessel that will, if an electronic system fails, enable an adequate lookout to be maintained and safe navigation of the vessel.

89. Subsection 26(2) provides that for a vessel of <500 GT, the master must ensure that the vessel has on board flags N and C of the International Code of Signals.

90. Subsection 26(3) provides that for a vessel ≥500 GT, the master must ensure that the vessel has on board a complete set of flags of the International Code of Signals.

91. Subsection 26(4) provides a strict liability offence for the failure of a master, except in the case of an emergency, to use or permit to be used, any equipment mentioned in subsection (1) that is not in good working condition or that is improperly rigged.

92. Subsection 26(6) confirms that a person who contravenes subsection 26(4) is subject to a civil penalty to a maximum of 50 penalty units.

Division 3 - Radio installations and radio equipment

93. Section 27 implements radio installations and carriage requirements for radio equipment in accordance with Regulations 6 to 11 of Chapter IV of SOLAS.

94. Subsection 27(1) requires that the owner of a vessel to which Chapter IV of SOLAS applies must ensure that a radio installation is fitted and radio equipment is carried on board in accordance with Regulations 6 to 11 of Chapter IV of SOLAS, and that for a regulated Australian vessel—the ARPANSA Standard for Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 GHz (Rev. 1) (2021) is taken into account for the safe operation of radio installations.

95. Subsection 27(2) provides that the owner of a regulated Australian vessel to which Chapter IV of SOLAS does not apply must ensure that the vessel has fitted adequate radio installations and carries on board adequate radio equipment to meet the functional requirements mentioned in section 28(2).

96. Subsection 28(1) provides that for a vessel to which Chapter IV of SOLAS applies — the radio installations fitted and radio equipment carried on board must meet the functional requirements that are set out in Regulation 4 of Chapter IV of SOLAS.
97. Subsection 28(2) provides that for an Australian regulated vessel to which Chapter IV of SOLAS does not apply — the radio installations fitted and radio equipment carried on board must meet the functional requirements specified at paragraphs (a) through to (h).
98. Subsection 28(3) provides that, despite subsection 28(2), if a vessel instead complies with an arrangement set out in Schedule 2, the vessel is taken to have met the functional requirements mentioned in subsection (2).
99. Section 29 implements other requirements in accordance with Regulations 12 to 18 of Chapter IV of SOLAS.
100. Subsection 29(1) provides that for a vessel to which Chapter IV of SOLAS applies — the owner must ensure that: radiocommunication watch requirements, while at sea, are maintained in accordance with Regulation 12 of Chapter IV of SOLAS, sources of energy for radio installations are maintained in accordance with Regulation 13 of Chapter IV of SOLAS, radio equipment is type approved in accordance with Regulation 14 of Chapter IV of SOLAS, and is maintained in accordance with Regulation 15 of Chapter IV of SOLAS, and that sources of energy for radio installations, radio personnel are qualified in accordance with Regulation 16 of Chapter IV of SOLAS, radio record keeping arrangements comply with Regulation 17 of Chapter IV of SOLAS and position updating comply with Regulation 18 of Chapter IV of SOLAS.
101. Subsection 29(2) provides that a regulated Australian vessel to which Chapter IV of SOLAS does not apply must have: arrangements in place to meet the requirements mentioned in subsection (1) as if the vessel were a vessel to which Chapter IV of SOLAS applies, MF/HF radiotelephone equipment, VHF equipment and satellite communications equipment that meets the performance standards mentioned in Regulation 14 of Chapter IV of SOLAS, VHF equipment with available priority of use and control of the channels required for navigational safety purposes immediately available at the place where the vessel is normally navigated, and must test monthly battery installations that provide emergency power supply to radio equipment.
102. Subsection 29(3) provides that a vessel that is normally engaged in harbour duties must be fitted with a VHF radio installation with DSC capability, and must be provided with an approved 406 MHz satellite EPIRB.
103. Subsection 29(4) requires that radio equipment must be tested at intervals specified by the manufacturer in accordance with the manufacturer's instructions.
104. Subsection 30(1) provides a strict liability offence for the failure of an owner of a regulated Australian vessel to ensure that any EPIRB fitted or carried on the vessel is registered with AMSA. Registration details should also be updated when an EPIRB changes ownership or is disposed of.
105. Subsection 30(2) provides a strict liability offence for the failure of an owner of regulated Australian vessel to ensure that manufacturer's instructions are followed for any EPIRB that is disposed of.
106. Subsection 30(4) provides that a person who contravenes subsections 30(1) and 30(2) is liable to a civil penalty to a maximum of 50 penalty units.

Division 4 - Safety, urgency and distress communications

107. Subdivision 4.1 provides for safety communications including safety signals and danger messages.

108. Section 31 implements requirements for safety signals and danger messages in accordance with Regulation 31 and 32 of Chapter V of SOLAS.

109. Subsection 31(1) requires that for the purposes of sending reports of dangers to navigation to vessels in the vicinity of other vessels in accordance with subparagraph 187(1)(b)(i) of the Navigation Act, the safety signal is sent out in the format mentioned in Article 33 of the Radio Regulations, and the danger message must include the information mentioned in Regulations 31 and 32 of Chapter V of SOLAS. Article 33 sets out the format and manner of transmission of safety communications including the use of the safety signal, being the words, “SECURITE”, spoken three times. Regulations 31 and 32 of Chapter V of SOLAS prescribe specific information that must be communicated in relation to dangerous ice, a dangerous derelict or any other direct danger to navigation, a tropical storm, encounters with sub-freezing air temperatures associated with gale force winds causing severe ice accretion on superstructures, and winds of force 10 or above on the Beaufort scale for which no storm warning has been received.

110. Subsection 31(2) provides that the safety signal and danger message must be sent out in accordance with paragraph 4 of Regulation 31 of Chapter V of SOLAS and requires that all radio messages must be sent using the procedure as prescribed by the Radio Regulations as defined in regulation 2 of Chapter IV of SOLAS. Section IV of Article 33 of the radio regulations prescribes safety communication requirements.

111. Subsection 31(3) provides that for the purposes of sending reports of dangers to navigation to vessels in the vicinity of other vessels in accordance with subparagraph 187(1)(b)(i) of the Navigation Act, the report to shore must be made to, for a vessel in NAVAREA X — the Joint Rescue Coordination Centre Australia, or for a vessel outside NAVAREA X — the Coordinator for the NAVAREA the vessel is in.

112. Section 32 specifies that the master of a regulated Australian vessel must ensure that a record is kept of any danger to navigation observed, any danger message received for a danger to the navigation of the vessel, information received on a danger to the navigation of the vessel, and any danger message and information sent or transmitted about a danger to navigation and the exact time and position of the vessel when the transmission is made.

113. Subsection 33(1) provides that any safety communication, including a safety signal, safety call or safety message must be transmitted in accordance with Article 33 of Chapter VII of the Radio Regulations. Article 33 of the Radio Regulation sets out the format and manner of transmission of safety communications including the use of the safety signal, being the words, “SECURITE”, spoken three times.

114. Subsection 33(2) provides a strict liability offence for a person who transmits a safety communication other than in circumstances where the calling radio station has a transmission about an important navigational or meteorological warning.

115. Subsection 33(3) provides a strict liability offence for a person who interferes with the transmission of a safety communication.

116. Subsection 33(5) provides that a person who contravenes subsection 33(2) or (3) is liable for a civil penalty to a maximum of 50 penalty units.

117. Subsection 33(6) specifies that a danger message preceded by a safety signal has priority over all communications other than distress and urgency communications.
118. Subsection 34(1) provides a strict liability offence for a person who operates a radio station on a vessel and hears a safety communication and fails to listen on the radio frequency used for the transmission until they are satisfied that the message is of no concern to the vessel.
119. Subsection 34(3) specifies that a person who contravenes subsection 34(1) is liable to a civil penalty to a maximum of 50 penalty units
120. Subdivision 4.2 provides for urgency and distress communications.
121. Subsection 35(1) provides that any urgency communication, including an urgency signal, urgency call or urgency message must be transmitted in accordance with Article 33 of Chapter VII of the Radio Regulations. Article 33 sets out the format and manner of transmission of urgency communications including the use of the urgency signal being the words ‘PAN PAN’ spoken 3 times.
122. Subsection 35(2) provides a strict liability offence for a person who transmits the urgency communication in circumstances that are not those specified in the provision.
123. Subsection 35(3) specifies urgency communication must be provided priority over all other radio communication except a distress communication.
124. Subsection 35(4) provides a strict liability offence for a person who interferes with an urgency communication.
125. Subsection 33(5) provides a strict liability offence for the master of a vessel who sends an urgency communication and is satisfied that action called for is no longer necessary and who fails to ensure that a further communication is transmitted in accordance with Article 33 of Chapter VII of the Radio Regulations cancelling the urgency communication.
126. Subsection 35(7) provides that a person who contravenes subsection 35(2), (4) or (5) is liable to a civil penalty to a maximum of 50 penalty units.
127. Subsection 36(1) provides that any distress communication, including a distress signal, distress call or distress message must be transmitted in accordance with Article 32 of Chapter VII of the Radio Regulations. Article 32 sets out the format and manner of transmission of distress communications including the use of the distress signal being the word ‘MAYDAY’.
128. Subsection 36(2) provides a strict liability offence for person who transmits a distress communication other than in circumstances where it relates to a vessel or person at sea requiring immediate assistance due to the grave and imminent threat to safety, an acknowledgement of a distress alert or distress call, or a distress alert relay or distress call relay.
129. Subsection 36(3) provides a strict liability offence in circumstances where a distress communication is accidentally transmitted or displayed from a vessel when there is no danger to the vessel, and the master of the vessel fails to immediately tell the marine rescue coordination centre for the search and rescue area about the accidental transmission; and that there is no danger to the vessel.
130. Subsection 36(5) confirms that a person who contravenes subsection 36(2) or (3) is liable to a civil penalty to a maximum of 50 penalty units.

131. Subsections 37(1) provides for strict liability offences for a person who operates a radio station and hears an urgency communication and resumes normal radio services in circumstances other than those described.

132. Subsection 37(2) provides for strict liability offences for a person who operates a radio station and hears a distress communication and resumes normal radio services in circumstances other than those described.

133. Subsection 37(4) confirms that a person who contravenes subsection 37(1) or (2) is liable to a civil penalty to a maximum of 50 penalty units.

Division 5 – Other matters

134. Subsection 38(1) provides a strict liability offence for the master of a vessel who fails to meet the obligations and follow the procedures mentioned in Regulation 33 of Chapter V of SOLAS in relation to persons in distress at sea.

135. Subsection 38(3) stipulates that a person who contravenes subsection 38(1) is liable to a civil penalty of 50 penalty units.

136. Subsection 39(1) implements Regulation 29 of Chapter V of SOLAS by requiring the owner of a vessel to ensure that an illustrated table describing the life-saving signals to be used when communicating with life-saving stations, maritime rescue units and aircraft engaged in search and rescue operations is available to the officer of the watch at all times.

137. Subsection 39(2) requires that the life-saving signals must be used when persons on the vessel are communicating with life-saving stations, marine rescue units and aircraft engaged in search and rescue operations, and specifies that Life-saving signals are described in the International Aeronautical and Maritime Search and Rescue Manual (IAMSAR) Manual Vol. III, Mobile Facilities and illustrated in the International Code of Signals,

138. Subsection 40(1) provides a strict liability offence for a person who uses a flare, rocket or shell, if it could be mistaken for a signal of distress coming from a vessel.

139. Subsection 40(2) provides a defence from subsection 40(1) if the person or another person is in distress; or the person has notified the JRCC using the approved form, and at least 24 hours before the proposed time of use of the flare, rocket or shell, of the intended use and the proposed time for the intended use; and has not received any objection from the JRCC to the intended use.

140. Subsection 40(4) provides that a person who contravenes subsection 40(1) is liable to a civil penalty to a maximum of 50 penalty units.

141. Subsection 41 specifies documents at paragraphs 41(a) through to (g) that must be made available for inspection on board the vessel.

Division 6 – Transitional arrangements

142. Section 42 provides that an exemption is taken to be in force and granted under this Marine Order if it was in force on 30 December 2023, and the requirement to which it applies is a requirement under this Marine Order.

143. Section 43 provides that an approval for use of an equivalent is taken to be approved under this Marine Order if it was for an equivalent that was in use on a vessel on 30 December 2023 and the requirement to which it applies is a requirement under this Marine Order.

Schedule 1 – Compass deviation book information

144. This schedule sets out the information to be recorded in the compass deviation book to fulfil the requirement of subparagraph 25(1)(a)(ii).

Schedule 2 – Radio installations and equipment – regulated Australian vessels to which Chapter IV of SOLAS does not apply

145. This Schedule sets out alternative arrangements for radio installations and equipment for a regulated Australian vessel to which Chapter IV of SOLAS does not apply that is taken to meet the functional requirements mentioned in subsection 28(2).

Statement of compatibility with human rights

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

Overview of the legislative instrument

147. This Marine Order is made under the Navigation Act 2012 (the Navigation Act). It gives effect to a number of measures that implement Australia's obligations under the International Convention for the Safety of life at Sea (SOLAS) in relation to safety of navigation. These include voyage planning, ship routing, ship reporting systems, cooperation with search and rescue services, records of navigation activities and daily reporting and requirements about steering systems.

148. The Marine Order also implements SOLAS requirements for navigational equipment, bridge design, radio installations, long range tracking of vessels, voyage data recorders, nautical charts and other equipment.

149. The Marine Order further sets out the specifications for radio equipment in line with SOLAS requirements and provides for safety signals, danger, urgency and distress communications. The Marine Order also provides for life-saving signals and creates offences for the misuse of distress and safety signals and requires the mandatory registration of EPIRBs on regulated Australian vessels.

Human rights implications

150. Sections 10, 11, 12, 15, 17, 18, 20, 21, 25, 26, 30, 33, 34, 35, 36, 37, 38 and 40 of the Marine Order create offences to which strict liability applies. They also create civil penalties. 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.

151. Strict liability is imposed to protect life while the vessel is at sea in isolated and remote circumstances. The offences ensure compliance with SOLAS and requirements of the Radio Regulations that are necessary to ensure maritime safety through safe navigation measures, compliant radio installations and equipment, and appropriate usage of safety, urgency and distress communications.

152. The penalties are relatively low (50 penalty units) and are within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. At the time of making of this Marine Order, one penalty unit was \$313.

153. The civil penalty provisions are directed at persons related to the operation of vessels rather than the community at large and are regulatory in nature. The civil penalty provisions are authorised by paragraph 341(1)(b) of the Navigation Act. Having regard to the objectives of the civil penalty provisions (which are protective, preventative, disciplinary or regulatory in nature), and the relatively low level of

penalty, the civil penalties should not be considered to be criminal matters for human rights law.

154. It is considered any limitation on human rights as a result of the imposition of strict liability and the creation of civil penalties is reasonable, necessary and proportionate.

Conclusion

155. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate for ensuring maritime safety.

Making the instrument

156. 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*.