

Explanatory Statement

Marine Order 55 (Vessels carrying industrial personnel) 2024 (Order 2024/1)

Authority

1. Section 98 of the *Navigation Act 2012* (the Navigation Act) provides that the regulations may provide for safety certificates including giving effect to the *International Convention for the Safety of Life at Sea 1974* (SOLAS).
2. Subsection 314 of the Navigation Act provides that regulations may provide for particular matters relating to certificates.
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. Subsection 339(2) of the Navigation Act provides that the regulations may provide for matters including the design and construction of vessels, the machinery and equipment to be carried on board vessels and the maintenance, testing, survey and certification of vessels.
5. Paragraph 340(1)(a) of the Navigation Act provides that the regulations may give effect to SOLAS.
6. Subsection 341(1) of the Navigation Act provides for the imposition of penalties in regulations.
7. 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.
8. Subsection 342(4) provides that a Marine Order may provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in a document as in force or existing at a particular time or from time to time.
9. 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.
10. This Marine Order is a legislative instrument for the *Legislation Act 2003*.

Purpose

11. This Marine Order sets out certification requirements for cargo vessels that carry industrial personnel. It also sets out arrangements for the safe carriage of industrial personnel.
12. As the purpose of the Marine Order is to give effect to Australia's international obligations in relation to implementing Chapter XV of SOLAS, the Marine Order is exempt from sunseting under item 1, section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

Overview

13. This new Marine Order gives effect to the *International Code of Safety for Ships carrying Industrial Personnel* (IP Code) and applies to cargo vessel and high speed cargo craft of 500 gross tonnage and upwards which carry more than 12 industrial personnel.
14. The IP Code is a mandatory code under Chapter XV of SOLAS and sets out requirements including vessel stability, machinery and electrical installations, fire

safety, life-saving appliances and arrangements, carriage of dangerous goods, training of industrial personnel and personnel transfer arrangements.

15. Internationally, there is increasing demand for vessels that can transport workers to and from offshore facilities including workers in the offshore renewable energy sector such as windfarms. The IP Code imposes minimum safety standards for vessels to address risks for maritime operations relating to the carriage and transfer of these personnel.

Consultation

16. A copy of the draft of this Marine Order was placed on the AMSA website for public comment for 8 weeks closing 14 April 2024. Over 160 stakeholders, including recognised organisations, shipping industry peak bodies, training organisations, unions, and interested government departments and agencies, were invited by email to participate in the consultation process. The introduction of the Marine Order was also advised on social media and via the February 2024 and March 2024 editions of “AMSA Update” which is a monthly newsletter with a distribution of around 27,000 people. Several comments were received relating to the type of training currently available internationally to industrial personnel; transitional arrangements for vessels; standards for personnel transfer arrangements; definitional matters in the instrument; and the criteria prescribed for AMSA’s power in relation to dealing with the certificate. These comments were taken into account in preparation of the instrument.

17. The Office of Impact Assessments (OIA) consider that the requirements of this new Marine Order have regulatory impacts of a minor or machinery nature and no regulation impact statement was required. The OIA reference number is OIA23-05892 and OIA23-06229.

Documents incorporated by reference

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

- *Marine Order 1 (Administration) 2013*;
- *Marine Order 31 (SOLAS and non-SOLAS certification) 2019*
- *Marine Order 49 (High-speed craft) 2015*
- SOLAS Chapters I, VII, VIII, X and XV;
- the 1994 and 2000 HSC Codes;
- the IP Code;
- *Interim recommendations on the safe carriage of more than 12 industrial personnel on board vessels engaged on international voyages (IMO Resolution MSC.418(97))*;

19. Marine Orders 1, 31 and 49 are adopted as in force from time to time 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*) and is available for free from the Federal Register of Legislation.

20. 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 Convention is available for free on the Australian Treaties Database at www.info.dfat.gov.au/treaties.

21. The HSC Codes and IP Code are also available for free from the Australian Treaties Database at www.info.dfat.gov.au/treaties. These Codes are incorporated as in force from time to time with rolling incorporation authorised by subsection 342(4) of the Navigation Act.
22. Information on obtaining copies of any International Maritime Organization (IMO) Resolution, IMO document or other document that is mentioned in this Marine Order is available from the Marine Order link at www.amsa.gov.au.

Commencement

23. The Marine Order commenced on 1 July 2024.

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 2 states the purpose of the Marine Order which is to give effect to the IP Code.
27. Section 3 sets out the powers in the Navigation Act that enable the Marine Order to be made.
28. Section 4 sets out definitions of terms used in the Marine Order.
29. Section 5 sets out matters that assist with the interpretation of the Marine Order.
30. Section 6 states the application of the Marine Order to a regulated Australian vessel and foreign vessel.
31. Section 7 provides that a regulated Australian vessel must have an IP Ship Safety Certificate in accordance with Chapter XV of SOLAS.
32. Section 8 specifies an IP Safety Certificate as a safety certificate so that a person may apply for the issue of an IP Safety Certificate under subsection 99(1) of the Navigation Act. A person must apply in accordance with Division 3 of *Marine Order 1 (Administration) 2013*.
33. Section 9 sets out the criteria that must be satisfied for an issuing body to issue an IP Safety Certificate.
34. Section 10 sets out the conditions that apply to the issue of an IP Safety Certificate.
35. Section 11 states the duration of an IP Safety Certificate.
36. Section 12 enables an issuing body to make an endorsement on an IP Ship Safety Certificate.
37. Section 13 sets out the criteria for variation of an IP Ship Safety Certificate.
38. Section 14 sets out the criteria for revocation of an IP Ship Safety Certificate.
39. Section 15 provides that a foreign vessel must have a certificate that is issued in accordance with the IP Code.
40. Section 16 requires a foreign vessel to comply with the requirements of Chapter XV of SOLAS and the IP Code that its flag state apply to it.
41. Section 17 provides that it is an offence if a master or owner takes a regulated Australia vessel to sea without personal transfer appliances and arrangements in place. Strict liability applies to the offence and a person is also liable to civil penalty.

42. Section 18 provides that it is an offence if a master of a regulated Australian vessel does not ensure that each industrial personnel on board is medically fit, can understand instructions, has specified training and familiarization in relation to the vessel. Strict liability applies to the offence and a person is also liable to civil penalty.

Statement of compatibility with human rights

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

Overview of the legislative instrument

44. The Navigation Act implements Australia's obligations under the *International Convention for the Safety of Life at Sea (SOLAS)*. SOLAS deals with internationally accepted standards for certification of vessels and arrangements for the safe operation of vessels. This Marine Order gives effect to IMO's IP Code that is a mandatory code under SOLAS for cargo vessels and high speed cargo craft that are subject to Chapter XV of SOLAS when carrying industrial personnel.

Human rights implications

45. Sections 17 and 18 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.

46. In section 17, a criminal offence has been created to ensure that no regulated Australian vessel carrying industrial personnel operates without minimum measures related to the onboard arrangements for personnel transfer. These measures reflect requirements of the IP Code and include supervision, communication, permanent markings for certain appliances and arrangements, checking and maintenance, lighting, transfer planning, procedures and record keeping. These on-board arrangements are additional to the requirements imposed under a vessel's IP Ship Safety Certificate that relate to the vessel itself. Accidents that happen at sea are exacerbated by the extreme conditions and isolation from medical and emergency assistance.

47. For this reason, strict liability is imposed to ensure international best practice is followed for measures on board the vessel that relate to the safe transportation of workers. The offence carries a low penalty of 50 penalty units. A civil penalty of 50 penalty units is also imposed. At the time of making of this Marine Order, one penalty unit was \$313.

48. In section 18, a criminal offence has been created to ensure that a master does not operate a regulated Australian vessel without ensuring that industrial personnel being carried are both medically fit and properly trained. Strict liability is imposed to ensure masters have verified whether the individual who is being carried as industrial personnel is personally prepared to face emergencies and mitigate the risks relating to transportation by sea. The offence carries a low penalty of 50 penalty units. A civil penalty of 50 penalty units is also imposed. At the time of making of this Marine Order, one penalty unit was \$313.

49. The criminal penalty provisions in this Marine Order are authorised by paragraph 341(1)(a) of the Navigation Act. The civil penalty provisions in this Order are authorised by paragraph 341(1)(b) of the Navigation Act.

50. Having regard to the objectives of the civil penalty provisions in this Marine Order and the low level of penalty, the civil penalties should not be considered to be criminal matters for human rights law.

Conclusion

51. AMSA considers that this instrument is compatible with the rights or freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Making the instrument

52. 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*.