

Explanatory Statement

Marine Orders Miscellaneous Amendment Order 2024 (Order 2024/2)

Authority

1. Subsection 339(1) of the *Navigation Act 2012*, section 25 of the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006*, subsection 33(1) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* and subsection 159(1) of the *Marine Safety (Domestic Commercial Vessel) National Law* authorise the Governor-General to make regulations necessary or convenient for carrying out or giving effect to that legislation.
2. Subsection 342(1) of the *Navigation Act 2012*, section 24 of the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006*, subsection 34(1) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* and subsection 163(1) of the *Marine Safety (Domestic Commercial Vessel) National Law* 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.
3. 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.
4. This Marine Order is a legislative instrument for the *Legislation Act 2003*.

Purpose

5. The *Administrative Review Tribunal Act 2024* establishes the Administrative Review Tribunal (Tribunal) as a fit-for-purpose federal administrative review body which will replace the Administrative Appeals Tribunal (AAT). That Act and related legislation received Royal Assent on 3 June 2024 and were proclaimed to commence on 14 October 2024.
6. This Marine Order is an amending instrument that implements the necessary changes to Marine Orders to give effect to these administrative review reforms.

Overview

7. Three Marine Orders are amended to replace outdated references to the Administrative Appeals Tribunal (AAT) or its establishing legislation. The changes are consequential to the establishment of the replacement Administrative Review Tribunal (ART).
8. The *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024* (No. 38, 2024) amends relevant provisions in the principal legislation that operate in conjunction with references in the Marine Orders. These provisions also provide for external merits review of administrative decisions made by AMSA.

Consultation

9. The website of the Attorney General's Department sets out the public consultation process for the establishment of the replacement Tribunal including the consultation process of changes to principal legislation. See www.ag.gov.au/legal-system/new-system-federal-administrative-review.
10. For the Office of Impact Analysis, no regulation impact statement is required. The OIA reference number is OIA ID reference OIA23-06166.

Documents incorporated by reference

11. The *Administrative Review Tribunal Act 2024* becomes a document incorporated by reference. As an Act of Parliament, it is subject to section 10 of the *Acts Interpretation Act 1901* and is in force from time to time.

Commencement

12. This Marine Order commenced on the day after registration.

Contents of this instrument

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

14. Section 2 provides for the commencement of the Marine Order.

15. Section 3 states the purpose of the Marine Order which is to amend three Marine Orders.

Statement of compatibility with human rights

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

Human rights implications

17. The amendments in the Marine Order may engage the following rights:

- the right to an effective remedy in Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), and
- the right to a fair and public hearing in Article 14 of the ICCPR.

18. As the amendments advance the right to an effective remedy and the right to a fair hearing, AMSA considers that this instrument is compatible with human rights. The Marine Order does not limit any rights or freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* apply.

Making the instrument

19. 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*.