

## **Explanatory Statement**

### **Marine Order 64 (Vessel traffic services) 2013 (Order 2013/14)**

#### **Authority**

1. Subsection 213 of the *Navigation Act 2012* (the *Act*) provides for regulations to be made about vessel traffic services including the authorisation by AMSA of vessel traffic services and training certification and auditing for vessel traffic services.
2. Paragraph 340(1)(a) of the Act provides for regulations to be made to give effect to SOLAS.
3. Subsection 341(1) of the Act provides that the regulations may provide for the imposition of penalties and civil penalties for a contravention of the regulations or a notice, order, direction or instruction, given issued or made under, or in force because of, the regulations.
4. Subsection 342(1) provides for AMSA to make orders about matters that can be provided for by regulations.
5. Subsection 342(4) of the Act provides for Orders to provide for any matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other document as in force at a particular time or from time to time.
6. Subsection 339(1) of the Act also provides a general regulation making power for matters required or permitted to be prescribed by the Navigation Act, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.
7. Marine Order 64 is made under subsection 342(1) of the Act and is a legislative instrument for the *Legislative Instruments Act 2003*.

#### **Purpose**

8. This Order provides for vessel traffic services for Australia and gives effect to Regulation 12 of Chapter V of the International Convention for the Safety of Life at Sea (**SOLAS**).
9. Under Regulation 12 of Chapter V of SOLAS Australia is obliged to arrange for the establishment of vessel traffic services where, in its opinion, the volume of traffic or the degree of risk justifies such services. Under Regulation 12 Australia must also, wherever possible, follow the guidelines developed by the International Maritime Organization (**IMO**) for vessel traffic services. The IMO's *Guidelines for vessel traffic services* provide for the operation of VTS Authorities under instruments of authority to be issued by the competent authority. AMSA is the competent authority for Australia.

#### **Overview**

10. This Order sets out the arrangements for the regulation by AMSA of VTS authorities and VTS training organisations, including their auditing.
11. It will be a condition of authorisation by AMSA of a VTS authority that it will operate in accordance with the IMO's *Guidelines for vessel traffic services*. Similarly, it will be a condition of accreditation of a VTS training organisation that it operate in accordance with applicable guidelines issued by the International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA).
12. The Order also provides for the recognition of training organisations previously accredited by AMSA, the qualifications for vessel traffic service operators and requirements for masters of vessels to provide reports required by VTS authorities and to comply with their instructions.

## Consultation

13. This draft is the result of a series of workshops AMSA conducted with stakeholders during 2012 to develop a framework for the regulation of vessel traffic services in Australia.

14. A copy of the draft Order was placed on AMSA's website on 12 April 2013 for stakeholders to consider and provide feedback by 1 May 2013. In addition, a copy of the draft Order was emailed to industry and other stakeholders for comment. Eleven responses were received providing comment on the draft. These comments were taken into account when preparing the final draft.

15. The Office of Best Practice Regulation (OBPR) was consulted on the proposed order. OBPR considered that the regulatory impact of the Order is of a minor or machinery nature and no further analysis in the form of a Regulatory Impact Statement is required (OBPR reference number 2013/14479).

## Documents incorporated by reference

16. This Order incorporates the following documents by reference:

- The *Guidelines for vessel traffic services* adopted by IMO Resolution A.857(20) as in force from time to time;
- *IALA Guideline No.1014 On the Accreditation and Approval Process for VTS Training* as in force from time to time.

17. A copy of each IMO resolution that adopts or amends the *Guidelines for vessel traffic services* is available on AMSA's website at <http://www.amsa.gov.au> or by emailing [international.relations@amsa.gov.au](mailto:international.relations@amsa.gov.au). Copies may also be purchased from:

International Maritime Organization (IMO)  
4 Albert Embankment, London SE1 7SR  
Telephone +44(0)20 7735 7611  
Facsimile +44(0)20 7587 3210  
IMO website: <http://www.imo.org>

18. The current edition of *IALA Guideline No. 1014* is available from the IALA website at <http://www.iala-aism.org>.

## Commencement

19. This Order commences on 1 September 2013.

## Contents of this instrument

20. Section 1 sets out the name of the Order.

21. Section 2 provides for commencement of the Order.

22. Section 3 states the purpose of the Order, which is to provide for vessel traffic services for Australia and give effect to Regulation 12 of Chapter V of SOLAS.

23. Section 4 sets out the provisions of the Act that provide the powers for the Order to be made.

24. Section 5 provides definitions of terms used in the Order. Also, subsection 5(2) provides that AMSA is the competent authority for Australia in relation to the *Guidelines for vessel traffic services* and IALA Recommendation V-103.

25. Section 6 sets out the entities and person to which the Order applies. In particular, it states that it applies to masters of particular kinds of vessels. These vessels are the same vessels to which Part 6 (Safe navigation) of Chapter 6 of the Act applies (see

section 212 of the Act), and includes the masters of foreign vessels, domestic commercial vessels and recreational vessels.

26. Section 7 sets out the decision makers within AMSA to make or review decisions under the Order.

27. Section 8 sets out the arrangements for making an application to AMSA for authorisation to provide a vessel traffic service for a VTS area, including the information to be included in the supporting statement for the application. An application must be made in accordance with *Marine Order 1 (Administration) 2011*.

28. Section 9 sets out the criteria for AMSA to consider when deciding whether or not to authorise the provision of a vessel traffic service for a VTS area. When considering whether there needs to be a vessel traffic service for the VTS area AMSA may consider matters such as whether its provision will improve the safety and efficiency of vessel traffic and protect the environment. These matters are to be addressed in the supporting statement for the application.

29. Section 10 provides that AMSA must give an authorised applicant an instrument of authority. It also sets out the details to be provided by AMSA in an instrument of authority. The instrument of authority must include each condition with which an applicant must comply. The issue of an instrument of authority is taken to be a decision to approve an application for subsection 16.1 of *Marine Order (Administration) 2011*. This is a reviewable decision under that Order. An applicant issued an instrument of authority is a 'VTS authority'.

30. Section 11 provides that a condition of authorisation of every VTS authority is that it must operate in accordance with the IMO's *Guidelines for vessel traffic services*. AMSA may also impose other conditions.

31. Section 12 provides for the term of authorisations. Generally, this will be for a 5 year period from when it is issued.

32. Section 13 provides for the amendment of instruments of authority. This may occur on AMSA's own initiative or on application by the VTS authority that holds the instrument. An application for an amendment of an instrument of authority must be made in accordance with *Marine Order 1 (Administration) 2011*.

33. Section 14 provides the criteria for amendment by AMSA of an instrument of authority.

34. Section 15 provides that AMSA may only amend an instrument of authority if it gives specified interested parties at least 3 months' notice of the proposed amendment and considers any written comments received.

35. Section 16 provides for the renewal by AMSA of an authorisation on application by the VTS authority given the related instrument of authority. Again, an application must be made in accordance with *Marine Order 1 (Administration) 2011*.

36. Section 17 provides for the suspension or cancellation of an authorisation to provide a vessel traffic service for a VTS area. AMSA may cancel an authorisation if the VTS authority to which the instrument of authority is issued has surrendered it to AMSA for cancellation.

37. Section 18 provides for auditing of VTS Authorities.

38. Section 19 requires a VTS Authority to comply with all reasonable requests made by an auditor for the conduct of the audit.

39. Section 20 enables persons to apply for accreditation as a VTS training organisation.

40. Section 21 sets out the criteria for accreditation.
41. Section 22 provides for issue of certificates of accreditation.
42. Section 23 provides that a VTS training organisation must operate in accordance with IALA Guideline No. 1014 (as defined in section 5) and any conditions imposed by AMSA.
43. Section 24 provides for the term of accreditation. Generally, this will be for a 5 year period from when a certificate of accreditation is issued.
44. Section 25 provides for amendment of a certificate of accreditation.
45. Section 26 sets out criteria for amendment of a certificate of accreditation.
46. Section 27 provides for AMSA to give notice of a proposed amendment of a certificate of accreditation to the VTS training organisation to which the certificate was issued (if the organisation did not apply for amendment) and any other body AMSA considers may have an interest in the proposed amendment.
47. Section 28 deals with renewal of certificates of accreditation.
48. Section 29 deals with suspension or cancellation of certificates of accreditation.
49. Section 30 provides for auditing of VTS training organisations.
50. Section 31 requires a VTS training organisation to comply with all reasonable requests made by an auditor for the conduct of the audit.
51. Section 32 provides that a person to whom a certificate of accreditation to provide training to vessel traffic service operators before 1 July 2013 is taken to be a VTS training organisation.
52. Section 33 provides for the master of a vessel to give a report or information to a VTS authority, if required.
53. Section 34 provides for the master of a vessel to comply with instructions by a VTS Authority. Non-compliance is an offence and also attracts a civil penalty.

### **Strict liability offence**

54. Section 34 creates an offence of non-compliance by a master of a vessel with an instruction given by a VTS Authority for movement of a vessel. Strict liability applies to that offence. The penalty is 50 penalty units.
55. It is considered that strict liability is warranted as a deterrent and to ensure the integrity of the regulatory regime. The penalty is relatively low (50 penalty units) and is within the limitation imposed by subsection 341(1) of the Act. In framing the offence, regard was had to the *Guide on Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* published by the Attorney-General's Department and the provisions dealing with the offence is consistent with the principles outlined in the Guide.

### **Statement of compatibility with human rights**

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

### **Overview of the legislative instrument**

57. This Order is made under the *Navigation Act 2012* which commences on 1 July 2013. The Act is a rewrite of the *Navigation Act 1912* and continues to give effect to Australia's obligations under international conventions covering such matters as safety of life at sea and vessel traffic services.

## Human rights implications

58. Section 34 creates an offence of non-compliance by a master of a vessel with an instruction given by a VTS Authority for movement of a vessel. Strict liability applies to that offence. The penalty is 50 penalty units.

59. Strict liability offences allow for the imposition of criminal liability without the need to prove fault (see section 6.1 of the *Criminal Code*). Strict liability offences may engage and limit the presumption of innocence mentioned in Article 17 of the International Covenant on Civil and Political Rights. This particular offence may also engage the right to freedom of movement.

60. Given that the provision is directed specifically at the master of a vessel on a matter that could be of critical significance to maritime safety and having regard to the relatively low level of penalty, it is considered that the provision is appropriate.

61. Subsection 34(3) also imposes a civil penalty of 50 penalty units for a contravention of subsection 34(1). Civil penalty provisions may engage the criminal process provisions under Articles 14 and 15 of the International Covenant on Civil and Political Rights. Having regard to the objectives of this civil penalty provision (which are protective, preventative, disciplinary or regulatory in nature) and relatively low level of penalty (50 penalty units), the civil penalty should not be considered 'criminal' for human rights law and the criminal process rights in Articles 14 and 15 do not apply.

## Assessment

62. This instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

## Making the instrument

63. 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 Authority Act 1990*.