



Australian Government
Australian Maritime Safety Authority

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Marine Order 504 (Certificates of operation and operation requirements — national law) 2018

I, Michael Kinley, Chief Executive Officer of the Australian Maritime Safety Authority, (the National Marine Safety Regulator under section 9 of the *Marine Safety (Domestic Commercial Vessel) National Law*), make this Order under subsection 163(1) of the *Marine Safety (Domestic Commercial Vessel) National Law*.

15 June 2018

Michael Kinley
Chief Executive Officer

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Division 1 Preliminary

1 Name of Order

This Order is *Marine Order 504 (Certificates of operation and operation requirements — national law) 2018*.

1A Commencement

This Order commences on 1 July 2018.

1B Repeal of *Marine Order 504 (Certificates of operation — national law) 2013*

Marine Order 504 (Certificates of operation — national law) 2013 is repealed.

2 Application of Order

This Order applies to:

- (a) persons who apply to the National Regulator for certificates of operation for domestic commercial vessels or for the variation, suspension or revocation of those certificates; and
- (b) owners and masters of domestic commercial vessels.

3 Applications under this Order

An application under this Order must be made in accordance with Marine Order 501.

Division 2 Requirements for certificate of operation

4 Application for certificate to include declaration of safety management system

- (1) An application for a certificate of operation must be made in the approved form.
- (2) An application must include a written declaration by the applicant that there is a safety management system in place:
 - (a) for each vessel to which the application relates; and
 - (b) that complies with the requirements of this Order for a safety management system.

Note 1 Giving false or misleading information in an application is an offence — see subsection 136(1) of the Criminal Code.

Note 2 It is an offence under the national law for the owner of a vessel not to implement and maintain a safety management system for the vessel — see subsection 12(2) of the national law. A safety management system may be for more than 1 vessel.

- (3) For paragraph (2)(b), the requirements are that the safety management system:
 - (a) identifies the risks to the safety of the vessel, the environment and persons on or near the vessel; and
 - (b) includes procedures to eliminate or minimise the identified risks so far as is reasonably practicable; and
 - (c) addresses the operation requirements that apply for the vessel; and

- (d) is documented and readily accessible for a person who uses the system; and
 - (e) is kept on board the vessel if it is reasonably practicable to do so given the size and use of the vessel.
- Note for paragraphs (b) and (e)* For the meaning of **reasonably practicable** — see section 27 of the national law.
- (4) For paragraph (3)(c), the operation requirements that apply for the vessel are:
 - (a) for a Class 1, Class 2 or Class 3 vessel — the operation requirements in Schedule 1; and
 - (b) for a Class 4 vessel — the operation requirements in Schedule 1 that apply for the vessel and the operation requirements in Schedule 2.
 - (5) If Part A of the ISM Code is complied with for a Class 1, Class 2 or Class 3 vessel, the vessel is taken to have a safety management system that complies with the requirements of this Order for a safety management system.

Note 1 Part A of the ISM Code sets out requirements for vessel safety management systems. For complying with Part A of the ISM Code, the relevant national requirement for crewing is Clause 6 of Schedule 1 to this Marine Order.

Note 2 A safety management system may be for more than 1 vessel.

Note 2 A person may apply to the National Regulator for a certificate of operation for 1 or more domestic commercial vessels — see subsection 47(1) of the national law. A fee may be charged — see the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*.

5 Criteria for issue of certificate

For paragraph 48(1)(c) of the national law, the criteria for the issue of a certificate of operation by the National Regulator are as follows:

- (a) for each vessel for which the certificate is to be issued and a unique identifier is required — the vessel has a unique identifier;
- (b) for each vessel for which the certificate is to be issued — the operation of the vessel complies with:
 - (i) for a Class 1, Class 2 or Class 3 vessel — Schedule 1, or Part A of the ISM Code;
 - (ii) for a Class 4 vessel — the operation requirements in Schedule 1 that apply for the vessel and Schedule 2.

Note The applicant must also demonstrate appropriate competence and capacity for the safe operation of the vessel — see paragraph 48(1)(b) of the national law.

6 Renewal of certificate

- (1) The National Regulator may renew a certificate of operation if:
 - (a) the application for renewal of the certificate of operation has been made in the approved form and accompanied by the prescribed fee; and
 - (b) the certificate of operation for which renewal is sought was in force within the 2 year period before the application for renewal was made; and

- (c) no change is sought to:
 - (i) the vessels set out in the certificate; or
 - (ii) the service category of the vessels; or
 - (iii) the kind of operation; and
- (d) the operation of the vessels continues to comply with this Order.
- (2) A decision to refuse to renew a certificate of operation is a reviewable decision for sections 16 and 17 of Marine Order 501.

Note A certificate of operation which has expired is no longer in force. If a certificate of operation has expired, the vessel or vessels mentioned on the certificate must not be operated until the certificate has been renewed. An application made 2 years or more after the certificate expires is a new application and would be considered in accordance with section 5.

7 Conditions on certificate

- (1) For paragraph 48(4)(a) of the national law, a certificate of operation is subject to the following conditions:
 - (a) there continues to be a safety management system in place for each vessel to which the certificate applies that complies with the requirements of this Order for a safety management system;
 - (b) the operation of each vessel to which the certificate applies must continue to comply with:
 - (i) the operation requirements in Schedules 1 or 2 that apply for the vessel; or
 - (ii) Part A of the ISM Code;
 - (c) each vessel to which the certificate applies must continue to meet any conditions to which the vessel is subject under:
 - (i) a certificate of survey; or
 - (ii) an exemption from the requirement to hold a certificate of survey;
 - (d) each vessel to which the certificate applies must comply with any limitations on each operational area mentioned in the certificate for the vessel;
 - (e) the holder of the certificate must tell the National Regulator in writing:
 - (i) at least 14 days before changing the nature of the operations of a vessel to which the certificate applies; or
 - (ii) at least 14 days before any alteration or replacement affecting the electrical system, machinery or associated systems, stability, watertight integrity or subdivision or equipment type of a vessel to which the certificate applies; or
 - (iii) within 14 days if a matter recorded on the certificate is no longer accurate;
 - (f) the certificate must not be transferred to another person;
 - (g) any fees charged that relate to a vessel to which the certificate applies must be paid.

Note 1 The National Regulator may also impose other conditions on a certificate of operation — see paragraph 48(4)(b) of the national law.

Division 3 Variation, suspension and revocation of certificates of operation

Section 8

Note 2 For offences related to a certificate of operation — see sections 53 to 57 of the national law.

Note 3 A recreational user of a domestic commercial vessel may have to comply with State or Territory legislation that applies to the activity — see *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*, sections 6 and 7.

- (2) For the avoidance of doubt, a certificate of operation issued prior to 1 July 2018 is subject to the conditions mentioned in this section.

8 Form of certificate

- (1) A certificate of operation must:
- (a) be in writing; and
 - (b) include the following:
 - (i) the name of the holder of the certificate;
 - (ii) if the certificate comes into force on a day other than the date of issue of the certificate — the date it comes into force;
 - (iii) the date of expiry of the certificate;
 - (iv) the kinds of operations;
 - (v) the vessel use category and operational area for each kind of operation.
- (2) A certificate of operation may include anything else the National Regulator considers relevant.

9 Duration of certificate

If a certificate of operation does not specify a date on which it ceases to be in force, the certificate ceases to be in force 5 years after it comes into force.

Division 3 Variation, suspension and revocation of certificates of operation

10 Application for variation, suspension or revocation of certificate

An application for variation, suspension or revocation of a certificate of operation for a domestic commercial vessel must, in addition to complying with section 9 of Marine Order 501:

- (a) a copy of the certificate of operation;
- (b) for an application for suspension — the period of suspension sought.

Note Marine Order 501 requires a supporting statement setting out the grounds for the application. It also provides that if a fee is charged the application must be accompanied by the prescribed fee and, if a form is approved for the application, the approved form must be used.

11 Criteria for variation of certificate

- (1) For paragraph 50(1)(b) of the national law, the criteria for variation of a certificate of operation by the National Regulator on application are that:
- (a) a vessel to which the certificate applies has been altered, damaged or sold and the applicant has requested the removal of the vessel from the certificate; or

- (b) the applicant has requested that a kind of operation be removed from the certificate; or
 - (c) the applicant has requested that another vessel be added to the certificate that:
 - (i) has the same service category as another vessel to which the certificate applies; and
 - (ii) the National Regulator considers meets the criteria mentioned in section 5 for issue of a certificate; or
 - (d) the applicant has applied for the certificate to no longer apply to a vessel; or
 - (e) there has been a change to the name of the owner of the vessel (other than transfer of ownership); or
 - (f) there has been a change to the name of a vessel to which the certificate applies; or
 - (g) information in the certificate is no longer accurate.
- (2) For paragraph 50(2)(a) of the national law, the criteria for variation of a certificate of operation by the National Regulator on its initiative are:
- (a) the National Regulator becomes aware that a vessel to which the certificate applies has been sold or damaged; or
 - (b) the National Regulator becomes aware that a vessel to which the certificate applies has ceased an operation type; or
 - (c) the National Regulator becomes aware that a certificate lists a service category that no longer applies to any vessels to which the certificate applies; or
 - (d) the National Regulator considers that a condition imposed on the certificate is no longer required; or
 - (e) there has been a change to the name of the owner (other than transfer of ownership); or
 - (f) there has been a change to the name of a vessel to which the certificate applies; or
 - (g) the National Regulator considers that information in the certificate is no longer accurate.

Note The variation of a certificate of operation does not change the expiry date of the certificate.

12 Suspension of certificate

- (1) For paragraph 51(1)(b) of the national law, the criteria for the National Regulator to suspend a certificate of operation on application are:
- (a) the holder of the certificate has given the National Regulator a declaration that all the vessels mentioned in the certificate will no longer perform the operations mentioned in the certificate in the period for which the suspension is sought; and
 - (b) any fees relating to the certificate have been paid.

- (2) For subsection 51(2A) of the national law, the purpose for the suspension of a certificate of operation on the National Regulator's initiative is any of the following:
- (a) ensuring any unpaid fees are recovered;
 - (b) ensuring necessary repairs are made to the vessel;
 - (c) ensuring that the vessel is not operated in contravention of a detention notice, a direction, an improvement notice or a prohibition notice.

Note The National Regulator must suspend a certificate if satisfied the suspension is necessary for other purposes (eg protecting human life) — see subsection 51(2) of the national law.

- (3) For subparagraph 51(3)(b) of the national law, the period of suspension is:
- (a) for a suspension on application mentioned in subsection 51(1) of the national law — 18 months; and
 - (b) for a suspension on the National Regulator's initiative mentioned in subsections 51(2) and (2A) of the national law — 6 months.

Note 1 Under paragraph 72(2)(a) of the national law the National Regulator must, before suspending a certificate under subsection 51(2A), give the holder of the certificate a notice inviting the holder to show cause, within a reasonable period specified in the notice, why the certificate should not be suspended.

Note 2 The prescribed period is the maximum period a suspension may remain in force. The National Regulator may specify in writing an earlier period — see paragraph 51(3)(b) of the national law.

13 Criteria for revocation of certificate

- (1) For paragraph 52(1)(b) of the national law, the criteria for revocation of a certificate of operation on application are that:
- (a) the holder of the certificate has given the National Regulator a declaration that all the vessels to which the certificate applies are no longer performing the operations mentioned in the certificate; and
 - (b) any fees relating to the certificate have been paid.

Note for paragraph (a) An example of a vessel no longer performing the operations mentioned in the certificate is a vessel that has been scrapped or sunk.

- (2) For paragraph 52(2)(a) of the national law, the criteria for revocation of a certificate of operation by the National Regulator on the National Regulator's initiative are that:
- (a) the National Regulator considers it to be necessary in the interest of marine safety or protecting the environment; or
 - (b) the certificate was issued in error; or
 - (c) a detention notice, a direction, an improvement notice or a prohibition notice has not been complied with.

Note The National Regulator may also revoke a certificate of operation if satisfied that the holder is not a fit and proper person to hold the certificate — see subsection 52(3) of the national law.

- (3) A certificate of operation may only be revoked by the National Regulator under subsection (2) if:
- (a) the National Regulator has given a show cause notice; and

- (b) within 30 days after the notice is given, the certificate holder has not given the National Regulator reasons that the National Regulator considers acceptable for not revoking the certificate.

14 Prescribed period for notice of vessel sold, modified or sunk

For paragraph 57(1)(b) of the national law, the holder of a certificate of operation must notify the National Regulator within 14 days after the sale, modification, sinking or scrapping of a vessel to which the certificate of operation applies.

Division 4 Interpretation and transitional

15 Definitions

In this Order:

briefeer means a person who gives a briefing to the hirer and participants of a Class 4 vessel.

certificate of recognition has the meaning given by section 4 of *Marine Order 70 (Seafarer certification) 2014*.

Class 1 vessel means a vessel that has the vessel use category 1 under section 2.1 of NSCV Part B.

Class 2 vessel means a vessel that has the vessel use category 2 under section 2.1 of NSCV Part B.

Class 3 vessel means a vessel that has the vessel use category 3 under section 2.1 of NSCV Part B.

Class 4 vessel means a vessel that has the vessel use category 4 under section 2.1 of NSCV Part B.

fast craft has the meaning given by the dictionary in NSCV Part B.

guide means a person who:

- (a) is assigned by the owner of the vessel to give guidance on board to the hirer of the vessel and any participants about its designated cruising area; and
- (b) is not the hirer or a participant; and
- (c) does not generally take control of or have responsibility for the vessel.

hazardous occurrence means a circumstance that may have led to a marine incident if it had developed further.

hirer has the same meaning as **hirer** of a hire and drive vessel in section 6 of the national law.

ISM Code means the *International Safety Management (ISM) Code* as defined in Regulation 1 of Chapter IX of the International Convention for the Safety of Life at Sea, done at London on 1 November 1974, as amended and in force for Australia from time to time (**SOLAS**).

Note For information on how to download the ISM Code for free from the IMO website — see AMSA's website at <http://www.amsa.gov.au>. The Code and SOLAS may also be purchased from the IMO — see the IMO website at <http://www.imo.org/publications>. The text of the original SOLAS convention and any amendments in force are in the

Australian Treaties Series, accessible for free through the Australian Treaties Library on the AustLII website at www.austlii.edu.au.

Marine Order 501 means *Marine Order 501 (Administration — national law) 2013*

non-conformance means a circumstance in which a procedure or other requirement mentioned in an operation requirement has not been followed.

NSCV Part B means *Part B — General requirements* of the National Standard for Commercial Vessels as existing from time to time.

Note The National Standard for Commercial Vessels as existing from time to time is available on AMSA's website at <http://www.amsa.gov.au>.

NSCV Part C means *Part C — Design and construction* of the National Standard for Commercial Vessels as existing from time to time.

NSCV Part F1C means *Subsection 1C — Category F2 Fast Craft* of Part F — *Special Vessels* of the National Standard for Commercial Vessels as existing from time to time.

NSCV Part D means *Part D — Crew competencies* of the National Standard for Commercial Vessels as existing from time to time.

operational area means a vessel operational area mentioned in the table to subsection 2.2(1) of NSCV Part B.

participant means a person, other than the hirer or a guide, who is or intends to be on board the vessel while it is underway during the period of time agreed between the owner and the hirer as the period when the vessel may be used.

pen, for a Class 4 vessel, means a designated cruising area surrounded by a set of markers.

Example

A line of buoys.

personal watercraft means a vessel that:

- (a) is less than 4 m long; and
- (b) has an internal combustion engine powering a water-jet pump as its primary source of propulsion; and
- (c) is designed to be operated by at least 1 person sitting, standing or kneeling on the hull of the vessel.

seafarer certificate has meaning given by section 14 of the *Navigation Act 2012*.

service category, for a vessel, means the service category assigned to a vessel under section 2.4 of NSCV Part B.

takeaway vessel means a Class 4 vessel that is collected by the hirer and driven on a trailer elsewhere to be launched.

tour leader means a person on a Class 2 vessel that is overseeing a tour made up of more than 1 Class 4 vessels being operated by 1 or more hirers.

vessel use category means a vessel use category mentioned in the table to subsection 2.1(1) of NSCV Part B.

Note 1 Some terms used in this Order are defined in Marine Order 501, including:

- AMSA
- increased level of risk
- national law
- NSCV

Note 2 Other terms used in this Order have the same meaning that they have in the national law, including **crew**, **domestic commercial vessel**, **marine incident**, **master** and **owner**.

16 Existing vessel — meaning

- (1) For this Order, a domestic commercial vessel is an existing vessel if:
 - (a) a person was entitled to use the vessel in connection with a commercial, governmental or research activity at any time in the 2 years ending on 30 June 2013; and
 - (b) the vessel was not a foreign vessel at any time in the 2 years ending on 30 June 2013.
- (2) However, a vessel is not an existing vessel if there has been a break, in its use in connection with a commercial, governmental or research activity, of a period of more than 2 years after 30 June 2013.
- (3) Also, a vessel is not an existing vessel if the National Regulator considers that:
 - (a) it has been altered or modified to the extent that it must be reassessed against the standards for construction, subdivision or stability that apply to the vessel; or
 - (b) the nature of its operations or its area of operation has changed so that there is an increased level of risk.

17 Transitional

- (1) This section applies to an application for the issue, variation, suspension or revocation of a certificate of operation made on, or before 30 June 2018, that is not decided before 1 July 2018.
- (2) The application is taken to be an application for this Order.
- (3) However, the National Regulator may consider the application in accordance with the criteria set out in *Marine Order 504 (Certificates of operation — national law) 2013* as if that Order had not been repealed.

Schedule 1 Operation requirements

(subsection 4(4), paragraph 5(b) and subparagraph 7(1)(b)(i))

Note The operation of all classes of vessels must comply with all the operation requirements set out in this Schedule unless a clause provides otherwise for Class 4 vessels. Additional operation requirements in Schedule 2 apply for Class 4 vessels. As an alternative to complying with applicable operation requirements, the operation of a vessel may comply with Part A of the ISM Code — see paragraph 5(b) and subparagraph 7(1)(b)(i).

1 Vessel and contact details

- (1) This clause applies for all vessels.
- (2) The owner of the vessel must ensure that the following information is recorded in writing and kept so that it is readily accessible:
 - (a) the name, address, phone number and email address (if any) of the owner of the vessel;
 - (b) the unique identification number for the vessel;
 - (c) the kind of vessel;
 - (d) the areas of operation of the vessel;
 - (e) the contact details of a person who may be contacted at any time about the operation of the vessel.

Note The owner may be the operator of the vessel and not the company or other person that owns the vessel if the operator is the person with overall general control and management of the vessel — see national law, section 6, definition of **owner**.

2 Risk assessment

- (1) This clause applies for all vessels.

Note For additional risk assessment requirements for Class 4 vessels — see clause 1 of Schedule 2.
- (2) The owner of the vessel must ensure the following:
 - (a) that a risk assessment of the operation of the vessel is carried out;
 - (b) that the risk assessment is documented and the document kept up to date;
 - (c) that the risk assessment is reviewed if:
 - (i) the vessel undertakes an operation that differs from that normally undertaken by the vessel; or
 - (ii) the master of the vessel considers that the risks may have changed; or
 - (iii) the vessel is involved in a marine incident.

Note for paragraph (b) A risk register is an example of a suitable way to document the risk assessment.
- (3) The owner must ensure that the risk assessment identifies the following:
 - (a) the key daily tasks to be performed by the master and all crew;
 - (b) any potential risks involved in the conduct of any task that may expose the following to unacceptable risks:
 - (i) the vessel;

- (ii) the operational environment of the vessel;
- (iii) persons on or near the vessel;
- (c) the appropriate crewing for the vessel;
- (d) a person to be responsible for ensuring that actions needed to eliminate or minimise any risk are carried out.

Examples of potential risks for paragraph (b)

- 1 Vessel collision or grounding.
- 2 Fire.
- 3 Drowning.

Note for subparagraph (b)(iv) For appropriate crewing requirements see clause 6.

3 Owner's responsibility and authority statement

- (1) This clause applies for all vessels other than Class 4 vessels.
- (2) The owner of the vessel must ensure that a statement about the following matters is prepared and kept so that it is readily accessible:
 - (a) the name and contact details of the owner of the vessel;
 - (b) the name and responsibilities of any person to whom the owner has given the authority to act on behalf of the owner;
 - (c) a statement about the relationship and lines of communication between the master, crew and onshore staff who are responsible for implementation of the operation requirements.

Note 1 This document is usually known as the owner's responsibility statement.

Note 2 There may be more than 1 owner of a vessel. A person with overall general control and management of the vessel may be an owner — see s 6 of the national law, definition of **owner**.

4 Designated person

- (1) This clause applies for all vessels.
- (2) The owner of the vessel must designate a person to be responsible for monitoring the safety of the vessel, the environment and all persons on or near the vessel and ensuring appropriate resources and shore support are provided to the vessel.

5 Master's responsibility and authority statement

- (1) This clause applies for all vessels other than Class 4 vessels.
- (2) The owner of the vessel must ensure that a statement about the following matters is prepared and kept so that it is readily accessible:
 - (a) the master's responsibility for verifying that the operation requirements are being complied with;
 - (b) that the master may request the owner's assistance and make decisions for the safety of the vessel, the environment and persons on or near the vessel to ensure compliance with the operation requirements.

6 Resources and personnel

- (1) This clause applies for all vessels other than Class 4 vessels.

Note For requirements relating to participant numbers and competency etc for Class 4 vessel hirers and participants — see clause 3 of Schedule 2.

Appropriate crewing

- (2) The owner must:
- determine the appropriate crewing for each kind of operation of the vessel by evaluating the risks to the safety of the vessel, the environment and all persons on or near the vessel; and
 - ensure the vessel operates with the appropriate crewing that is determined.
- (3) Subject to subclause (8), the number and certification (or non-certification) of the determined appropriate crewing must be at least equal to that of the minimum crewing.

Note 1 Minimum crewing is calculated in accordance with subclause (4).

Note 2 Subclause (8) mentions circumstances which may result in a vessel being operated with appropriate crewing that is less than the minimum crewing.

Minimum crewing

- (4) For subclause (3), the minimum crewing for a vessel is the number of crew and the master that:
- is mentioned in the following table for a vessel of its length; and
 - comprises the certificated crew and master and the uncertificated crew mentioned in the table for a vessel of its length worked out in accordance with any rule mentioned in the table that applies to a vessel of its length.

Vessel length	Minimum crewing	Certificated crew and master	Uncertificated crew	Rules
$55 \leq x < 80\text{m}$	4	3	1	Rule 1
$35 \leq x < 55\text{m}$	3	2	1	Rule 1
$12 \leq x < 35\text{m}$	2	2	—	Rules 1 and 2
$< 12\text{m}$	1	1	—	-

Note Under the national law the crew of a vessel does not include the master or a pilot — see definition of **crew** in section 6 of the national law.

- (5) In the table to subclause (4):

certificated means a person who:

- holds a certificate of competency or equivalent qualification recognised by AMSA that permits the person to perform duties or functions that are mentioned in NSCV Part D for the grade of certificate; or
- is exempt under subsection 143(1) of the national law from the requirement to hold a certificate of competency to perform those duties or functions because the person holds:

- (i) a specified seafarer certificate; or
- (ii) a certificate of recognition recognised as equivalent to a specified seafarer certificate.

Rule 1 means that, if the chief engineer holds a deck certificate permitting the holder to be the mate, the number of certificated crew may be reduced by 1 if the number of uncertificated crew is increased by 1.

Rule 2 applies to vessels with $\leq 750\text{kW}$ propulsion power only and means that, if a master holds an engineering certificate, the number of certificated crew and master for the vessel may be reduced by 1 if the number of uncertificated crew is increased by 1.

deck certificate means a certificate of competency or an equivalent qualification recognised by AMSA, a seafarer certificate or a certificate of recognition of a seafarer certificate that allows the holder to perform duties in a deck capacity.

engineering certificate means a certificate of competency or an equivalent qualification recognised by AMSA, a seafarer certificate or a certificate of recognition of a seafarer certificate that allows the holder to perform duties in an engineering capacity related to the machinery of a vessel.

Note For equivalent qualifications recognised by AMSA — see Schedule 3 of NSCV Part D.

- (6) The evaluation mentioned in paragraph (2)(a) must take into account the following factors:
 - (a) the tasks or activities of the vessel and any particular demands on the master and crew that each task or activity will impose in addition to the safe navigation of the vessel;
 - (b) the number of persons to be carried on the vessel and the effectiveness and timeliness arrangements for any passenger monitoring by the crew;
 - (c) the design characteristics of the vessel, including its general arrangements, machinery and equipment;
 - (d) the competency required for the use of technological aids to safety and navigation fitted in addition to the mandatory requirements;
 - (e) the area of operation of the vessel and expected conditions (eg weather, climate and water temperatures);
 - (f) the duration of the voyage;
 - (g) the risk of fatigue of the master and crew;
 - (h) the requirements for the vessel's emergency preparedness, including the vessel's emergency plan and evacuation arrangements;
 - (i) the maintenance requirements of the vessel, its machinery and its equipment;
 - (j) the risks to the environment and all persons who will be on or near the vessel;

- (k) the qualifications and competencies of the master and crew, including circumstances where only the master holds mandated engineering qualifications (dual certification);

Note For qualifications and competency requirements — see NSCV Part D.

- (m) the external support available to the vessel;
- (n) the requirements of key onboard operations.

Examples for paragraph (a) of tasks or activities

- 1 Passenger carrying.
- 2 Fishing.
- 3 Tourism activities.

Examples for paragraph (d) of technological aids to safety and navigation

- 1 Fire safety systems.
- 2 Remote engineering monitoring and diagnostics.
- 3 Electronic communication and navigation equipment.
- 4 Closed Circuit TV (CCTV).

Example for paragraph (n) of potential risks for a fast craft

Risk of grounding or collision when operating at high speeds.

- (7) The appropriate crewing that has been determined for each kind of operation of the vessel must be recorded in the vessel's documentation, together with reasons that address the factors mentioned in subclause (6).

Circumstances where appropriate crewing need not comply with minimum crewing requirements

- (8) The appropriate crewing may be:
 - (a) the crewing requirements that applied to the vessel on 30 June 2013, if the vessel is an existing vessel; or
 - (b) the crewing requirements mentioned in a temporary crewing permit issued, in writing, by the National Regulator; or
 - (c) crewing requirements approved, or taken to have been approved, as an equivalent means of compliance:
 - (i) under Section 1.6 of NSCV Part B; and
 - (ii) before the commencement of this Order; or
 - (d) the requirements mentioned in clause 5 of Schedule 2, if the vessel is a Class 2 vessel that is:
 - (i) a sailing vessel that is <7.5m, a personal watercraft or a human powered vessel; and
 - (ii) being operated by a tour leader; and
 - (iii) not carrying passengers.
- (9) A temporary crewing permit is subject to any conditions mentioned in the permit and may be issued:
 - (a) if the National Regulator is satisfied that:
 - (i) the vessel may be operated safely with less than the minimum crewing that would otherwise apply to the vessel under subclause (4); and

- (ii) the minimum crewing that would otherwise apply to the vessel under subclause (4) is impracticable or would cause unreasonable or unnecessary expense; and
- (b) for up to 3 months.
- (10) An approval of an equivalent means of compliance mentioned in paragraph (8)(c):
 - (a) is taken to be in force under this Order; and
 - (b) may be revoked by the National Regulator.
- (11) A decision by the National Regulator to revoke an approval of an equivalent means of compliance mentioned in paragraph (8)(c) is a reviewable decision for sections 16 and 17 of Marine Order 501.

Training

- (12) The owner of the vessel must ensure that the master and crew receive the following training:
 - (a) as soon as practicable after joining the vessel and before commencing duties — initial safety training that familiarises the person with safety matters about the person's presence and duties on board the vessel;
 - (b) sufficient training in key onboard operations to establish, maintain and verify the competence and capacity of the person to safely carry out assigned duties;
 - (c) sufficient training in emergency procedures to establish, maintain and verify the ability of the person to respond rapidly and effectively in an emergency and to follow the emergency plan.
- (13) The owner must ensure that any other person engaged in key onboard operations for the vessel also receives all the training mentioned in subclause (12).

Example An onshore staff member involved in berthing the vessel.

- (14) The master, or crew whom the master considers has the appropriate skills and knowledge, must give the training.
- (15) The owner must ensure that a written record of any training mentioned in subclause (12) that is undertaken is made and signed by each person who undertook the training.

Note This record may be included in the logbook.

Qualification requirements

- (16) The owner must ensure that the vessel only operates if there is at least 1 person who:
 - (a) is available at all times to provide first aid; and
 - (b) holds a first aid qualification in accordance with NSCV Part D or another first aid qualification that AMSA considers equivalent.
- (17) A vessel may only operate if it has a master or a deck watchkeeper required as minimum crewing under this Schedule who is qualified in accordance with clause 7.3 of Subsection 7B of NSCV Part C to operate the radio or other communication equipment fitted on the vessel.

7 Procedures for onboard operations

- (1) Subclause (2) applies for all vessels.
- (2) The owner of a vessel must ensure that procedures for the safety of the vessel, the environment and persons on or near the vessel are:
 - (a) developed for key onboard operations to address any risks identified by the risk assessment; and
 - (b) recorded in writing; and
 - (c) if an increased risk is identified by a review of the risk assessment — changed to reduce so far as is reasonably practicable any increased risk identified by the review.
- (3) Subclauses (4), (5) and (6) apply for all vessels other than Class 4 vessels.

Note For additional requirements regarding procedures for onboard operations for Class 4 vessels — see clause 2 of Schedule 2.

- (4) The owner must ensure that each task involved in a procedure that has been developed for key onboard operations is assigned to crew with the skills and knowledge to perform the task.
- (5) The owner must ensure that a record of the procedures is kept on board the vessel in a form readily accessible by the master and crew.
- (6) The procedures for key onboard operations must include at least the following:
 - (a) pre-operating checks;
 - (b) for a passenger vessel — a safety induction for each passenger about relevant operational and emergency procedures, as soon as practicable after the passenger boards the vessel;
 - (c) a radio watch, unless:
 - (i) the equipment is being used on another frequency for the business or safe navigation of the vessel; or
 - (ii) a radio watch is being maintained on another frequency required by a local pilotage or port authority; or
 - (iii) communications are being exchanged with another shore based or ship station; or
 - (iv) the master considers that, because of sea or weather conditions, maintaining the watch would interfere with the safe navigation or safe working of the vessel; or
 - (v) the vessel is not required to carry a radio.

Note for paragraph (b) This requirement does not prevent group inductions. The timing and format of the induction will depend upon the nature of the vessel's operations.

- (7) The matters mentioned in subclause (6) are taken to be covered if the vessel has the following manuals from NSCV Part F1C:
 - (a) a craft operating manual in accordance with clause 3.10.1; and
 - (b) a maintenance and servicing manual in accordance with clause 3.10.2; and
 - (c) a route operational manual in accordance with clause 5.5.

8 Emergency preparedness

- (1) Subclauses (2) and (3) apply for all vessels.
- (2) The owner of the vessel must ensure that an emergency plan is:
 - (a) developed; and
 - (b) recorded in writing; and
 - (c) kept on board the vessel in a form readily accessible by the master and crew; and
 - (d) if an increased risk is identified by a review of the risk assessment — changed to eliminate or minimise any increased risk so far as is reasonably practicable.
- (3) The emergency plan must include procedures for responding to each of the following situations that is relevant to the vessel and its operation:
 - (a) fire;
 - (b) a person overboard;
 - (c) a personal injury or other medical emergency;
 - (d) master incapacitated;
 - (e) loss of steering;
 - (f) vessel collision;
 - (g) vessel grounding;
 - (h) vessel flooding;
 - (i) adverse weather or water conditions;
 - (j) any other circumstance identified by the risk assessment that may require an emergency response.

Example The risk of fire is unlikely to apply to an unpowered kayak.

- (4) Subclauses (5) to (7) apply for all vessels other than Class 4 vessels.

Note For additional emergency preparedness requirements for Class 4 vessels — see clause 4 of Schedule 2.
- (5) The emergency plan must include the following:
 - (a) at least 1 assembly station (**primary assembly station**) for all persons on board;
 - (b) for a vessel that may carry more than 36 persons — alternative assembly stations that may be used in place of each primary assembly station that is unusable or inaccessible during an emergency;
 - (c) arrangements for the assignation of each crew member to an emergency station;
 - (d) a system, for use in an emergency, for the crew to record and confirm the presence of all persons on board;
- (6) The owner of a vessel with passengers must provide the following emergency information in each assembly station, each passenger cabin and other areas frequented by passengers:
 - (a) the location of each assembly station;
 - (b) what passengers must do in an emergency;

- (c) how passengers are to find, put on and secure lifejackets.
- (7) The owner of a vessel operating only with a master and that is carrying passengers must prepare and clearly display a laminated written or diagrammatic emergency safety procedure for use by the passengers.

9 Follow-up on hazardous occurrences and non-conformances

- (1) This clause applies for all vessels.
- (2) The owner of a vessel must ensure that any identified hazardous occurrence or non-conformance must be investigated.
- (3) The owner must ensure that a written record must be kept of the following matters:
 - (a) each hazardous occurrence;
 - (b) each non-conformance;
 - (c) the result of each investigation into a hazardous occurrence or non-conformance including any corrective action taken to prevent it happening again.
- (4) The written record may include a description of any customer complaint or feedback about the hazardous occurrence or non-conformance.

10 Maintenance of vessel and equipment

- (1) This clause applies for all vessels.
- (2) The owner of a vessel must ensure that a system of regular programmed inspection and maintenance appropriate for the vessel, its machinery and its equipment is developed, maintained and implemented in accordance with this clause.
- (3) The system must include arrangements for recording details of each inspection and correcting each deficiency identified by an inspection.

Note This record may be kept in the logbook.
- (4) The vessel must be inspected sufficiently to determine if the vessel, its machinery and its equipment complies with the maintenance and operation requirements that apply to it.

Note This requirement does not prevent inspections being made for compliance with voluntary maintenance guidelines.
- (5) Each inspection must be conducted by the person who has overall general control and management of the vessel.
- (6) The vessel must be serviced taking into account the manufacturer's specifications and requirements.

11 Documentation

- (1) This clause applies for all vessels other than Class 4 vessels.

Note See Schedule 2 for documentation requirements for Class 4 vessels.

Logbook

- (2) The owner and master of a vessel must ensure that a logbook is kept for a vessel and made available for inspection upon request.

Note A format for logbooks is not specified. A logbook for a vessel may be kept on board the vessel or on land.

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- (3) A logbook may be kept electronically if there is a back-up arrangement to prevent the loss of the information included in the logbook.
- (4) The master must ensure that the logbook includes details about the following matters:
- (a) any illness or injury of persons onboard;
 - (b) any marine incident, other incident or accident involving the vessel or its equipment;
 - (c) any assistance rendered to another vessel;
 - (d) any unusual occurrence or incident;
 - (e) all communications messages sent or received for an emergency;
 - (f) any operation of the vessel for recreational purposes.
- Note for paragraph (b)* It is an offence under the national law for the owner or master of a vessel not to report a marine incident — see sections 88 and 89 of the national law.
- (5) The logbook may include any details that the master considers relevant about the following matters about the vessel:
- (a) its key activities;
 - (b) its position;
 - (c) its navigation track;
 - (d) a general summary of the weather it has experienced.
- (6) The master must ensure that the information about an incident or occurrence mentioned in subclause (4) is entered into the logbook as soon as practicable after it occurs.
- (7) The owner must ensure that an entry in a logbook is kept for at least 5 years after it is made.
- (8) The owner and master must ensure that a logbook:
- (a) is not mutilated, destroyed or deliberately withheld from inspection; and
 - (b) does not include an illegible, false or fraudulent entry.

Passenger documents

- (9) For a voyage that is less than 12 hours long, the master must:
- (a) ensure that at least 1 head count is conducted of all passengers on board the vessel; and
 - (b) know the number of passengers on the vessel at any time.
- (10) For a voyage that is at least 12 hours long, the owner must ensure that a readily accessible passenger manifest is kept on board the vessel.
- (11) The passenger manifest must include details about the following:
- (a) the name of the vessel;
 - (b) an identification number for the vessel;
 - (c) the voyage;
 - (d) if required in an emergency — details of any medical or safety requirements of particular passengers;

- (e) for each person on board the vessel — name, address (local and home if a person has both), email address (if any) and phone number.

Crew documents

- (12) The owner must ensure that an up to date crew list must be kept so that it is readily accessible.
- (13) The crew list must include details about the following:
 - (a) the name of the vessel;
 - (b) the identification number of the vessel;
 - (c) the name, address, phone number and email address (if any) of the owner of the vessel;
 - (d) the name, address, phone number and email address (if any) of the employer of the crew;
 - (e) the name, home address, phone number and email address (if any) of each crew member;
 - (f) the name, address and phone number of each crew member's next of kin;
 - (g) the capacity in which each crew member is employed;
 - (h) each certificate of competency or other certificate held by a crew member that is required by a standard prescribed under *Marine Order 505 (Certificates of competency — national law) 2013*;
 - (i) the date each crew member joined the vessel;
 - (j) the date each crew member left the vessel.

12 Verification, review and evaluation

- (1) This clause applies for all vessels.

Record of revisions

- (2) The owner of the vessel must ensure that a written record of revisions is made following each change to any document or other written record that is required under this Schedule.
- (3) The record of revisions must include the following matters:
 - (a) a reference number;
 - (b) a reference to the part of the document or record changed;
 - (c) the date of the change;
 - (d) the signature or initials of the person making the record of the change.

Note A record of revisions may be a 'revisions page' at the end of an emergency plan, the record of key operations procedures or the master's responsibility statement.

Review

- (4) The owner and master of a Class 1, Class 2 or Class 3 vessel, and the owner of a Class 4 vessel, must ensure that:
 - (a) a review system to assess compliance with the operation requirements is developed internally; and

- (b) a review of all procedures is conducted every 12 months including onboard and offshore procedures.
- (5) The owner must ensure that each review and its outcome is documented and any consequential actions or changes to procedures are included in the written record or other document that outlines the procedures changed.

Note For example, a change to a key onboard operation procedure would require a change to the record of those procedures.

Schedule 2 Additional operation requirements for Class 4 vessels

(subsection 4(4), subparagraphs 5(b)(ii) and 7(1)(b)(i))

Note The operation of a Class 4 vessel must comply with this Schedule and the provisions in Schedule 1 that apply to Class 4 vessels. Alternatively, the operation of the vessel may comply with Part A of the ISM Code — see subparagraphs 5(b)(ii) and 7(1)(b)(i).

1 Risk assessment

- (1) The risk assessment of the operation of a Class 4 vessel must identify or include the following:
 - (a) the boundaries of each designated cruising area of the vessel;
 - (b) any navigation hazards where the vessel activity is to occur and ways to manage the hazards, including for vessel operation during the night;
 - (c) the weather patterns in each operating area of the vessel and ways to deal with adverse weather or water conditions;
 - (d) potential interactions with other persons using the designated cruising area and ways to manage them;
 - (e) the minimum separation distances between vessels;
 - (f) any restrictions on speed and direction to be observed by the hirer;
 - (g) any additional safety precautions to be observed;
 - (h) the kind of marine safety equipment to be provided on the vessel, taking into account its suitability for the waters in which the vessel will operate and the skill levels of the hirer and participants;
 - (i) a pollution mitigation strategy;
 - (j) if the vessel is to be used for a tour — the maximum ratio of hirers and participants to tour leaders and arrangements for communication between the tour leader and the hirer and participants;
 - (k) arrangements to be followed to ensure that each hirer, participant and any other person operating the vessel is not impaired by drugs or alcohol.

Note for paragraph (h) A pollution mitigation strategy may include, for example, preventing or cleaning up fuel spills, or waste management.

- (2) The risk assessment must include assessment of the following:
 - (a) if the vessel is to be used to tow skiers or persons using a towing apparatus — the additional risks that may arise due to this activity and ways to manage those risks;
 - (b) if the vessel is a takeaway vessel — the operational procedures specific to takeaway activities including the risks and hazards associated with:
 - (i) multiple designated cruising areas; and
 - (ii) transporting the vessel on a trailer; and
 - (iii) loading and unloading the vessel onto a trailer; and

- (iv) the hirer and participants' competence to deal with the matters mentioned in subparagraphs (i) to (iii).

2 Procedures for onboard operations

Note For other requirements for onboard operation procedures for Class 4 vessels — see clause 7 of Schedule 1.

- (1) The owner must ensure that any key daily tasks to be performed by the owner and persons on board the vessel are identified, including pre-operating checks.
- (2) The owner must ensure that pre-operating checks are carried out before the hirer or participant takes control of the vessel.
- (3) The owner must ensure that a record of the onboard procedures is kept on board the vessel in a form readily accessible by any person on board the vessel.

3 Participant numbers, competency, age and health

- (1) The owner must assess the special skills, abilities and level of medical fitness required by the hirer and participants to undertake the activity for which the vessel is to be used.
- (2) The owner must determine the maximum number, minimum competency, minimum age and minimum medical requirements of participants for the vessel.
- (3) For subclause (2), the following matters must be taken into consideration by the owner when making the determination:
 - (a) the minimum number of persons required to safely operate the vessel;
 - (b) the amount of space available for persons on board the vessel;
 - (c) the kind of safety equipment on board the vessel;
 - (d) the load and stability limitations of the vessel;
 - (e) the area in which the vessel operates;
 - (f) the operational risk.
- (4) The maximum number of persons on board that may be determined by the owner must not be more than:
 - (a) 12 persons; or
 - (b) the maximum number of persons the vessel is permitted under the national law to carry.
- (5) The owner must ensure that the person with primary responsibility for the operation of the vessel, whether or not the hirer of the vessel, is competent to operate the vessel.

Note Additional competency requirements relating to the supervision etc of the operation of personal watercraft apply — see clause 9.

- (6) The owner must be satisfied that the hirer and participants have the skills and abilities necessary to operate the vessel safely, over the term of the agreement, having regard to the vessel's size, type, propulsion power and intended areas of operation.

Note The owner might consider, for example, relevant boating experience, evidence of successful crossing of a bar, observation of the hirer's and participants' skills,

documents relating to the hirer and participants' medical conditions, certificates of competency.

- (7) The owner of a vessel that operates in a State or Territory that has recreational boating operator licencing requirements for equivalent recreational boats must comply with subclause (8) if the vessel:
 - (a) is capable of operating at a speed of greater than 10 knots; or
 - (b) operates in operational area C.
- (8) The owner must ensure that each hirer and participant meets the recreational boating operator licencing requirements unless an exemption for the operation applies under State or Territory law.

4 Emergency preparedness

Note For other requirements for onboard operation procedures for Class 4 vessels — see clause 7 of Schedule 1.

- (1) The owner must ensure that the emergency plan includes at least 1 assembly station on the vessel for all persons on board if it is practicable for an assembly station to be provided.
- (2) The owner must ensure that a laminated written or diagrammatic emergency safety procedure for use by persons on the vessel is prepared and displayed on the vessel if practical.

Note For example, it may not be practical to display the emergency safety procedure on a canoe, kayak or personal watercraft.

5 Competencies of tour leader, guide and briefer

The owner must ensure that:

- (a) each tour leader, guide and briefer for a vessel is competent to perform their duties; and
- (b) if the vessel operates in a State or Territory that has recreational boating operator licencing requirements — the owner ensures that each tour leader, guide and briefer meets the requirements; and
- (c) each tour leader holds a first aid certificate in accordance with NSCV Part D or another first aid qualification that AMSA considers equivalent.

6 Provision of information to hirer and participants

The owner must ensure that:

- (a) a briefing that includes the matters determined in writing by the National Regulator is given to each hirer and participant before the person takes control of a vessel; or
- (b) if not all hirers or participants are present when a hirer or participant takes control of a vessel — a hirer or participant present at the briefing agrees to brief all other hirers and participants who may operate the vessel about the matters determined in writing under paragraph (a).

Note The determination is available on the AMSA website at <http://www.amsa.gov.au>.

7 Provision of safety equipment to hirer and participants

The owner must ensure that:

- (a) a vessel has all safety equipment on board when the hirer or a representative of the hirer takes control of the vessel; and
- (b) each hirer and participant is made aware of any requirements for the wearing of lifejackets that apply in the areas of operation of the vessel under State or Territory law.

Note Additional requirements regarding lifejackets apply for personal watercraft — see clause 9.

8 Documentation

The owner must ensure that written records about the operation of the vessel are maintained to allow for investigation of marine incidents that must be reported to the National Regulator.

Note It is an offence under the national law for the owner or master of a vessel not to report a marine incident — see sections 88 and 89 of the national law.

9 Additional requirements for personal watercraft

The owner of a personal watercraft must ensure the following:

- (a) that no hirer or participant takes the personal watercraft outside its designated cruising area or pen;
- (b) that each hirer and participant operating a personal watercraft in a pen is supervised by the owner or, if they are on a tour, by the tour leader;
- (c) that each hirer and participant has the skills and abilities necessary to operate the personal watercraft safely, over the term of the agreement, having regard to the personal watercraft's size, type, propulsion power and intended operating areas;
- (d) that each hirer and participant declares any medical condition of which he or she is aware that is likely to affect his or her ability to safely undertake the activity;
- (e) if the personal watercraft is used in a pen or tour that is being supervised by a tour leader — that the hirer and each operator of the vessel is:
 - (i) at least 16 years old; and
 - (ii) capable of taking immediate control of the personal watercraft if required;
- (f) that any pillion passenger who is under 16 years is on board with a hirer who is at least 16;
- (g) if the personal watercraft is to be used outside of a pen or tour and the State or Territory where the vessel is operating has recreational licencing requirements for an equivalent recreational vessel operation — that each hirer and participant meets those requirements, unless an exemption for the operation applies under the State or Territory law or the State or Territory law provides that the recreational licencing requirements do not apply to personal watercraft operations;

(h) that an appropriately sized lifejacket is supplied to each hirer and participant and fitted properly.

Note for paragraph (c) The owner might consider, for example, relevant boating experience, evidence of successful crossing of a bar, observation of the hirer's and participants' skills, documents relating to the medical conditions of the hirer and participants and certificates of competency.

Note

1. All legislative instruments and compilations of legislative instruments are registered on the Federal Register of Legislation under the *Legislation Act 2003*. See <https://www.legislation.gov.au>.