

EXPLANATORY STATEMENT

Issued by the Minister for Small and Family Business, the Workplace and Deregulation

Occupational Health and Safety (Maritime Industry) Act 1993

Seacare Authority Code of Practice Approval 2018 - Health and Safety in Shipboard Work, including Offshore Support Vessels

Section 109 of the *Occupational Health and Safety (Maritime Industry) Act 1993* (the OHS(MI) Act) provides that the Minister may approve codes of practice prepared by the Seafarers Safety, Rehabilitation and Compensation Authority (the Seacare Authority) or any other body, for the purpose of providing practical guidance to operators on meeting their obligations under the OHS(MI) Act.

The *Seacare Authority Code of Practice Approval 2018 - Health and Safety in Shipboard Work, including Offshore Support Vessels* (the Code) provides guidance on ways to meet occupational health and safety standards on vessels. The Code provides advice on how to manage commonly understood hazards and control measures for managing health and safety risks at work on vessels. Section 110 of the OHS(MI) Act provides that an approved code of practice is admissible in evidence in any proceedings for an offence under the OHS(MI) Act. Failure to comply with a relevant provision in the Code is treated as proving that a person has failed to comply with a duty or obligation under the OHS(MI) Act unless the person can satisfy the court of compliance with the duty or obligation other than by complying with the Code.

This Code replaces the Seacare Authority Code of Practice Approval 2017, which was first approved on 10 May 2000 and was re-approved as an interim measure in 2017 to allow completion of a review by a working group formed by the Seacare Authority. It is a revision of the current code.

The working group consisted of representatives from the Australian Maritime Safety Authority (AMSA) and employee and employer representatives (Maritime Industry Australia Ltd, the Australian Maritime Officers Union, the Australian Institute of Marine and Power Engineers and the Maritime Union of Australia). The Code represents the work of that working group and was endorsed by the Seacare Authority.

The Code is a legislative instrument for the purposes of the *Legislation Act 2003*.

Incorporated documents and documents referred to for guidance

Subsection 109(3) of the OHS(MI) Act provides that codes of practice may incorporate documents prepared by another body as in force at the particular time, or as amended from time to time.

The Code references (but does not incorporate) a number of other documents to provide guidance to readers about where to find additional information on particular hazards and risks. These include Marine Orders, codes of practice published by Safe Work Australia and marine notices and guidance material, agreed to at international and national forums. This

material is not incorporated into the Code, but is referenced to provide further practical guidance.

All incorporated documents are incorporated as amended from time to time. This is because the documents are subject to revision as risk management processes evolve over time. Subsection 109(7) of the OHS(MI) Act provides that an up-to-date copy of every document incorporated in the Code will be made available for inspection at the offices of AMSA, as the Inspectorate for the OHS(MI) Act. Most documents will be made available free of charge at the AMSA websites at <https://www.amsa.gov.au>. Documents that are authored by external agencies that charge for copies will be made available for inspection at AMSA offices (see <https://www.amsa.gov.au/about-us/who-we-are/amsa-state-and-territory-offices> for location of AMSA offices).

Marine Orders

Marine Orders are a form of delegated legislation that apply to certain Australian and foreign vessels. Marine Orders are available on the AMSA website <https://www.amsa.gov.au> and are also registered on the Federal Register of Legislation <https://www.legislation.gov.au>. As Marine Orders take effect according to their own provisions, these are not ‘incorporated’ into the Code.

Guidance from other Codes of Practice

The Code references a number of model codes of practice which are available on the Safe Work Australia website https://www.safeworkaustralia.gov.au/resources_publications/model-codes-of-practice

The Code also refers to guidance that is available in the International Labour Organisation (ILO) code of practice ‘Health and Safety in Ports’ and ‘Code of Practice for Packing of Cargo Transport Units’. ILO Codes can be accessed on the ILO website <http://www.ilo.org/safework/info/standards-and-instruments/codes/lang--en/index.htm>

Guidance from IMO documents

The Code refers to guidance that is available in the International Maritime Organisation (IMO) Convention for the Safety of Life at Sea (SOLAS) and a range of IMO Codes. The Code also refers to guidance that can be obtained from circulars setting out guidelines prepared by the IMO’s Maritime Safety Committee and the Maritime Environment Protection Committee. The Code also provides guidance in certain resolutions by the IMO Assembly. IMO documents are available from AMSA premises.

The Code also refers to guidance that is available in several Australian standards.

The Code provides that the guidance in the following standards should be met:

- *AS/NZS 2210.1– 2010 Safety, protective and occupational footwear – Guide to selection, care and use,*
- *AS/NZS 1337.1:2010 Personal eye protection – eye and face protectors for occupational application or its equivalent,*
- *AS/NZS 1270–2002 (Acoustics— Hearing protectors) or its equivalent,*
- *AS/NZS 1067-2003 Sunglasses and fashion spectacles,*
- *AS/NZS 1716–2012 Respiratory protective devices or its equivalent,*

- *AS/NZS 4484-/NZS-2004 Gas cylinders for industrial, scientific, medical and refrigerant use – Labelling and colour coding* or its equivalent,
- *AS/NZS 3000–2007 Electrical installations* and *AS 1345–1995 Identification of the contents of piping, conduits and duct*.

The AS/NZ standards are available to be purchased from the Standards Australia distributor accessible at <https://www.standards.org.au/standards-catalogue/sa-snz>.

Commencement

The Code commences on 1 January 2019.

Regulation Impact

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required [OBPR ID 22870].

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Seacare Authority Code of Practice Approval 2018 - Health and Safety in Shipboard Work, including Offshore Support Vessels (the Code)

The Code 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*.

Overview of the Legislative Instrument

The *Occupational Health and Safety (Maritime Industry) Act 1993* (the OHS(MI) Act) and the *Occupational Health and Safety (Maritime Industry) Regulations* (OHS(MI) Regulations) represent work health and safety laws for a defined part of the maritime industry. Section 109 of the OHS(MI) Act provides that the Minister may approve codes of practice prepared by the Seafarers Safety, Rehabilitation and Compensation Authority (the Seacare Authority) or any other body for the purpose of providing practical guidance to operators. Section 110 of the OHS(MI) Act provides that an approved code of practice is admissible in evidence in any proceedings for an offence under the OHS(MI) Act. The code of practice can be used as evidence of whether or not a duty or obligation under the OHS(MI) Act has been complied with.

The Code provides guidance on ways to meet occupational health and safety standards on vessels and to manage commonly understood hazards and control measures for managing health and safety risks at work on vessels. Failure to comply with the relevant provisions in the Code is treated as proving a contravention unless the accused can satisfy the court that he or she complied with the provision of the OHS(MI) Act other than by complying with the Code.

The Code updates a code that was first approved by the Minister for Employment, Workplace Relations and Small Business on 10 May 2000, and remade as an interim measure when the original code was due to sunset on 1 April 2017 under section 51 of the *Legislation Act 2003*.

The Code provides guidance to the industry on meeting the duties and obligations under the OHS(MI) Act by establishing a benchmark. The industry is free to meet those duties and obligations in ways other than set out in the Code if they choose.

Human rights implications

This legislative instrument engages the right to safe and healthy working conditions which is part of the set of interdependent rights relating to work and conditions of work set out in articles 6, 7 and 8 of the *International Convention on Economic Social and Cultural Rights* (ICESCR). Article 7(b) of ICESCR provides that everyone has the right to the ‘enjoyment of just and favourable conditions of work, which ensure, in particular...[s]afe and healthy working conditions’. The instrument promotes the right to safe and healthy working conditions by providing duty holders with industry specific practical guidance. The guidance will assist them to meet their obligations under the OHS(MI) Act and OHS(MI) Regulations.

Conclusion

This legislative instrument is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* as it promotes the protection of those rights.