

Explanatory Statement

Marine Orders Part 54 Amendment 2011 (No. 1) (Order 2011/13)

Coastal pilotage

Authority

1. Part IIIA of the *Navigation Act 1912* (*Navigation Act*) deals with pilotage. Section 186C is in Part IIIA of the Navigation Act. Under that section the regulations may provide for qualifications of pilots, including conditions and licensing of pilots and documents and certificates for pilots. Under section 186D of the Navigation Act, also in Part IIIA, the regulations may provide for operations of pilotage providers, including matters relating to pilotage safety management systems. They may also provide for duties, professional relationships and record keeping requirements of pilots.
2. Subsection 425(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.
3. Subsection 425(1AA) 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.
4. This instrument was made under subsection 425(1AA) and is a legislative instrument for the *Legislative Instruments Act 2003*.

Purpose

5. This instrument amends *Marine Orders Part 54, issue 5 (Coastal pilotage)* to make some changes identified by stakeholders as necessary to be made quickly to ensure its effective operation. It also makes some other amendments of a technical nature designed to clarify the meaning of the Order.

Overview

6. *Marine Orders Part 54, issue 5 (Coastal pilotage)* provides among other things for pilotage provider operations, for licensed pilots and the performance of pilot duties. That Order gives effect to the routine review into coastal pilotage that was undertaken in 2008 — *The Delivery of Coastal Pilotage Services into the Great Barrier Reef and Torres Strait*. This instrument makes some changes to that Order that are needed urgently so that it operates effectively in practice. Other changes identified by stakeholders are proposed to be considered in the next review of the Order.

7. Key changes made by this instrument are:

- revision of the demerit points associated with a pilot's failure to comply with a fatigue management plan;
- removal of the requirement for a trainee pilot to undergo psychometric assessment approved by AMSA;
- clarification that current documents of compliance issued under *Marine Order Part 54, issue 4* are to be taken to be pilot licenses in force during the period for assessment by AMSA for revalidation;
- extension of the transition arrangements for pilot launch deck width;
- inclusion of transition arrangements for Helicopter Underwater Escape training (HUET) certificate and training requirements.

8. The other changes are of a minor technical nature designed to clarify the intent of the Order.
9. The effect of this instrument is minor in nature. For this reason, and based on the information available, no further analysis in the form of a Regulation Impact Statement is required (OBPR reference number 13221).

Consultation

10. The proposed amendments were discussed with affected stakeholders before the draft amendment was prepared. A copy of the draft amendment was emailed to the following industry stakeholders on 26 October 2011 with a request to provide any comments on the draft: Australian Reef Pilots Pty Ltd, Hydro Pilots Australia Pty Ltd, Torres Pilots. A response was received from Australian Reef Pilots Pty Ltd requesting certain changes to be made and that request was agreed to and reflected in the final instrument.

Documents incorporated by reference

11. The following publications may be purchased from Standards Australia's publisher SAI-Global. See the SAI Global infostore website at <http://infostore.saiglobal.com>.

- AS/NZS 4869.1 *Maritime Survivor Locating Systems (MSLS) — Operating on 121.5 MHz*, published 25 July 2006
- AS/NZS 4869.2 *Stand alone maritime survivor locating systems (MSLS) — Operating on frequencies other than 121.5 MHz*, published 26 February 2010.

Commencement

12. Sections 1 to 3 and Schedule 1 of this instrument are taken to have commenced on 1 July 2011, the commencement date of *Marine Orders Part 54, issue 5*. The retrospective commencement complies with subsection 12(2) of the *Legislative Instruments Act 2003*. No person (other than the Commonwealth) will be disadvantaged or rendered liable for anything by this retrospective operation. The amendments have the effect of reducing the level of obligations.

13. Schedule 2 commences on the day after registration on the Federal Register of Legislative Instruments.

Contents of this instrument

Schedule 1 — Amendment taken to have commenced on 1 July 2011

14. Item 1 revises the demerit points associated with a pilot's failure to comply with the Pilot Providers' fatigue management plan. It reduces the demerit points incurred for a first and second infringement to introduce a tiered point scheme, and so does not impose any additional liability on a pilot.

15. Item 2 omits provision 53.3 that required certain information to be provided to REEFVTS (the navigational service known as the Great Barrier Reef and Torres Strait Vessel Traffic Service). This will reduce the administrative burden on pilotage providers.

16. Item 3 substitutes a new provision 54.1 to reduce administrative burden on industry. It revises incident reporting requirements by providing different timeframes for the giving of notice of an incident involving a pilot launch and notice of an incident involving ships under pilotage. Also, the information need not be provided in writing unless AMSA requests written details of the incident.

17. Items 4 and 5 substitute new paragraphs 54.2(d) and 54.2(i). The first paragraph ensures that an incident to be reported includes not only an injury but also an illness that may affect the *safe* operation of a launch or ship. The second ensures that the machinery or equipment failure to be reported is failure that may affect the safe operation of the launch or ship.

18. Items 6 and 7 make clear that provision 75.2 is subject to provision 78.3.

19. Item 8 removes the requirement for persons applying for a trainee pilot licence to undergo a psychometric assessment approved by AMSA. Whether or not this is needed will be at the discretion of the person's employer.

20. Item 9 substitutes a new provision 124 and inserts a new provision 125. New provision 124 ensures that the requirement in clause 1.10.4 of Schedule 1, that a pilot must not be transferred by helicopter to or from a ship unless he or she holds a current HUET certificate, applies from 1 January 2012 instead of from 1 July 2011. This is to allow adequate transition time for pilots to undertake HUET. New provision 125 revises the expiry date of Division 13 (Transitional provisions) because of the amendment to provision 122.2 by item 5 of Schedule 2.

Schedule 2 — Amendment commencing on registration

21. Item 1 is a minor technical amendment. It omits the words 'the person' from paragraph 82 (c) as 'the person' is mentioned earlier in the provision.

22. Item 2 is another minor technical amendment clarifying that the 18 months of the service mentioned in paragraph (f) that must be completed must be completed by the person applying for the licence.

23. Item 3 substitutes a new provision 120.1 to the effect that documents of compliance issued under *Marine Order Part 54, issue 4* are to be taken to be pilotage provider licences issued under this Part and will expire on 29 February 2012. This is to clarify the status of those documents and to allow an audit to be undertaken before any licence renewal. Section 18 of the Order provides that the holder of a pilotage provider licence may apply to AMSA to renew the licence.

24. Item 4 corrects 2 date references in provision 122 from '1 July 2011' to '30 June 2011'. *Marine Order Part 54, issue 4* was repealed on 1 July 2011 and therefore a launch cannot have complied with it on that date.

25. Item 5 extends the commencement date of the requirement to extend the width of pilot launch decks from 1 July 2013 to 1 July 2013. This allows pilot service providers adequate transition time for compliance with this requirement.

26. Item 6 substitutes a new paragraph 1.7(h) in Schedule 1 to correct a reference to an Australian/New Zealand Standard and to insert a reference to another standard with which Maritime Survivor Locating Systems operating on a specified frequency are to comply.

Making the instrument

27. This Order has been made by the Acting Chief Executive Officer of the Australian Maritime Safety Authority, in accordance with subsection 49(4) of the *Australian Maritime Authority Act 1990*.