

Explanatory Statement

Marine Order 505 (Certificates of competency — national law) 2013 (Order 2013/10)

Authority

1. Division 4 of Part 4 of the *Marine Safety (Domestic Commercial Vessel) National Law* (the **national law**) set out in Schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* provides for matters that can be prescribed in the regulations about certificates of competency for undertaking particular duties or performing particular functions in relation to domestic commercial vessels.
2. Subsection 159(1) of the national law authorises the Governor-General to make regulations necessary or convenient for carrying out or giving effect to the national law.
3. Subsection 159(2) of the national law provides for regulations to be made prescribing standards for the national law.
4. Subsection 163(1) of the national law allows the National Regulator to make Marine Orders for any matter in the Act for which provision may be made by regulations, with some specified exceptions.
5. Section 164 of the national law allows a Marine Order to provide for any matter by applying, adopting or incorporating any matter contained in any written instrument in force or existing from time to time including the National Standard for Commercial Vessels (*NSCV*) and the Uniform Shipping Laws Code (*USL Code*).
6. This Order was made under subsection 163(1) of the national law and is a legislative instrument for the *Legislative Instruments Act 2003*.

Purpose

7. This Order provides for certificates of competency and prescribes standards for those performing functions or duties in relation to domestic commercial vessels.

Overview

8. The national law is a key part of the national system for commercial vessel safety. When applied in all Australian jurisdictions (see section 2 of the national law) it will replace existing State and Territory laws, and parts of Commonwealth law, with a single law for the safety of all domestic commercial vessels and their crew in Australian waters. The national law is supported by Marine Orders made under the national law by the National Regulator.
9. The Australian Maritime Safety Authority is the National Marine Safety Regulator (referred to as the **National Regulator** — see section 9 of the national law).
10. This Marine Order provides requirements for the application, issue, variation, suspension and revocation of certificates of competency for the master or crew of domestic commercial vessels.. The Order also provides for endorsement and renewal of certificates.
11. The effect of the Order is only ancillary to the national law and does not affect the policy background of the national law. For these reasons, and based on the information available, no further analysis in the form of a Regulation Impact Statement is required (OBPR reference number 14031).

Consultation

12. The instrument was developed in consultation with the Maritime Agencies Forum, representing the marine safety authorities of each State and the Northern Territory, and the Department of Transport and Infrastructure. It was advertised for public comment and posted for comment on the national law website. Comments from the public and from marine safety authorities were considered and the draft instrument was developed taking these into account.

Documents incorporated by reference

13. Parts of the following document is incorporated by reference:

- the National Standard for Commercial Vessels (NSCV) adopted by the National Marine Safety Committee.

14. This document is available from the Australian Maritime Safety Authority website at <http://www.amsa.gov.au>.

Commencement

15. This Order commences on 1 July 2013.

Contents of this instrument

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

17. Section 2 provides for commencement of the Order.

18. Section 3 states the purpose of the Order, which is to provide for certificates of competency for the master and crew of domestic commercial vessels to be issued by the National Regulator.

19. Section 4 sets out the provisions of the national law that provide the powers for the Order to be made.

20. Section 5 provides definitions of terms for the Order. One of the terms defined is *existing certificate*.

21. Section 6 sets out the qualification standard that apply to the master and crew of a vessel. The standard comprises Part D of the NSCV .

22. Section 7 provides for applications under the Order to made in accordance with *Marine Order 501 (Administration — national law) 2013*.

23. Section 8 sets out the types of certificates that may be issued.

24. Section 9 requires that an applicant must provide certain additional information including detailing how eligibility requirements for the certificate sought are met.

25. Section 10 sets out the criteria for the issue of a certificate of competency.

26. Section 11 describes the form which a certificate of competency must take.

27. Section 12 sets out the conditions that apply to a certificate of competency. These include disclosure of medical information, compliance with conditions applying to existing certificates and a requirement to inform the National Regulator of certain changes.

28. Section 13 provides that the term of a certificate of competency is 5 years, or a lesser period determined by the National Regulator.

29. Section 14 provides for the process of endorsement of a certificate of competency by the National Regulator, including the requirements for an endorsement application.

30. Section 15 provides that the effect of an endorsement on a certificate is to provide an exemption under the national law, enabling the holder of the certificate to perform duties or functions not otherwise permitted with that certificate.
31. Section 16 provides that an application for variation, suspension or revocation of a competency certificate must be in the approved form.
32. Section 17 provides the criteria for variation of a competency certificate.
33. Section 18 provides the criteria and purposes for suspension of a competency certificate.
34. Section 19 sets out the criteria for revocation of a certificate of competency.
35. Section 20 sets out the application requirements for renewal of certificates.
36. Section 21 provides that an applicant for renewal of a certificate of competency (other than a Coxswain Grade 2 certificate) must have an approved first aid certificate of a certain type.
37. Section 22 provides that an applicant for renewal may be given a different certificate of competency than that applied for if they do not fulfil the criteria for the certificate sought to be renewed.
38. Section 23 provides that the term of a renewed certificate is 5 years or a lesser period determined by the National Regulator.
39. Section 24 provides that Subdivision 5.2 applies to renewals for certificates covering general purpose hands, and specified grade of coxswain, master and marine engine driver.
40. Section 25 sets out renewal requirements for certificates mentioned in section 24.
41. Section 26 provides the National Regulator must not renew a certificate of competency mentioned in section 24 if the specified medical requirements are not met.
42. Section 27 provides that Subdivision 5.3 applies to renewals for certificates covering the specified grade of master, marine engine driver and mate.
43. Section 28 sets out renewal requirements for certificates mentioned in section 27.
44. Section 29 sets out the qualifying sea service required for renewal.
45. Section 30 sets out the alternative to meeting the specified sea service requirements mentioned in section 29.

Statement of compatibility with human rights

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

Purpose and effect

47. This instrument is made under the *Marine Safety (Domestic Commercial Vessel) National Law* and provides for certificates of competency for the master and crew of domestic commercial vessels. More specifically, it provides requirements for the application, issue, variation, suspension and revocation of certificates of competency. The Order also provides for endorsement and renewal of certificates.

Possible effect on human rights

48. Article 6 of the International Covenant on Economic, Social and Cultural Rights (the *Covenant*) recognises the right to work, defined as the opportunity of everyone to gain their living by freely chosen or accepted work. This instrument engages Article 6 by imposing

standards of competency in order for a person to perform duties or functions as a master or member of the crew of a domestic commercial vessel.

49. However, the Order clearly advances the right to work by promoting safety of life at sea and safe working conditions on board vessels by ensuring seafarers have appropriate certification evidencing training and experience. This objective is consistent with Article 6 of the Covenant which refers to decent work, effectively defined by Article 7 which recognises the right of everyone to ‘just and favourable’ working conditions. This in turn is defined to include safe working conditions.

50. This instrument is therefore consistent with the right to work by promoting occupational safety for seafarers who work with complex equipment, often in an isolated marine environment, on vessels that may carry potentially hazardous cargo. Without appropriate certification demonstrating competency, seafarers pose a threat to the safety of themselves, fellow crew, passengers, and the marine environment.

51. This instrument 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*.

Making the instrument

52. 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*.