

Explanatory Statement

Marine Order 18 (Measures to enhance maritime safety) 2013 (Order 2013/19)

Authority

1. Subsection 339(1) of the *Navigation Act 2012* (***Navigation Act***) authorises the Governor-General to make regulations necessary or convenient for carrying out or giving effect to the Navigation Act.
2. Subsection 339(2) of the Navigation Act provides for various matters to be regulated, including testing, survey and certification of vessels.
3. Subsection 340(1) of the Navigation Act provides that the regulations may give effect to SOLAS.
4. Subsection 342(1) of the Navigation Act provides that the Australian Maritime Safety Authority (***AMSA***) may make orders about any matter for which provision must or may be made by the regulations.
5. This Order was made under subsection 342(1) and is a legislative instrument for the *Legislative Instruments Act 2003*.

Purpose

6. This Order gives effect to various provisions in Chapter XI-1 of the International Convention for the Safety of Life at Sea, done at London on 1 November 1974, as in force from time to time (***SOLAS***).

Overview

7. This Order replaces *Marine Order 18 ((Measures to enhance maritime safety) 2009*, which was made under the *Navigation Act 1912* and modified to continue in effect under the Navigation Act. It provides for enhanced surveys, vessel identification numbers, continuous synopsis records and notification on ceasing of Australian registration of a vessel.

Consultation

8. A copy of a draft of this Order was sent to stakeholders and was placed on AMSA's website on 6 September 2013 for stakeholders to consider and provide written feedback by 4 October 2013. Comments were received from 4 stakeholders, and these were considered when preparing the final version of the Order.
9. The Office of Best Practice Regulation (OBPR) was also consulted, and considered that the changes were minor and machinery in nature and no regulatory impact statement was required. The OBPR reference number is 2013/15135.

Documents incorporated by reference

10. This order incorporates by reference various provisions in Chapter XI-1 of SOLAS.
11. A copy of documents issued by the International Maritime Organization (IMO) and mentioned in the Order are available on the IMO website or may also be purchased from:

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

Commencement

12. This Order commences on 1 January 2014.

Contents of this instrument

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

14. Section 2 provides for the commencement of the Order.

15. Section 3 repeals the previous issue of this Order.

16. Section 4 sets out the purpose of the Order, which is to give effect to Chapter XI-1 of SOLAS and to apply some of its provisions to regulated Australian vessels to which it would not otherwise apply.

17. Section 5 sets out the powers in the Navigation Act that enable the Order to be made.

18. Section 6 sets out the definitions of terms used in the Order.

19. Section 7 gives a standard definition for the date of construction of a vessel.

20. Section 8 sets out the meaning of *the Administration* mentioned in Chapter XI-1 of SOLAS, an IMO resolution or other document mentioned in the Order.

21. Section 9 sets out describes the application of this Order to various kinds of vessels.

22. Sections 10 and 11 set out the process for applying for an exemption from a requirement of the Order or for approval of the use of an equivalent.

23. Section 12 requires an enhanced program of inspections for a bulk carrier or oil tanker.

24. Section 13 requires an identification number to be marked on a vessel.

25. Section 14 specifies who is the registered owner of a vessel.

26. Section 15 sets out the requirements for the owner of a vessel to have a Continuous Synopsis Record, which contains the administrative details of the vessel.

27. Section 16 provides for the Registrar of Ships to issue a Continuous Synoptic Record for a vessel.

28. Section 17 provides for the information in the Continuous Synopsis Record to be kept up to date.

29. Section 18 requires the owner of a regulated Australian vessel to tell the Registrar of Ships if the registration of the vessel is changed to another country.

30. Offences under section 15, 17 and 18 are strict liability offences, and civil penalties are also included.

31. The need for strict liability and civil penalties is explained in the statement of compatibility with human rights. In framing the offences, 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 offences are consistent with the principles outlined in the Guide.

Compatibility with human rights

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

Overview of the legislative instrument

33. This Order gives effect to various provisions in Chapter XI-1 of the International Convention for the Safety of Life at Sea, done at London on 1 November 1974, as in force from time to time.

34. This Order replaces *Marine Order 18 (Measures to enhance maritime safety) 2009*, which was made under the *Navigation Act 1912* and modified to continue in effect under the Navigation Act. It provides for enhanced surveys, vessel identification numbers, continuous synopsis records and notification on ceasing of Australian registration of a vessel

Possible effect on human rights

35. Sections 15, 17 and 18 of the Order create offences to which strict liability applies. They also create civil penalties. Strict liability offences may engage and limit the presumption of innocence mentioned in Article 14 of the International Covenant on Civil and Political Rights (ICCPR). Civil penalty provisions may engage the criminal process provisions under Articles 14 and 15 of the ICCPR.

26. Strict liability is imposed in pursuit of the objective of enhancing marine safety. The penalties are relatively low (50 penalty units) and are within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. The civil penalty provisions are directed at owners of vessels rather than the community at large and are regulatory in nature. The civil penalty provisions are authorised by paragraph 341(1)(b) of the Navigation Act. Having regard to the objectives of the civil penalty provisions (which are protective, preventative, disciplinary or regulatory in nature), and the relatively low level of penalty, the civil penalties should not be considered to be criminal matters for human rights law. Any limitation on human rights as a result of the imposition of strict liability and the creation of civil penalties is reasonable, necessary and proportionate.

27. No other human right or freedom recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is engaged by this Order.

Assessment

36. 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

29. This instrument 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*.