

Explanatory Statement

Marine Order 70 (Seafarer certification) 2014 (Order 2014/2)

Seafarer certification

Authority

1. Section 28 of the *Navigation Act 2012* (the *Navigation Act*) provides that regulations may provide for seafarer certificates and give effect to the International Convention on Certification and Watchkeeping for Seafarers, 1978 (the *STCW Convention*).
2. Section 29 of the *Navigation Act* provides for regulations to prescribe different classes of seafarer certificates and to require an individual to hold a seafarer certificate of a particular kind to undertake particular duties or functions. It also provides that regulations may prescribe various things for seafarer certificates, including competencies, proficiencies, qualifications, minimum age, health, nationality, citizenship or residence, and how the attainment of competencies etc may be evidenced. Section 29 also provides for the instruction, training and examination of seafarers, and the recognition of certificates granted to seafarers under the national law, the law of a State, a Territory or a foreign country, and conditions to which seafarer certificates are to be subject.
3. Section 314 of the *Navigation Act* provides for other matters to be prescribed for certificates, including matters relating to applying for them, the criteria for their issue, variation or revocation, the information to be included in certificates and conditions to which certificates are subject. It allows the regulations to provide for the renewal, suspension, transfer and surrender of certificates.
4. Subsection 342(1) of the *Navigation Act* provides for the making of Marine Orders for any matter for which provision must be made by regulations, and subsection 339(1) provides a general regulation making power for matters.
5. This Order was made under subsection 342(1) of the *Navigation Act* and is a legislative instrument for the *Legislative Instruments Act 2003*.

Purpose

6. This Order sets out the general provisions that apply for a person to be a qualified master, officer or other seafarer under the *Navigation Act*. It give effect to Australia's obligations under the International Maritime Organization's *STCW Convention*.
7. The Order provides for the administrative arrangements required for AMSA to provide seafarer certification services.

Overview

8. This Order revokes *Marine Order 3 (Seagoing qualifications) 2004*. This Order is part of a package of Marine Orders dealing with seafarer certificates that may be issued by AMSA (the *seafarer certification package*). The Orders in the package work together to update the seafarer certificate structure that appeared in *Marine Order 3 (Seagoing qualifications) 2004* to provide a more streamlined career pathway for seafarers. Together these Orders also update the training and other eligibility requirements for the issue, endorsement and revalidation of seafarer certificates to implement the requirements of the 2010 amendments to the *STCW Convention* and the *STCW Code* (the *STCW Manila amendments*).
9. The certification and training requirements for ship masters, deck officers, engineer officers and ratings set out in the seafarer certification package are based on the internationally recognised standards set out in the *STCW Convention* and *STCW Code*.

10. The other Marine Orders in the seafarer certification package are *Marine Order 71 (Masters and deck officers) 2014*, *Marine Order 72 (Engineer officers) 2014* and *Marine Order 73 (Ratings) 2014*. These three Orders deal respectively with other matters relating to the master and deck officer, engineer officer and ratings classes of certificate that AMSA may issue. They set out the duties or functions a person may perform if the person holds a particular grade of certificate, the eligibility requirements for the issue of certificates, the qualifying seagoing service requirements for certificates, requirements for revalidation of certificates and transitional arrangements for persons holding certificates previously issued by AMSA.

11. The changes made to the eligibility requirements for certificates in the other Marine Orders in the seafarer certification package create additional pathways to obtain seafarer certificates from AMSA, thus ensuring that seafarers can continue to develop and maintain their professional skills and that an adequate pool of skilled seafarers essential for the safe and efficient operation of Australian vessels is maintained.

12. This Order prescribes the classes of seafarer certificates and the kinds of seafarer certificates for which a person may apply to AMSA. It sets out the application process for certificates and provides for the review of decisions made under the Order.

13. Consistent with the STCW Convention, this Order also sets out the process and eligibility requirements for certificate endorsements and their revalidation, and provides for the recognition of seafarer certificates issued to seafarers by other countries. It also provides for regulatory action that may be taken by AMSA against persons holding certificates, and arrangements for the provision of seafarer training courses.

14. This Order ensures that final assessments undergone by persons for the purpose of ensuring they meet the eligibility requirements for the issue or revalidation of certificates must still include an oral examination by an AMSA employee. However this may be supplemented by the use of other assessment methods such as written, online or the use of bridge simulators.

15. All existing valid seafarer certificates will continue to be recognised by AMSA when the seafarer certification package of Orders commence. However, the seafarer certification package introduces the following new certificates:

- Master <24m FG (see *Marine Order 71 (Masters and deck officers) 2014*, Schedule 1)
- Electro-technical officer (see *Marine Order 72 (Engineer officers) 2014* Schedule 1)
- Able Seafarer — Deck (see *Marine Order 73 (Ratings) 2014*, Schedule 1)
- Able Seafarer — Engine (see *Marine Order 73 (Ratings) 2014*, Schedule 1)
- Marine Cook (Subdivision 3.2 of this Order).

16. The five new certificates have been introduced for varying reasons. Four have been introduced to implement changes made by the STCW Manila Amendments. The STCW introduced training and certification requirements for the new grades of Able Seafarer — Deck and Able Seafarer — Engine, and also new competency standards and certification requirements for the position of Electro-technical officer. The Marine Cook certificate that ship cooks must have from 20 August 2013 has been introduced because the Maritime Labour Convention, to which Australia is a signatory, requires trained cooks on board ship.

17. Further explanation of these certificates is set out in the Explanatory Statements to the related Marine Orders. The Explanatory Statements also explain further a number

of new endorsements of seafarer certificates that AMSA has introduced due to STCW requirements.

18. The Order does not deal with qualifications required for operations on domestic commercial vessels. That is covered by *Marine Order 505 (Certificates of competency — national law) 2013*, made under the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

19. All offences under this Order are strict liability, as was the case under *Marine Order 3 (Seagoing qualifications) 2004*. The Navigation Act has introduced a system of civil penalties and, like in other Marine Orders issued under the Navigation Act, any conduct that is subject to a criminal penalty in the Order gives rise to a civil penalty.

Consultation

20. A copy of a draft of a new issue of *Marine Order 3 (Seagoing qualifications) 2004* (titled *Marine Order 3, issue 7 (Seafarer certification)*) was placed on AMSA's website on 8 December 2011 for stakeholders to consider and provide written feedback by 2 March 2012. Key stakeholders were invited by email to provide comment on the draft instrument. 'Fact sheets' explaining the proposed amendments were also released. Information sessions were held along with meetings with shipping operators and unions.

21. Approximately 160 people attended the information sessions, which were held in Brisbane, Sydney, Melbourne and Fremantle. Attendees included seafarers, shipping operators, union officials and training representatives.

22. AMSA also received 202 written submissions, 184 of which were from seafarers, 8 were from ship owns/operators, 3 from training providers, 6 from unions/industry associations and 1 from a government agency. Of the 184 seafarer submissions, approximately 180 were from engineer officers.

23. Following the consultation process, on 30 May 2012 AMSA's Chief Executive Officer released a statement advising that as the draft had received considerable comment AMSA would review the submissions in detail. Since that time the Navigation Act came into force on 1 July 2013 replacing the *Navigation Act 1912*. This necessitated changes to the draft Order so that it could be made under the new Navigation Act, to reflect how seafarer certificates are dealt with in that Act, and to reflect the changes to terminology and the new penalty arrangements of that Act, including civil penalties.

24. A copy of a second draft of the Order (titled *Marine Order 3 (Seafarer certification) 2013*) that took account of the feedback received on the first draft was released on AMSA's website on 31 July 2013 for stakeholders to consider and provide written feedback by 28 August 2013.

25. A discussion paper *Marine Order 3 (Issue 7) – Overview and Amendments following 2012 consultation* and a document *Career Path Options for Deck, Engineer & Ratings* was released with the second draft of the Order. An email was distributed to AMSA's stakeholders, key industry bodies and contactable seafarers who made submissions in the first consultation period. This reached approximately 640 stakeholders. 169 submissions were received of which 92% were from individual seafarers.

26. After considering all comments received, it was determined that the legislative reform previously set out in a single draft Order would be better achieved in four separate Orders, and this has been delivered through this package. Consideration of submissions had identified a strong and broad view that separate Marine Orders were

appropriate for master and deck officers, engineer officers and ratings to provide clarity of requirements for each class of certificate. This will also allow for any proposed changes to each Order to be considered separately in future, so that consultation can be addressed to those stakeholders who may be affected by requirements for a particular class of certificate.

27. AMSA has prepared a document *MO3 Summary of MO3 consultation* that is available from the AMSA website at <http://www.amsa.gov.au>. All comments received concerning the subject matter of this instrument were taken into account when preparing the final instrument.

28. The Office of Best Practice Regulation (OBPR) was consulted on the proposed Order. OBPR considered that the regulatory impact of the Order is of a minor or machinery nature and no further analysis in the form of a Regulatory Impact Statement is required (OBPR reference number 13286). OBPR confirmed this assessment on 12 November 2013.

Documents incorporated by reference

29. A 2011 edition of the STCW Convention and the STCW Code can be purchased from the International Maritime Organization. The 2011 edition includes the 2010 Manila amendments made by the 2010 Conference.

30. The STCW Code is incorporated as adopted by resolution of the 2010 Conference of the Parties to the STCW Convention.

31. The International Code of Safety for High-Speed Craft is adopted as in force from time to time. A 2008 consolidated edition of the International Code of Safety for High-Speed Craft, 2000, incorporating all amendments as at 1 January 2012 can be purchased from the International Maritime Organization. An amendment was made to this Code by IMO resolution MSC.326(90) that is to enter into force on 1 January 2014.

32. See the IMO website at <http://www.imo.org/publications> to purchase these documents. There is a list of distributors who maintain permanent stock of all IMO publications on the IMO website. Information on obtaining copies of IMO documents mentioned in this Order is also available from AMSA's website at <http://www.amsa.gov.au> or by email at international.relations@amsa.gov.au.

Commencement

33. This Order commenced on 1 April 2014.

Contents of this instrument

Division 1 — Preliminary

34. Section 1 states the name of the Order.

35. Section 1A states that the Order commences on 1 April 2014. A note states that the Order will be amended by Schedule 3 on 1 July 2014.

36. Section 1B repeals *Marine Order 3 (Seagoing qualifications) 2004*.

37. Section 2 states the purpose of the Order, which is to set out general provisions that apply for a person to be a qualified master, officer or other seafarer under the Navigation Act and to give effect to the STCW Convention.

38. Section 3 sets out the powers in the Navigation Act that enable the Order to be made.

39. Section 4 provides definitions of words and phrases used in the Order. Important definitions include:

certificate of recognition, meaning, other than in Division 4, a certificate of recognition or a restricted certificate of recognition issued by AMSA; and

final assessment, meaning, for applications for certificates, their revalidation or their issue under the transitional arrangements, an assessment by AMSA, of which part must be conducted by oral examination by an examiner, of whether the applicant has operational knowledge and knowledge of Australian maritime legislation appropriate for the grade of certificate.

40. Due to subsection 7(2) a certificate of recognition is a kind of seafarer certificate. This means that wherever a ‘seafarer certificate’ is mentioned in this Order the provision applies to a certificate of recognition, unless otherwise provided (as in section 10).

41. With respect to the final assessment, in addition to the oral examination, AMSA is able to supplement a final assessment with any other method of assessment that it considers appropriate for delivering contemporary training assessment outcomes. For example, depending upon the grade of certificate, an assessment might include online assessment, practical exercises, or the use of a simulator to replicate an engine room or bridge on a ship.

42. Section 5 provides for rules of interpretation about the requirements to hold certificates and qualifications.

43. Section 6 states the persons to whom the Order applies.

44. Section 7 prescribes classes of seafarer certificates for subsection 29(1) of the Navigation Act. Under section 30 of the Navigation Act an individual may only apply to AMSA for a seafarer certificate of a specified kind. Subsection 7(2) specifies the kinds of certificates for which an individual may apply, and a certificate in a prescribed class is one of these kinds, as is a certificate of recognition of one of the prescribed classes (other than a certificate of proficiency as marine cook or a certificate of safety training).

45. The classes of seafarer certificate are: certificate of competency as master or deck officer, certificate of competency as engineer officer, certificate of proficiency as rating, a certificate of proficiency as marine cook and a certificate of safety training. Section 7 also provides that seafarer certificates are issued for permitted duties or functions on a regulated Australian vessel.

46. Section 7 states that a person holding a seafarer certificate or a certificate of recognition is to be taken under the Act to be qualified to perform the duties or functions mentioned in the Order for the grade of certificate (the **permitted duties**).

47. Section 7 also sets out the rules for the issue by AMSA of more than 1 seafarer certificate to the same person and provides examples.

48. Section 8 provides for endorsements of certificates. There will be 2 kinds of endorsements under the Order: vessel endorsements (these allow the performance of stated duties or functions on stated kinds of vessels) and functions endorsements (these allow the duties or functions stated on the endorsement to be performed on any regulated Australian vessel). The section makes clear that an endorsement may state duties or functions by reference to the STCW Code or the International Code of Safety for High-Speed Craft, ie a list of all the duties or functions permitted by the endorsement does not have to appear on the endorsement itself to be ‘stated’ on the endorsement. This is because it may be impractical to list them in full on the endorsement.

Division 2 Seafarer certificates other than certificates of recognition — administration

49. Section 9 provides that this Division does not apply to certificates of recognition except as set out in section 30. Section 30 provides for how the provisions dealing with conditions on and terms of certificates apply to certificates of recognition. Division 4 sets out other arrangements for certificates of recognition such as the application process for them.

50. Section 10 provides for the application process for a person to apply to AMSA for a seafarer certificate.

51. Section 11 sets out the period for consideration by AMSA of an application for a seafarer certificate. The arrangement is similar to that for consideration of applications for exemptions and equivalents under *Marine Order 1 (Administration) 2013* except that different timeframes apply.

52. The standard deadline is 28 days after the application is made. Depending on the certificate sought, AMSA may need to seek further information, such as the particular vessel operations or specific duties on board the vessel that may have an effect on the qualifying sea service the applicant is claiming. If AMSA requests further information, documents etc, the deadline for consideration of the application is 28 days after AMSA receives what has been requested.

53. Also, if AMSA asks for information or a document but does not receive it all within a reasonable time, AMSA can continue to consider the application. It is not possible to put a fixed time limit on this circumstance. Different periods may be reasonable in different cases. The decision maker is constrained by the requirement to consider the application after allowing a reasonable time for requests to be answered.

54. Section 12 sets out the procedure for dealing with an application, and provides for written reasons to be given if the decision is to refuse to issue the certificate. If a decision is not made on time, AMSA is taken to have decided to refuse to issue the certificate (triggering a right of review). However, AMSA does have the power to then decide to issue a certificate afterwards. It is not anticipated that this will occur very often, but this provision avoids the need for a seafarer to have to apply to the AAT for review of a decision to refuse to issue a certificate when AMSA has simply been unable to issue the certificate within the specified timeframes eg in times of high demand for certificates.

55. Section 13 sets out what must be included in a seafarer certificate, and requirements for the form of the certificate.

56. Section 14 sets out the conditions that apply to all issued or revalidated seafarer certificates. Importantly, a condition is that the person to whom it is issued must comply with the requirements of the Navigation Act and Marine Orders.

57. Section 15 provides for the term of seafarer certificates. A certificate must expire on the date determined by AMSA. If no expiry date is determined, it must expire 5 years after issue (if it is revoked it expires on revocation). However, this arrangement is subject to arrangements set out in the other Marine Orders in the seafarer certification package for the expiry of certain certificates.

58. Subsection 15(3) provides that AMSA may extend the term of any certificate of competency or a certificate of proficiency as rating or certificate of proficiency as marine cook for up to 6 months. This gives the person additional time to meet the requirements (other than the qualifying seagoing service requirements) for revalidation of the certificate, eg to obtain a place in an approved revalidation course. However, any seagoing service undertaken within the extension period is not to be taken to be qualifying seagoing service. An extension of the term of certificates issued

under *Marine Order 3 (Seagoing qualifications) 2004* or a previous issue of that Order can only be made until 31 December 2016. This is because all these certificates will generally expire on 1 January 2017 anyway — see the arrangements for the expiry of previously issued certificates in the other Marine Orders in the seafarer certification package.

59. Subsection 15(4) provides that similar arrangements apply to the term of a revalidated seafarer certificate and that a revalidated certificate can be extended in the same way, subject to the rules for revalidation of certificates so that they expire after 31 December 2016 set out in the other Marine Orders in the seafarer certification package. Persons applying for revalidation of certificates of competency as master, deck or engineer officers or ratings certificates beyond that date will need to demonstrate additional competence in the various STCW courses.

Division 3 Seafarer certificates — eligibility

60. Seafarer certificates are issued by AMSA under section 31 of the Navigation Act if AMSA is satisfied that the person satisfies the criteria prescribed for the issue of the certificate in the seafarer certification package.

61. Section 16 provides that an eligibility criterion is that the person has the qualifying seagoing service appropriate for the grade of certificate. The other criteria, including eligibility requirements, are set out in the relevant Order in the seafarer certification package.

62. Section 17 sets out the general rules for calculating qualifying seagoing service, in order to determine if a person meets the qualifying seagoing service eligibility requirement for a certificate. These rules are the same as those in the previous issue of the Order, but the language has been simplified. Specific rules applicable to deck officers, engineer officers and ratings are contained within the other Orders in the package.

63. Section 18 provides for the discounting of service by AMSA if AMSA considers it was served in circumstances of little relevance to the seafarer certificate for which application has been made. *Marine Order 3 (Seagoing qualifications) 2004* included a similar provision.

64. Section 19 provides that equivalent service on vessels that is not otherwise recognised as seagoing service under the Order may be recognised by AMSA as qualifying seagoing service. Again, *Marine Order 3 (Seagoing qualifications) 2004* included a similar provision.

65. Section 20 gives AMSA the ability to recognise equivalent seagoing service as being some or all of the qualifying seagoing service required for a certificate. For example, service on large dredgers limited to port duties only and not undertaking voyages between two ports. Section 21 gives AMSA a similar ability for equivalent training. For example, training in the Royal Australian Navy can be considered equivalent to STCW competencies.

66. Section 22 sets out the eligibility criteria for certificates of safety training.

67. Section 23 sets out the eligibility criteria for certificates of proficiency as marine cook.

68. Section 24 ensures that a marine cook certificate is needed to perform the duties or functions of a marine cook.

69. Section 25 sets out the requirements for the revalidation of a certificate of proficiency as marine cook.

Division 4 Recognition of certificates issued overseas

70. This Division sets out arrangements for the recognition by AMSA of certificates issued by maritime administrations of countries recognised by Australia under memorandums of understanding for the recognition of seafarers' qualifications. It enables AMSA to issue persons holding such certificates with a certificate of recognition or a restricted certificate of recognition, ie a certificate of recognition for the permitted duties and term determined by AMSA. The STCW Convention recognises this approach.

71. Section 26 sets out definitions for Division 4.

72. Section 27 sets out the application process for persons to apply to AMSA for either a certificate of recognition or a restricted certificate of recognition. The application process is similar to that which applies to applications for seafarer certificates, except that an applicant must produce the certificate, or a certified copy of the certificate, to be recognised.

73. Section 28 sets out the period for consideration of an application and section 29 deals with the decision on the application and notification of the decision. The same arrangements apply for these matters as for an application for a seafarer certificate.

74. Subsections 29(2) and 29(3) respectively set out the criteria for issue by AMSA of a certificate of recognition or a restricted certificate of recognition. Importantly, AMSA may only issue a person with a certificate of recognition if the applicant has completed training, short courses and qualifying sea service at least equivalent to the training and qualifying seagoing service required for the equivalent seafarer certificate.

75. AMSA may only issue a person with a restricted certificate of recognition if the person cannot be issued a certificate of recognition as AMSA does not have a Memorandum of Understanding with the foreign Administration.

76. Section 30 ensures conditions may be applied to certificates of recognition and restricted certificates of recognition and provides for their term and revalidation. Because section 30 does not apply subsection 15(3) to these certificates their term may not be extended. This is because these certificates recognise a primary certificate and AMSA usually determines that a certificate of recognition expires at the end of the term of the primary certificate or at the end of a lesser period (eg on expiry of the applicant's visa).

Division 5 Certificates — revalidation and endorsements

77. Section 31 provides an application process for persons holding a seafarer certificate other than a certificate of safety training to revalidate the certificate. Under the transitional arrangements in the other Orders in the seafarer certification package certificates issued under *Marine Order 3 (Seagoing qualifications) 2004* are taken to be seafarer certificates. The application process is similar to that which applies to an application for a seafarer certificate except that the application must mention the certificate to be revalidated.

78. Section 32 sets out the period for consideration of an application.

79. Section 33 provides for the decision on the application and notification of the decision. As mentioned earlier, different requirements apply for AMSA to revalidate a certificate so that it expires before 1 January 2017 and to revalidate a certificate so that it expires after 31 December 2016, but these requirements are set out in the other Marine Orders in the seafarer certification package. For example, a new requirement for revalidation of a certificate so that it expires after 31 December 2016 is that the seafarer to complete security-awareness training (unless the seafarer is exempt under

transitional arrangements). This is because of new requirements imposed by the STCW Convention Manila amendments.

80. Subsection 33(2) provides that AMSA may only revalidate a certificate of recognition if the certificate it recognises has been revalidated by the Administration that issued it. This provides an assurance mechanism that the person retains the skills and knowledge necessary to perform their permitted duties.

81. Sections 34 and 35 respectively set out the process for the making of, and consideration of, an application for endorsement of a seafarer certificate or a certificate of recognition. The process is similar to that for an application for a seafarer certificate.

82. AMSA has also introduced a number of new endorsements due to STCW requirements, including a new endorsement for Integrated Ratings known as a 'Certificate of proficiency as Integrated Rating (STCW regulation II/5 and III/5 compliant)'. There are also endorsements to extend the limitations of the two Chief Mate certificates. A new optional endorsement known as a 'Certificate of proficiency as designated security person' is for seafarers who are required to perform security duties including anti-piracy and anti-armed robbery functions. A new mandatory endorsement known as a 'certificate of proficiency as ECDIS trained' is for deck officers performing duties on vessels equipped with ECDIS (Electronic Chart and Display Information System).

83. Section 36 provides for the decision on an application for an endorsement and notification of the decision. The different kinds of endorsement are set out in Schedule 2, together with their eligibility requirements. Different requirements apply for AMSA to endorse a certificate with a vessel endorsement than with a functions endorsement. The two kinds of endorsements are defined in section 6.

84. Section 37 provides for the terms of the different kinds of endorsements, including for endorsements of certificates of recognition.

85. Section 38 sets out the application process for revalidation of an endorsement. An endorsement of a certificate of recognition may be revalidated by AMSA.

Division 6 General

86. This Division sets out a number of strict liability offences. A person may be liable for a civil penalty for the same conduct. This is not a new approach and *Marine Order 3 (Seagoing qualifications) 2004* contained similar strict liability offences and civil penalties. They are necessary to ensure that only qualified persons operate vessels.

87. Section 39 sets out requirements for final assessments that are to be passed by a person before a certificate may be issued to the person or revalidated. AMSA may decide when the person is to undergo the final assessment. Passing a final assessment ensures the person has and maintains the technical knowledge and practical skills required to perform their permitted duties.

88. Section 40 is an offence provision. Its purpose is to ensure seafarers can obtain the necessary documentation required (eg a sea service letter) to support an application for a certificate from the owner of vessels on which they have worked.

89. Section 41 provides that AMSA may revoke a certificate that includes incorrect information and may issue a certificate with correct information in its place. It is an offence not to return a revoked certificate after being notified of its revocation.

90. Section 42 provides that AMSA may issue a replacement seafarer certificate if satisfied that the person's original certificate has been lost, stolen or destroyed. AMSA may require a statutory declaration to that effect.
91. Section 43 provides that AMSA may dispose of a seafarer certificate that the person has returned to AMSA if the person has applied for a replacement certificate.
92. Section 44 is a new offence provision. A person (except AMSA or persons acting on the authority of AMSA, in certain circumstances) cannot deface or physically alter a seafarer certificate.
93. Section 45 enables AMSA to make certain information about the status or a seafarer certificate or an endorsement of a seafarer certificate issued by AMSA available, on request only, to the owner of a vessel or the Administration of a country that is a Party to the STCW Convention. This power is needed for the purposes of paragraph 15 of Regulation I/2 of the STCW Convention. Its aim is to assist the Administrations of other countries or owners of vessels to verify the authenticity and validity of certificates issued by AMSA. This assists those Administrations in the recognition of those certificates, and assists seafarers seeking employment on board ship.

Division 7 Regulatory action

94. The powers in this Division are required to ensure the safe navigation, management and operation of vessels. It is a condition of each seafarer certificate issued under this Order that the person agrees to comply with this Order. Safeguards are included to enable any person who is the subject of regulatory action under this Division to respond and if necessary seek review of the action taken.
95. AMSA may take regulatory action under subsection 48(2) against a person holding a seafarer certificate if satisfied that a ground for regulatory action has been established.
96. Section 46 sets out the grounds for regulatory action.
97. Section 47 sets out the forms of regulatory action that AMSA may take. These include requiring the person to complete certain training and amending, suspending or revoking a certificate.
98. Regulatory action may only be taken under section 48 after AMSA gives the person written notice about the proposed action and considers any response the person provides.
99. However, under section 49 AMSA may give a person an immediate suspension notice to immediately suspend a person's seafarer certificate if AMSA reasonably considers there is a ground for regulatory action and the suspension is in the public interest. This is not a reviewable decision. However, the immediate suspension has a finite timeframe (see subsection 49(4) and the power is only to be used if it is in the public interest, eg if there is a risk to public safety. The power might be used, for example, to suspend the certificate of a sea pilot who guides a vessel so that it runs aground.
100. Section 50 provides that a person holding a suspended or revoked certificate must surrender the certificate to AMSA within a certain timeframe. However, a person given an immediate suspension notice does not have to surrender the certificate if the certificate is not then revoked or further suspended. A similar strict liability offence relating to the failure to return a revoked certificate was in *Marine Order 3 (Seagoing qualifications) 2004*.

Division 8 Seafarer training courses

101. This Division establishes a framework for seafarer training organisations (either a registered training organisation or the Australian Maritime College) to obtain AMSA approval to provide seafarer training courses and for AMSA to audit seafarer training organisations. The purpose of this framework is to ensure Australian seafarers obtain quality world-class training.

102. Section 51 provides for applications to be made. Section 52 sets out the period for consideration of an application. The application process is similar to that which applies to an application for a seafarer certificate except that AMSA has 8 weeks to consider the application. This is because it may take some time and resources to verify a certificate of competency course.

103. Section 52 provides for the decision on the application and notification of the decision. Similar arrangements apply for these matters as for an application for a seafarer certificate. Subsection 53(2) sets out the criteria for approval of an application to provide a seafarer training course.

104. Section 54 provides for the term of the approval. If AMSA does not decide an expiry date within 4 years after it is issued, it will expire 4 years after issue.

105. Section 55 allows AMSA to suspend or cancel an approval in certain circumstances.

106. Section 56 provides that a seafarer training organisation that holds an approval may apply to AMSA to renew it, how that application must be made and that AMSA is to deal with it as if it was an application for approval.

107. Sections 57 to 59 provide for training course audits. AMSA may audit any seafarer training organisation that has applied for, or holds, an approval to provide a seafarer training course. Section 58 sets out the purposes for which an audit may be conducted and what may be reviewed, and section 59 provides that all reasonable requirements of the person undertaking the audit must be complied with.

Division 9 Review of decisions

108. Section 60 provides that a person who is affected by a decision mentioned in Schedule 1 may apply to AMSA for internal review of the decision. These are decisions made under the Order and the persons who may apply for their review are also mentioned in Schedule 1. The Navigation Act provides for review of decisions made under the Act, including decisions to refuse to issue or to revoke a seafarer certificate (see section 313 of the Navigation Act).

109. The standard timeframe to make a request for internal review of a decision made under the Order is within 90 days after being notified of the decision. AMSA then has 28 days to review the decision. Standard internal review arrangements apply for notification of the applicant of the outcome of the internal review. The applicant may request a statement of reasons for the decision.

110. Section 61 provides that the applicant may apply to the Administrative Appeals Tribunal (AAT) for review of the decision.

Division 10 Transitional arrangements

111. Section 62 provides for the recognition of previous approvals given by AMSA to organisations providing seafarer training courses to ensure AMSA may continue to audit and otherwise oversee the provision of seafarer training by those organisations.

112. Section 63 provides for references to provisions of *Marine Order 3 (Seagoing qualifications) 2004* in other Marine Orders to be references to equivalent provisions in the Orders in the seafarer certification package.

113. Section 64 provides for an amending schedule (Schedule 3).

Schedule 1

114. This schedule sets out the decisions made by AMSA under the Order that are internally reviewable by AMSA and reviewable by the AAT and the affected persons who may seek review of these decisions.

Schedule 2

115. This schedule sets out the eligibility requirements for vessel endorsements and functions endorsements.

Schedule 3

116. This schedule is an amending Schedule. On 1 July 2014 it will amend section 23 to remove from the eligibility requirements for the new certificate of proficiency as marine cook the transitional option of at least 6 months documented qualifying seagoing service as marine cook before 1 July 2014 instead of completion of a training course in hospitality.

Statement of compatibility with human rights

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

Overview of the legislative instrument

118. This Order sets out the general provisions that apply for a person to be a qualified master, officer or other seafarer under the Navigation Act and to work on regulated Australian vessels. It gives effect to Australia's obligations under the International Maritime Organization's STCW Convention. The Order sets out the general administrative arrangements and regulatory powers AMSA requires to provide seafarer certification services for these seafarers.

119. This Order is part of a package of Marine Orders dealing with seafarer qualifications (the **seafarer certification package**) that replaces *Marine Order 3 (Seagoing qualifications) 2004*. The seafarer certification package also implements requirements arising from the 2010 amendments to the STCW Convention and the STCW Code (the STCW Manila amendments) by updating the training and other eligibility requirements for the issue, endorsement and revalidation of some seafarer certificates to. To do this, this Order introduces some new endorsements that may be made to certain seafarer certificates, while other Orders in the seafarer certification package introduce some new seafarer certificates.

120. This Order revokes *Marine Order 3 (Seafarer qualifications) 2004*. It prescribes the kinds of seafarer certificates that AMSA may issue under the Navigation Act, and administrative arrangements for the issue, endorsement and revalidation of these certificates. The related eligibility criteria and the duties or functions a person may perform if issued a master or deck officer, engineer officer or rating certificate are set out in the other Orders in the seafarer certification package.

121. The Order also sets out arrangements for the oversight by AMSA of the provision of seafarer training courses, the regulatory action that may be taken by AMSA against persons holding seafarer certificates and the recognition by AMSA of certificates issued to seafarers by other countries.

Human rights implications

122. This Order, like the previous issue of the Order, includes some strict liability offences and creates civil penalties. Strict liability offences may engage and limit the

presumption of innocence mentioned in Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) and civil penalty provisions may engage the criminal process provisions under Articles 14 and 15 of the ICCPR.

123. However, these offence arrangements are necessary to preserve the integrity of the regulatory regime that is designed to ensure vessels are operated safely by qualified seafarers. The penalty for commission of a strict liability offence is relatively low (50 penalty units) and, like the civil penalty provisions, are directed at seafarers and owners of vessels rather than the community at large. The civil penalty provisions are authorised by paragraph 341(1)(b) of the *Navigation Act 2012* and given their relatively low level of penalty and their objectives (which are protective, preventative, disciplinary or regulatory in nature) should not be considered ‘criminal’ for the purposes of human rights law.

124. The Order also provides for AMSA to make certain information about the status of a seafarer certificate or an endorsement of a seafarer certificate issued by AMSA available on request to the owner of a vessel or the Administration of a country that is a Party to the STCW Convention. This power may engage the right to privacy and reputation. However, it is required by paragraph 15 of Regulation I/2 of the STCW Convention. Its aim is to assist the Administrations of other countries or owners of vessels to verify the authenticity and validity of certificates issued by AMSA. This assists those Administrations in the recognition of those certificates, and also assists seafarers seeking employment on board ship.

125. The Order also engages the right to work of seafarers. First, it provides for regulatory action by AMSA that may include the suspension or revocation of a seafarer certificate. However, these powers can only be used in limited, specified circumstances, and any regulatory action is reviewable. They are considered necessary to ensure the safety of vessels and persons on board those vessels.

126. Second, by its very nature of requiring specified qualifying seagoing service for seafarer certificates and specifying standards of competence and training requirements for certain seafarer certificates the Order places limits on the promotion and advancement of seafarers until they have obtained certain qualifications. However, these limitations are required to implement Australia’s international obligations under the IMO’s STCW Convention and again are necessary to ensure the safety of vessels and persons on board by ensuring that only appropriately qualified seafarers work on vessels.

Assessment

127. 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

128. 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 Authority Act 1990*.