

Explanatory Statement

Marine Order 73 (Ratings) 2014 (Order 2014/5)

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 specifies standards of competence and other conditions to be satisfied by a person to be a qualified rating under the Navigation Act. It gives effect to Australia's obligations under the International Maritime Organization's STCW Convention.

Overview

7. This Order sets out the following in relation to ratings certificates: 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, the requirements for revalidation of certificates and transitional arrangements for persons holding certificates previously issued by AMSA.
8. 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 seafarer certification package work together to update the seafarer certificate arrangements that appeared in *Marine Order 3 (Seagoing qualifications) 2004*. The other Marine Orders in the seafarer certification package are *Marine Order 70 (Seafarer certification) 2014*, *Marine Order 71 (Masters and deck officers) 2014* and *Marine Order 73 (Ratings) 2014*.

9. The seafarer certification package provides a more streamlined career pathway for seafarers. Together the 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).

10. The certification and training requirements for ratings set out in this Order are based on the internationally recognised standards set out in the STCW Convention and STCW Code.

11. *Marine Order 70 (Seafarer certification) 2014* sets out the administrative arrangements required for AMSA to provide seafarer certification services, including the application process for certificates and for review of decisions. That Order prescribes the classes of seafarer certificate and the kinds of seafarer certificates for which a person may apply to AMSA. One of the classes of seafarer certificates it prescribes is a certificate of competency as engineer officer. *Marine Order 70 (Seafarer certification) 2014* also provides for regulatory action that may be taken by AMSA against persons holding certificates, for the provision of seafarer training courses, and the recognition of seafarer certificates issued by seafarers.

12. *Marine Order 71 (Masters and deck officers) 2014* and *Marine Order 72 (Engineer officers) 2014* set out similar matters in relation to masters and deck officer and engineer officer seafarer certificates as this Order does for ratings seafarer certificates.

13. The changes made in this Order to the eligibility requirements for ratings 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.

14. All existing valid certificates of competency as ratings will continue to be recognised by AMSA when this Order commences. However, this Order introduces the following two new ratings certificates: the Able Seafarer — Deck and Able Seafarer — Engine certificates of proficiency. This is because the STCW Manila amendments introduced the new grades of Able Seafarer — Deck and Able Seafarer — Engine.

15. AMSA has also introduced a number of new endorsements due to STCW requirements. A new endorsement for Integrated Ratings has been introduced known as a ‘Certificate of proficiency as Integrated Rating (STCW regulation II/5 and III/5 compliant)’. Another 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. Endorsements are provided for in *Marine Order 70 (Seafarer certification) 2014*.

16. Other changes in this Order to take account of the STCW Manila Amendments include the requirement that all seafarers must now show evidence of continued competence in sea survival and fire fighting including refresher training, to be issued with a seafarer certificate under the Order, and that, to be issued with a seafarer certificate or to have one revalidated all seafarers must have undergone security awareness training.

17. This Order does not include any offences. Offence provisions relating to seafarer certification are set out in *Marine Order 70 (Seafarer certification) 2004*. This Order also 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*.

Consultation

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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

27. 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.

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

29. 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

30. This Order commenced on 1 April 2014.

Contents of this instrument

Division 1 — Preliminary

31. Section 1 states the name of the Order.

32. Section 1A states that the Order commences on 1 April 2014.

33. Section 2 states the purpose of the Order, which is to specify standards of competence to be attained and other conditions to be satisfied by a person to be a qualified engineer officer under the Navigation Act and to give effect to the STCW Convention.

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

35. Section 4 provides definitions of words and phrases used in the Order. Importantly, subsection 4(2) provides that terms defined in *Marine Order 70 (Seafarer qualifications) 2014* and used in this Order have the meaning given by that Order.

36. Section 5 states the persons to whom the Order applies.

37. Section 6 provides that a person is qualified to perform the duties or functions of a rating for a regulated Australian vessel if the person holds a certificate required by this Order to perform them and the certificate permits the person to perform duties or functions mentioned in Schedule 1 for the grade of certificate. Section 35 of the Navigation Act provides a related offence.

38. Section 7 states that a person must hold a seafarer certificate of a certain grade to perform the permitted duties or functions for the grade of certificate.

Division 2 Requirements

39. Section 8 sets out criteria for the issue by AMSA of seafarer certificates as a rating. One of those criteria is that the person satisfies the eligibility requirements for the certificate set out in Schedule 2.

40. Section 9 provides that the qualifying seagoing service requirements are those mentioned in Schedule 3 (section 16 of *Marine Order 70 (Seafarer certification) 2014* states that another criterion is that the person has the qualifying seagoing service appropriate for the grade of certificate).

41. Section 10 sets out the requirements for revalidation of a seafarer certificate by AMSA. 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 3 December 2016. The new requirement for revalidation of a certificate so that it expires after 31 December 2016 that the seafarer is to complete security awareness training is because of new requirements imposed by the STCW Convention Manila amendments.

42. Section 11 sets out arrangements for persons to be qualified to perform duties as part of a navigational watch. These arrangements are required by Regulation II/4 of the STCW Convention and were previously in *Marine Order 3 (Seagoing qualifications) 2004*.

Division 3 Transitional arrangements

43. Section 12 provides that specified certificates as rating in force on commencement of this Order will expire on 1 January 2017.

44. However, section 13 provides that persons holding certificates as ratings issued under *Marine Order 3 (Seagoing qualifications) 2004* or a previous issue of that Order will be taken to hold certificates of proficiency as rating. This ensures that all the requirements of the Act and this Order that apply to holders of seafarer certificates apply to those persons.

45. Also, section 13 ensures that persons holding specified AMSA certificates of rating may be issued by AMSA with an equivalent certificate of rating in accordance with Schedule 5 if they satisfy some specified eligibility requirements of a relatively minimal nature.

46. Ratings certificates were previously perpetual but the arrangement described above is necessary because the STCW Manila amendments require all seafarers to demonstrate continued competence in specific short courses. Other countries are taking the same approach to implement the Manila amendment requirements for ratings. This approach will assist Australian seafarers' certificates to be recognised on foreign vessels.

Schedule 1

47. This schedule sets out the permitted duties or functions for each grade of engineer officer certificate.

Schedule 2

48. This schedule sets out the eligibility requirements for each grade of engineer officer certificate.

Schedule 3

49. This schedule sets out the qualifying seagoing service requirements for engineer officer certificates.

Statement of compatibility with human rights

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

Overview of the legislative instrument

51. This Order sets out the standards of competence to be attained and other conditions to be satisfied by a person to be a qualified rating under the Navigation Act and gives effect to the STCW Convention.

52. 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 other Marine Orders in the seafarer certification package are *Marine Order 70 (Seafarer certification) 2014*, *Marine Order 71 (Masters and deck officers) 2014* and *Marine Order 72 (Engineer officers) 2014*.

53. The seafarer certification package provides a more streamlined career pathway for seafarers. Together the Orders in the package 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).

54. This Order sets out the following in relation to ratings officer certificates: 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, the requirements for revalidation of certificates and transitional arrangements for persons holding certificates previously issued by AMSA.

55. This Order does not include any offence provisions. The offence provisions and regulatory powers necessary for AMSA to administer the seafarer certification regime set out in the seafarer certification package are set out in *Marine Order 70 (Seafarer certification) 2014*. The human rights implications of those provisions are addressed in the statement of compatibility for human rights prepared for that Order.

Human rights implications

56. This Order sets out standards of competency and training requirements for engineer officer certificates of competency. The need to attain these standards and meet these requirements in order to obtain seafarer qualifications places limits on the promotion and advancement of seafarers. 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.

57. This Order also provides for ratings certificates (that were previously perpetual) to expire on 1 January 2017. However, it also has arrangements for persons holding ratings certificates to be issued with equivalent certificates provided they satisfy certain eligibility requirements. This arrangement implements Australia's obligations under the STCW Manila amendments to ensure that all seafarers to demonstrate continued competence in specific short courses.

Assessment

58. 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

59. 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*.