

Explanatory Statement

Marine Order 508 (National law amendment) 2014 (2014/18)

Authority

1. Schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the National Law) is the single law for the safety of all domestic commercial vessels and their crew in Australian waters. It is supported by Marine Orders made under the National Law by the National Regulator.
2. Divisions 2, 3 and 4 of Part 4 of the National Law provide for matters to be prescribed in the regulations about certificates of survey, certificate of operation and certificates of competency for the operation of domestic commercial vessels.
3. Subsection 138(1) of the National Law provides for regulations to be made to enable a person who is alleged to have committed an offence to pay a penalty to the National Regulator as an alternative to prosecution. Subsection 138(2) provides that the penalty must equal one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.
4. Subsection 159(2) of the National Law provides for regulations to be made prescribing standards for the National Law. Subsection 159(5A) of the National Law provides for regulations to be made for the conduct of the survey of vessels.
5. Subsection 163(1) of the National Law provides for the making of Marine Orders about matters that can be made by the regulations. Section 164 of the National Law enables a Marine Order to provide for the application, adoption or incorporation of any matter in any written instrument in force or existing from time to time including the National Standard for Commercial Vessels (NSCV).
6. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power in an Act to make a legislative instrument includes the power to repeal or amend the instrument, subject to any conditions that apply to the initial power.
7. Marine Order 508 (this Order) was made under subsection 163(1) of the National Law and is a legislative instrument for the *Legislative Instruments Act 2003*.

Purpose

8. This Order amends Marine Orders 501, 503, 504, 505 and 507 to:
 - (a) make consequential amendments to Marine Orders, as a result of amendments to the National Law made by the *Marine Safety (Domestic Commercial Vessels) National Law Amendment Act 2014* (the Amendment Act);
 - (b) make consequential amendments to Marine Order 503, as a result of the Marine Safety (Domestic Commercial Vessel) National Law Amendment (Surveyor Accreditation) Regulation 2014;
 - (c) co-locate all prescribed standards for the National Law in Marine Order 501 to make future amendments to prescribed standards easier;
 - (d) clarify that endorsements for certificates of competency that applied on 30 June 2013 continue to apply under the National Law, so seafarers can continue to perform the tasks specified in these endorsements;
 - (e) reduce penalty infringement notice amounts so the amounts align with section 138 of the National Law;
 - (f) correct an outdated reference and an incorrect reference.

Overview

9. This Order updates a number of references to the National Law in the existing Marine Orders, so that these references are consistent with the National Law that has recently been amended by the *Marine Safety (Domestic Commercial Vessels) National Law Amendment Act 2014*. This Order also addresses a small number of inconsistencies and anomalies in Marine Orders.

Consultation

10. This Order was not publicly consulted on because the amendments are all minor editorial, administrative or consequential amendments that do not substantially alter existing arrangements.
11. A copy of the draft of this Order was sent to each member of the Maritime Agencies Forum, which represents the maritime safety authorities of each State and the Northern Territory. No issues were raised with the proposed amendments.
12. The Office of Best Practice Regulation (OBPR) has advised that based on the information provided to the OBPR, the regulatory impacts of the amendments in this Order appear minor and no formal Regulation Impact Statement assessed by the OBPR is required. The OBPR reference number is 17706.

Documents incorporated by reference

13. This Order does not incorporate any new documents by reference. This Order prescribes the following standards for the purposes of the National Law by co-locating all these existing prescribed standards in Marine Order 501:
- National Standard for the Administration of Marine Safety endorsed by the Australian Transport Council on 6 November 2009
 - National Standard for Commercial Vessels (NSCV) (see section 6 of the National Law)
 - Uniform Shipping Law Code (see section 6 of the National Law)
14. These documents are available from the Australian Maritime Safety Authority website at <http://www.amsa.gov.au>.

Commencement

15. This Order commenced on the day after it was registered.

Contents of this instrument

16. Section 1 of this Order states the name of this Order.
17. Section 2 of this Order states that this Order commences on the day after registration.
18. This Order has five schedules with each schedule amending an existing Marine Order. Section 3 of this Order provides that each Marine Order named in the title of a schedule is amended in accordance with the amendments in that schedule.
- Schedule 1 Marine Order 501 (Administration) 2013*
19. Item 1 of Schedule 1 of this Order amends section 4 to insert the authority in the National Law that provides for the regulations to prescribe standards. This authority is subsection 159(2).
20. Item 2 inserts new section 6A that prescribes the existing standards for the National Law in one place, including Part G of the NSCV (the National Standard for General Safety Requirements).

21. Items 3 and 4 reduce the amount of penalty units for the offences in Division 2 of Schedule 1 of Marine Order 501 so the amounts are consistent with subsection 138(2) of the National Law.

Schedule 2 Marine Order 503 (Certificates of survey) 2013

22. Item 1 of Schedule 2 of this Order amends section 4 to insert the new authority for regulations to be made about the conduct of the survey of vessels. This new authority is at paragraph 159(5A) of the National Law (as amended by the Amendment Act).

23. Item 2 replaces section 8 to include the standards that apply for a new vessel that has already been issued a certificate of survey under the National Law. New paragraph 8(a) is the same as the previous paragraph 8(b) and new paragraph 8(b) is the same as the previous paragraph 8(a).

24. New paragraph 8(c) clarifies that the applicable construction, subdivision and stability standards for a new vessel are those standards that applied to the vessel when it was first issued with a certificate of survey under the National Law. This provides for grandfathering of construction, stability and subdivision standards for a new vessel. It means that the new vessel must only comply with the construction, subdivision and stability standards that applied when the vessel was first issued a certificate of survey under the National Law, rather than those standards that apply from time to time. However, and as for other new vessels, the equipment standards that apply to a new vessel are those equipment standards that apply from time to time. Equipment standards are standards about fire equipment, safety equipment, communications equipment, navigation equipment and anchoring systems.

25. Items 3, 4 and 5 and 6 amend Marine Order 503 to make consequential amendments arising from the *Marine Safety (Domestic Commercial Vessel) National Law Amendment (Surveyor Accreditation) Regulation 2014* (the surveyor accreditation regulation), which commences in January 2015.

26. The surveyor accreditation regulation creates a regulatory framework for the conduct of surveys by accredited marine surveyors. To ensure consistency with the surveyor accreditation regulation, items 3 and 4 amend paragraphs 11(1)(b) and 11(1)(c) of Marine Order 503 to include an accredited marine surveyor as a person who may conduct surveys and assess plans. Item 5 provides that after 31 December 2015, any survey must be conducted by the National Regulator or an accredited marine surveyor. Before this date, surveys of vessels will need to be conducted by the National Regulator, an accredited marine surveyor or a person who the National Regulator is satisfied is competent to survey vessels, including attested marine surveyors.

27. Item 6 amends paragraph 14(c) of Marine Order 503 to simplify the certificate of survey condition but maintain the requirement for the National Regulator to be given a report on the condition of the vessel and its extent of compliance with the relevant standard.

28. Item 7 is a table of amendments to the provisions that deal with the variation, suspension or revocation of a certificate of survey. The amendments are consequential amendments to the Marine Order that are necessary to reflect changes made to the section numbers in the National Law (as amended by the Amendment Act).

Schedule 3 Marine Order 504 (Certificates of operation) 2013

29. Item 1 of Schedule 3 of this Order removes the reference to the authority for the regulations to prescribe standards as standards will now be prescribed in Marine Order 501.

30. Items 2 and 3 remove the reference to the National Standard for General Safety Requirements (NSCV Part G) and NSCV Part E and other parts of the NSCV as these are now prescribed in Marine Order 501.

31. Item 4 is a table of amendments. The first line of the table of amendments is an editorial amendment so that the expression NSCV Part E is used consistently. The second line of the table of amendments corrects an out of date reference as Marine Order 3 has been repealed and all these certificates are issued under the *Navigation Act 2012* (specifically Marine Orders 70 to 73). The third, fourth, fifth and sixth lines are consequential amendments to the Marine Order that are necessary to reflect changes made to the section numbers in the National Law.

Schedule 4 Marine Order 505 (Certificates of competency) 2013

32. Item 1 of Schedule 4 of this Order removes the reference to the authority for the regulations to prescribe standards as standards will now be prescribed in Marine Order 501.

33. Items 2 and 3 remove the reference to NSCV Part D and prescribed standards as these are now prescribed in Marine Order 501.

34. Item 4 clarifies that endorsements have the same status as conditions for existing certificates (issued under a State or Northern Territory law) and ensures that holders are permitted to perform duties or functions provided for by the endorsement on their existing certificate.

35. Item 5 is a table of amendments. The amendments are all consequential amendments to the Marine Order that are necessary to reflect changes made to the section numbers in the National Law (as amended by the Amendment Act). The provisions in the third column of the table are the new provisions in the National Law (as amended by the Amendment Act).

Schedule 5 Marine Order 507 (Load line certificates) 2013

36. Item 1 of Schedule 5 of this Order amends the definition of *load line certificate* so that the definition refers to the correct authority under which a load line certificate is issued under the National Law (that is, section 8 of Marine Order 507).

Statement of compatibility with human rights

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

Overview of the legislative instrument

38. This Order is made under 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*. It updates a number of references to the National Law in the existing Marine Orders, so that these references are consistent with the National Law that has recently been amended by the *Marine Safety (Domestic Commercial Vessels) National Law Amendment Act 2014*. This Order also makes other consequential amendments to Marine Order 503 and contains amendments to address a small number of inconsistencies and anomalies in Marine Orders, and provide that Marine Order 501 prescribes all National Law standards.

Human rights implications

39. This instrument does not engage any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

40. 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

41. 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*.