Explanatory Statement

Marine Order 52 (Yachts and training vessels) 2016 (Order 2016/1)

Authority

1. Subsection 98(1) of the *Navigation Act 2012* (the Navigation Act) provides that the regulations may provide for safety certificates.
2. Paragraph 98(3)(a) of the Navigation Act provides that the regulations may provide that particular classes of vessels must have safety certificates of specified kinds, either generally or in specified circumstances, including survey certificates.
3. Subsection 339(1) of the Navigation Act authorises the Governor-General to make regulations necessary or convenient for carrying out or giving effect to the Navigation Act.
4. Subsection 341(1) provides that the regulations may provide for the imposition of penalties for a contravention of the regulations.
5. Subsection 342(1) of the Navigation Act allows the Australian Maritime Safety Authority (AMSA) to make orders for any matter in the Act for or in relation to which provision may be made by regulations.
6. Subsection 342(4) provides that a Marine Order may provide for a matter by applying, adopting or incorporating, with or without modification, any matter in a document as in force or existing at a particular time or from time to time.
7. 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.
8. This Order was made under subsection 342(1) and is a legislative instrument for the *Legislative Instruments Act 2003*.

Purpose

1. This Order provides for the survey, maintenance and certification of yachts and training vessels and adopts the UK Large Commercial Yacht Code (the LY3 Code) as modified for Australia for regulated Australian vessels that are large yachts.

Overview

1. This Order provides for safety certificates to be issued by the Australian Maritime Safety Authority (AMSA) for regulated Australian vessels that are commercial yachts and training vessels. These vessels were previously categorised as cargo or passenger vessels for certification, survey and inspection purposes.
2. The Order uses an existing international framework of standards for large yachts, the LY3 Code, which is complied with by most large yachts worldwide. A large yacht is defined in the Order as a vessel that is at least 24 m in load line length, is for commercial use for sport or pleasure or is a training vessel, does not carry cargo and does not carry more than 12 passengers.
3. The Order will enable Australian owned ‘superyachts’ registered overseas to change to Australian registration and new or existing vessels operating in Australia to obtain Australian certification under certificate of recognition processes.
4. Under the Order, large yachts must have a certificate of compliance (large yacht). To be issued this certificate a large yacht and its equipment must comply with the LY3 Code as modified for Australia by the LY3 Australian National Annex. It is a condition of the certificate that the yacht and its equipment continue to comply with the LY3 Code as so modified. Yachts and training vessels must have a certificate of survey for a yacht or training vessel. A large yacht less than 500 gross tonnage must have both these certificates.
5. The Order specifies different criteria for issue of a certificate of survey for a yacht or training vessel depending upon the kind of vessel. These criteria include watertight integrity, and requirements for intact stability and auxiliary means of propulsion for sailing vessels.
6. The Order specifies the requirements for certificates or other documentation to be carried and complied with by foreign vessels in Australian ports or waters. A foreign vessel that is a large yacht must have and comply with any certificate that a large yacht must have under the LY3 Code.
7. The Order replaces *Marine Order 52 (Sailing vessels) 1999* following a review of the Order. Transitional arrangements in the Order will allow existing sailing vessels and sail training vessels that were issued with a certificate of survey appropriate to the voyage under a previous issue of the Order to continue to comply with *Marine Order  52 (Sailing vessels) 1999*.

**Consultation**

1. A copy of the draft of this Order was placed on AMSA’s website on 18 November 2015 for a 4 week period of public consultation; which was later extended until 8 January 2016. AMSA officials also held meetings with key industry stakeholders to discuss the Order.
2. The draft Order was also emailed to a targeted list of stakeholders including recognised organisations the yachting industry, seafarer representative organisations and relevant government agencies. Four submissions were received relating to the Order and were taken into account when the Order was finalised.
3. The Office of Best Practice Regulation (OBPR) was also consulted and considered that the Order dealt with matters of a minor or machinery nature and no regulatory impact statement was required.  The OBPR reference number is 19532.

Documents incorporated by reference

1. The following documents are incorporated by reference by this Order:
* *The Large Commercial Yacht Code* (LY3) published by the Maritime and Coastguard Agency of the United Kingdom in August 2012, as in force from time to time;
* the *Australian National Annex to the Large Commercial Yacht Code (LY3)*, published by AMSA; as in force from time to time (the LY3 Australian National Annex);
* some provisions of the *National Standard for Commercial Vessels* as in force from time to time (the NSCV);
* some provisions of the *Uniform Shipping Laws Code* adopted by the Australian Transport Council established by the Council of Australian Governments as in force from time to time (the USL Code);
* some provisions of the International Convention for the Safety of Life at Sea (SOLAS) as in force from time to time;
* *Marine Order 52 (Sailing vessels) 1999* as in force on commencement of the Order.
1. The LY3 Code, the LY3 Australian National Annex, the NSCV and the USL Code are all available on the AMSA website at http://www.amsa.gov.au. The LY3 Code is also available on the publications page of the UK Government website at http://www.gov.uk/government/publications. *Marine Order 52 (Sailing vessels) 1999* is available on the Comlaw website at http//www.comlaw.gov.au. SOLAS is available from the Australian Treaties Library on the AustLII website at http://www.austlii.edu.au.
2. Information on obtaining copies of any IMO Resolution, IMO document or other document that is mentioned in this Order is available from the AMSA website Marine Orders link at http://www.amsa.gov.au. IMO published material may also be purchased from:

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

Commencement

1. This Order commenced on 1 March 2016.

Contents of this instrument

**Division 1 Preliminary**

1. Section 1 sets out the name of the Order.
2. Section 1A provides for the commencement of the Order.
3. Section 1B repeals the previous issue of the Order.
4. Section 2 states the purpose of the Order, which is to provide for the survey, maintenance and certification of yachts and training vessels and adopt the UK Large Commercial Yacht Code (the LY3 Code) as modified for Australia for regulated Australian vessels that are large yachts.
5. Section 3 sets out the powers in the Navigation Act that enable the Order to be made.
6. Section 4 sets out definitions of terms used in the Order. A key term is ***yacht***, which is defined as a vessel that is for commercial use for sport or pleasure, does not carry cargo and does not carry more than 12 passengers. Some terms have the same meaning as in the LY3 Code, including ***training vessel***.
7. Section 5 is an interpretation provision for the purposes of the application of the LY3 Code.
8. Section 6 describes the vessels to which the Order applies.
9. Section 7 provides a process for applications for an exemption of a vessel from a requirement of the Order.
10. Section 8 provides for applications for approval to use an equivalent to a requirement of the Order.
11. Section 9 enables AMSA to determine that a vessel is for commercial use for sport or pleasure. This is a reviewable decision under *Marine Order 1 (Administration) 2013*.

**Division 2 Certificate of compliance (large yacht)**

1. Section 10 requires regulated Australian vessels that are large yachts to have a certificate of compliance (large yacht).
2. Section 11 provides that a certificate of compliance (large yacht) is a safety certificate and applies the application process in *Marine Order 1 (Administration) 2013* to an application for that kind of certificate.
3. Section 12 sets out the criterion for issue of a certificate of compliance (large yacht), which is that the vessel and its equipment comply with the LY3 Code as modified for Australia.
4. Section 13 provides that a condition of a certificate of compliance (large yacht) is that the vessel and its equipment and appliances must be maintained to comply with the LY3 Code as modified for Australia.
5. Section 14 provides for each intermediate and annual survey and inspection of the outside of the bottom of a vessel to be endorsed on a certificate of compliance (large yacht) by an issuing body.
6. Section 15 provides that the duration of certificates of compliance (large yacht) is to be in accordance with Regulation 14 of Chapter I of SOLAS as if it were a Safety Certificate other than a Passenger Ship Safety Certificate.
7. Section 16 sets out the criteria for variation of certificates of compliance (large yacht).
8. Section 17 sets out the criteria for revocation of certificates of compliance (large yacht).

**Division 3 Certificate of survey for a yacht or training vessel**

1. Section 18 provides that a regulated Australian vessel that is a large yacht less than 500 gross tonnage or a yacht or training vessel less than 24 m long that is less than 500 gross tonnage must have a certificate of survey for a yacht or training vessel.
2. Section 19 provides that a certificate of survey for a yacht or training vessel is a safety certificate and applies the application process in *Marine Order 1 (Administration) 2013* to an application for that kind of certificate.
3. Section 20 sets out the criteria for issue of a certificate of survey for a yacht or training vessel. Different requirement apply depending upon whether the vessel is a large yacht less than 500 gross tonnage, or a yacht or training vessel less than 24 m long.
4. Section 21 sets out the conditions of a certificate survey for a yacht or training vessel. Again, Different requirement apply depending upon whether the vessel is a large yacht less than 500 gross tonnage, or a yacht or training vessel less than 24 m long. Also, specified stability requirements apply if the vessel is carrying sail.
5. Section 22 provides for each intermediate and annual survey and inspection of the outside of the bottom of a vessel is to be endorsed on a certificate of survey for a yacht or training vessel by an issuing body.
6. Section 23 provides that the duration of a certificate of survey for a yacht or training vessel is to be in accordance with Regulation 14 of Chapter I of SOLAS as if it were a SOLAS certificate for a cargo vessel.
7. Section 24 sets out the criteria for variation of a certificate of survey for a yacht or training vessel.
8. Section 25 sets out the criteria for revocation of a certificate of survey for a yacht or training vessel.

**Division 4 Requirements for foreign vessels**

1. Section 26 applies the Division to a foreign vessel that is a yacht, a training vessel or a large yacht.
2. Section 27 sets out the certification requirements for foreign vessels. It makes clear that foreign vessels must have and comply with any certificate that a Marine Order (for example, *Marine Order 31 (Vessel surveys and certification) 2015*) requires it to have and also to comply with other applicable Marine Order requirements. Foreign vessels that are large yachts must have and comply with any certificate mentioned in Annex 4 of the LY3 Code.

**Division 5 Transitional arrangements**

1. Section 28 recognises certificates of survey appropriate to the voyage issued for a vessel under the previous issue of the Order that are still in force on commencement of the Order. These vessels are to comply with and be surveyed against the previous issue of the Order as in force on commencement of this Order.
2. Section 29 enables these certificates to be varied or revoked under the Act in accordance with the previous issue of the Order as in force on commencement of this Order. However, if changes are made to the vessel (for example, to its structure or equipment) and AMSA has not approved the change, the certificate may be revoked under the Act in accordance with this Order.

**Division 6 Other matters**

1. Section 30 sets out the responsibilities of the master of a training vessel to provide training to trainees. Under section 30 it is an offence for a master not to ensure each trainee of the vessel receives familiarisation training and safety procedure training within specified timeframes. Breach of this obligation may result in a criminal or civil penalty under the Order.

Statement of compatibility with human rights

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

Overview of the legislative instrument

1. This Order provides for the survey, maintenance and certification of regulated Australian vessels that are yachts and training vessels. It also sets out the certification requirements for foreign yachts and training vessels that are in Australian ports and waters. The Order uses an existing international framework of standards for large yachts, the UK Large Commercial Yacht Code (the LY3 Code).
2. The Order provides for more effective regulation of yachts and training vessels by providing for safety certificates to be issued by the Australian Maritime Safety Authority (AMSA) under the *Navigation Act 2012* (the Navigation Act) for regulated Australian vessels that are yachts and training vessels.
3. Regulated Australian vessels that are large yachts must have a certificate of compliance (large yacht). A large yacht must be at least 24 m long and may be either for commercial use for sport or pleasure or a training vessel. A large yacht must be assessed against the LY3 Code as modified for Australia to obtain a certificate of compliance (large yacht).
4. Other yachts and training vessels must have a certificate of survey for a yacht or training vessel. A large yacht less than 500 gross tonnage must have both a certificate of compliance and a certificate of survey. A foreign vessel that is a large yacht must have and comply with those certificates that a large yacht must have under the LY3 Code.
5. Section 30 of the Order creates an offence to which strict liability applies. It also creates a civil penalty. 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.
6. Strict liability is imposed to ensure safety of life at sea. 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 provision is directed at the master of a vessel rather than the community at large and is regulatory in nature. The civil penalty provision is authorised by paragraph 341(1)(b) of the Navigation  Act. Having regard to the objectives of the civil penalty provision (which is protective, preventative, disciplinary or regulatory in nature), and the relatively low level of penalty, the civil penalty should not be considered to be a criminal matter for human rights law. It is considered 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.

Human rights implications

1. This Order promotes the safety of life at sea by ensuring the more effective regulation of yachts and training vessels by providing for them to be issued with safety certificates under the Navigation Act.

Conclusion

1. AMSA considers that 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

1. 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*.