

## Explanatory Statement

### Marine Order 502 (Vessel identifiers — national law) 2017 (Order 2017/3)

#### Authority

1. The *Marine Safety (Domestic Commercial Vessel) National Law*, set out in Schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the ***national law***), provides for this Order to be made.
2. Section 75 of the national law provides for the regulations to provide for matters in relation to unique identifiers.
3. Subsection 76(1) of the national law provides for the regulations to prescribe specified matters about unique identifiers including the manner of making applications.
4. Paragraph 77(1)(a) of the national law provides for the regulations to set out the criteria to be satisfied for the National Regulator to issue unique identifiers.
5. Paragraph 78(c) of the national law provides that the regulations may provide that notification must be given of events involving domestic commercial vessels, including, but not limited to, change of ownership.
6. Section 79 of the national law provides that the regulations may require that a person display a certificate or a unique identifier in the prescribed manner.
7. Section 162 of the national law provides that the regulations may prescribe penalties for offences against the regulations.
8. Subsection 163(1) of the national law allows Marine Orders to be made for any matter for which provision may be made by regulations, with some specified exceptions.
9. 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.
10. This Order is a legislative instrument for the *Legislation Act 2003*.

#### Purpose

11. This Order replaces *Marine Order 502 (Vessel identifiers — national law) 2013* and provides for unique identifiers for domestic commercial vessels.

#### Overview

12. This Marine Order provides requirements for the application, issue and display of unique identifiers for domestic commercial vessels. A unique identifier is a unique identification number issued to each vessel that stays with the vessel for its lifetime even if it changes ownership or use. Uniquely identifying each vessel allows the National Regulator to identify vessel ownership, monitor vessels, review their ownership and operation history, or to find the owner of a vessel if, for example, it is found adrift.
13. The proposed Order sets out the time limits within which a unique identifier must be displayed following its issue. It prescribes situations where a unique identifier may be removed or altered without committing an offence under the national law and requires notification to the National Regulator where certain events occur for a vessel for which a unique identifier has been issued.
14. The Order repeals *Marine Order 502 (Vessel identifiers — national law) 2013* and makes changes to the requirements for display of a unique identifier. Currently the requirement is to display a unique identifier on both sides of the vessel with numbers and/or letters of a certain size. It is proposed to replace that by simply

requiring that a unique identifier must be displayed clearly and prominently on the vessel.

15. Currently, application for a unique identifier is restricted to the owner. The Order removes this restriction, allowing anyone to apply. This means that the person who builds a vessel may apply for a unique identifier. To take account of the fact that a builder may now apply, an alteration of the time limit within which a unique identifier must be displayed is proposed. Twenty one days after issue is proposed for vessels already constructed and before the launch of the vessel is proposed for a vessel for which the application is made before or during the course of construction of the vessel.

16. Under section 36 of the national law it is an offence to remove or alter a unique identifier unless the removal or alteration is permitted by the regulations. It is proposed to prescribe two situations where removal or alteration will not be contrary to the Act: first, where the owner has notified the National Regulator that the vessel has ceased to be a domestic commercial vessel and secondly, where an exemption from the requirement to have or display a unique identifier is in effect for the vessel.

## **Consultation**

17. A copy of the draft of this Order was released for external consultation on 22 March 2017 for a four week period. A copy was sent to AMSA's domestic commercial vessel and fishing advisory committees and to each member of the Maritime Agencies Forum which represents the marine safety authorities of each State and Territory. A copy of the draft was subsequently placed on AMSA's website and the public invited to comment. Seven responses were received and were taken into account in the preparation of the final draft.

18. 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 22067.

## **Documents incorporated by reference**

19. The following document is incorporated by reference:

- *Marine Order 501 (Administration — national law) 2013.*

## **Commencement**

20. This Order commences on 1 July 2017.

## **Contents of this instrument**

21. Section 1 of this Order states the name of the Order.

22. Section 1A states that this Order commences on 1 July 2017.

23. Section 1B provides for the repeal of *Marine Order 502 (Vessel identifiers — national law) 2013.*

24. Section 2 provides that an application for a unique identifier must be made in accordance with the application process set out in *Marine Order 501 (Administration — national law) 2013.*

25. Section 3 provides that the criterion for the issue of a unique identifier is that the National Regulator has not previously issued a unique identifier for the vessel.

26. Section 4 provides that a unique identifier must be displayed clearly and prominently on the vessel. The section provides a time within which a unique

identifier must be displayed on the vessel depending on whether the application was made before or after the vessel was constructed.

27. Section 5 prescribes for the national law that it is permitted to remove a unique identifier if the vessel has ceased to be a domestic commercial vessel or an exemption from a requirement to have or display a unique identifier is in effect for the vessel.

28. Section 6 prescribes for the national law that the owner of a vessel must notify the National Regulator within 14 days if ownership of the vessel is transferred, the vessel sinks or is scrapped or it ceases to be a domestic commercial vessel.

### **Statement of compatibility with human rights**

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

#### **Overview of the legislative instrument**

30. This Order replaces *Marine Order 502 (Vessel identifiers — national law) 2013* and provides for unique identifiers for domestic commercial vessels. A unique identifier is a unique identification number issued to each vessel that stays with the vessel for its lifetime even if it changes ownership or use. The instrument changes the requirements for display of a unique identifier to simply require that it be displayed clearly and prominently on the vessel. It is also proposed to change the Order so that anyone may apply for a unique identifier, not just the owner of the vessel. The proposed Order sets out the time limits within which a unique identifier must be displayed following its issue. It prescribes situations where a unique identifier may be removed or altered without committing an offence under the national law and requires notification to the National Regulator where certain events occur for a vessel for which a unique identifier has been issued.

#### **Human rights implications**

31. Section 6 of the proposed Order creates an offence to which strict liability applies. This provision makes it an offence for a person who does not notify the National Regulator within 14 days of transfer of ownership of the vessel, sinking or scrapping of the vessel or the vessel ceasing to be a domestic commercial vessel. Any strict liability offence 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.

32. The objective of this strict liability offence remains unchanged from the version of the Order that is being replaced. It ensures that the National Regulator is told of transfer of ownership, sinking or scrapping, and if the vessel ceases to be a domestic commercial vessel. The accurate identification of a vessel enhances maritime safety by ensuring proper records of vessel history and prompt access to vessel information that could assist in a maritime incident.

33. The penalty is set at the same relatively low amount of 50 penalty units and is within the limit imposed by section 162 of the national law.

#### **Conclusion**

34. 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* because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate for ensuring maritime safety.

## **Making the instrument**

35. This instrument has been made by the Acting Chief Executive Officer of the Australian Maritime Safety Authority, in accordance with subsection 49(4) of the *Australian Maritime Safety Authority Act 1990* and paragraph 33A(1)(e) of the *Acts Interpretation Act 1901*.