**Explanatory Statement**

*Marine Order 43 (Cargo and cargo handling-livestock) 2018*

**Authority**

1. Subsection 98(3) of the *Navigation Act 2012* (the Navigation Act) provides that the regulations may provide that vessels included in a particular class are required to have safety certificates of specified kinds.
2. Subsection 112(4) of the Navigation Act provides that the regulations may provide for the carriage on a vessel of cargo and livestock.
3. Subsection 112(5) of the Navigation Act provides that the regulations may provide for the loading, unloading or carriage of livestock and for the giving of notices about those things.
4. Subsections 314 (1) and (3) of the Navigation Act provide that the regulations may provide for matters about certificates.
5. Paragraph 339(2)(a) of the Navigation Act provides that the regulations may provide for the design and construction of vessels.
6. Paragraph 339(2)(i) of the Navigation Act provides that the regulations may provide for maintenance, testing, survey and certification of vessels.
7. Subsection 341(1) of the Navigation Act provides for the imposition of penalties for a contravention of a provision of the regulations.
8. Subsection 339(1) of the Navigation Act provides for regulations to be made prescribing matters required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to the Act.
9. Subsection 342(1) of the Navigation Act provides that AMSA may make a Marine Order about matters that can be provided for by regulation.
10. 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.
11. *Marine Order 43 (Cargo and cargo handling - livestock) 2018* (this Order) is a legislative instrument for the *Legislation Act 2003*.

**Purpose**

1. This Order specifies requirements for the safe carriage and stowage of livestock on board vessels to ensure the safe operation of vessels.
2. This Order repeals and replaces *Marine Order 43 (Cargo and cargo handling - livestock) 2006*. When the Order commences, Schedule 23 of *Marine Order 4 (Transitional modifications) 2013* ceases to have effect because that schedule modifies the previous Order.

**Overview**

1. The Navigation Act provides a legal framework for the Australian Maritime Safety Authority (AMSA) to make a Marine Order required or permitted by the Navigation Act, or necessary or convenient for carrying out or giving effect to the Navigation Act, relating to maritime safety, the prevention of pollution of the marine environment, and related purposes.
2. *Marine Order 43 (Cargo and cargo handling - livestock) 2018* (this Order) replaces and updates *Marine Order 43 (Cargo and cargo handling - livestock) 2006* to include a number of improvements with the object of promoting the safety of life at sea, safe carriage and stowage of livestock, safe navigation, preventing pollution of the maritime environment, and to ensure that AMSA has the necessary power to carry out inspections of vessels and implement various Conventions.
3. All the policy settings are addressed in this Order and will apply to all existing and new vessels applying for an Australian certificate for the carriage of livestock (ACCL). Specifically, this Order provides for the certification of vessels that carry livestock, and specifies requirements for the carriage and stowage of livestock to ensure the safe operation of vessels. Accordingly this Order makes provision for improvements to effluent drainage arrangements for new vessels, new structural fire protection standards, amendments to declarations for bulk fodder, and the introduction of requirements for emptying fodder tanks.
4. In addition, this Order makes provision for the ventilation of open decks, visual and audible alarms on the bridge, the removal of the two-tier pen option, maximum rail spacing and maximum top rail height for cattle, maximum rail spacing for sheep on open decks, the clarification of reportable levels and information required for livestock mortalities and the introduction of requirements for the carriage of camels which are currently dealt with under the ‘ITS43-02 Livestock Pre-loading Inspections policy document.

**Consultation**

External Consultation

1. Early consultation was carried out with members of the Livestock Advisory Committee (LAC), who were provided with a draft Order and change summary four weeks before public consultation commenced.
2. LAC members include the Department of Agriculture and Water Resources (DAWR), livestock ship operators and owners, Australian Livestock Ship Owners & Operators Association (LiveShip), Classification Societies, Animal welfare organisations including the Royal Society for the Prevention of the Cruelty to Animals (RSPCA), Australian Livestock Exporters Council, Cattle Council of Australia, Sheepmeat Council of Australia and Sheep Producers Australia.
3. Following initial consultation with LAC, the documents were discussed in detail at a LAC meeting held on 28 March 2018. At the meeting, phase-in periods for older vessels of between 3 and 5 years were discussed for a number of proposed measures. It was agreed that comments on appropriate times for phasing-in these measures would be sought during formal public consultation.
4. Public consultation commenced in April 2018; however, on 10 April 2018 the government announced a ministerial review of the sheep trade with an expected report date of 11 May 2018. Public consultation was postponed to ensure that any recommendations that might affect the order could be appropriately actioned.
5. As a result of the review’s recommendations provided in the report prepared by Dr Michael McCarthy entitled *Independent Review of Conditions for the Export of Sheep to the Middle East During the Northern Hemisphere Summer*, the government decided that all vessels would be required to comply by 1 January 2020, unless able to comply earlier, with provisions prohibiting the carriage of livestock in more than one tier and provisions increasing first, ventilation requirements on open decks and secondly, air flow across pens. A decision was also made that a RIS would not be required for these changes and that they were to come into effect on 1 July 2018. At the time of drafting this explanatory statement the report may be viewed at <https://www.documentcloud.org/documents/4465299-McCarthy-Report-Into-Live-Exports.html>
6. A copy of the draft Order incorporating the above changes, together with a summary comparing the existing law to the proposed Order was placed on AMSA’s website for public consultation on 25 May 2018 for a 2 week period until 8 June 2018. The shortened period took account of the earlier targeted consultation with the LAC and the fact that the only substantive changes to the consultation draft released earlier were those arising from the government decision.
7. AMSA received 7,152 submissions during the 2 week external consultation period, 7,073 of which were attributable to an RSPCA online campaign. Many submissions sought an earlier implementation date for the three proposed measures than that set out in the government decision. When considering these suggestions, AMSA took into account livestock ship owners’ advice that the major structural changes required to comply would take at least 18 months. During this time, vessels that were being altered to comply would be unavailable for use. It was therefore decided not to bring the compliance date forward.
8. In addition to the RSPCA sourced submissions, comments were received from 8 industry stakeholders, 6 animal welfare organisations and 65 others. Many comments related to animal welfare issues that are the responsibility of the DAWR. The remaining comments related to matters that included additional equipment and technologies. These would require further consideration, including consultation with equipment manufacturers and suppliers, to confirm the required equipment and technologies are available and suitable for fitting to ships. These submissions have been recorded and will be considered during the next review of the Order.

Office of Best Practice Regulation

1. On 26 April 2018, the Office of Best Practice Regulation (OBPR) considered that the changes contained in the draft revised Order would have minor regulatory impacts and, as a result no regulation impact statement (RIS) would be required. The OBPR reference number is OBPR ID 23774.
2. The government subsequently brought forward implementation dates for certain policies, requiring additional changes to be made by the draft revised Order. A RIS exemption was granted in relation to those additional changes.

**Documents incorporated by reference**

1. This Order incorporates by reference parts of the following documents:
* *Marine Order 1 (Administration) 2013* (Marine Order 1)
* *Marine Order 27 (Safety of navigation and radio equipment) 2016* (Marine Order 27)
* *Marine Order 31 (Vessel surveys and certification) 2015* (Marine Order 31)
* *Marine Order 32 (Cargo handling equipment) 2016* (Marine Order 32)
* *section 17 of the Australian Meat and Live-stock Industry Act 1997* (the AMLI Act)
* *the International Code on Intact Stability, 2008* (the IS Code) *adopted by IMO Resolution MSC.267(85)*
* the International Convention for the Safety of Life at Sea(SOLAS)
* the International Convention for the Prevention of Pollution from Ships (MARPOL)
* *the Australian Standards for the Export of Livestock* (ASEL)
* *IEC 60079-10-2:2015 Explosive atmospheres – Part 10-2: Classification of areas – Explosive dust atmospheres– as amended from time to time*
* *IEC 60079-14:2013: Explosive atmospheres – Part 14: Electrical installations design, selection and erection as amended from time to time*
* *IEC 60079-17:2013: Explosive atmospheres – Part 17: Electrical installations inspection and maintenance as amended from time to time*
* *AS 1074-1989 Steel tubes and tubulars for ordinary service as amended from time to time*
* *AS/NZS 61241.14:2005: Electrical apparatus for use in the presence of combustible dust, Part 14: Selection and installation as amended from time to time*
* *UN Recommendations on the Transport of Dangerous Goods — Manual Test and Criteria (6th edition)*
1. Due to the operation of section 10 of the *Acts Interpretation Act 1901* (as applied by paragraph 13(1)(a) of the *Legislation Act 2003*), Marine Order 1*,* Marine Order 27, Marine Order 31, and Marine Order 32 are adopted as in force from time to time because these instruments are adopted by reference to their title in this Order. These Marine Orders can be accessed through the AMSA website at <http://www.amsa.gov.au>. They are available for free download from the Federal Register of Legislation, which are also set out on AMSA’s website.
2. The AMLI Act is also subject to section 10 of the *Acts Interpretation Act* *1901* and is incorporated as in force from time to time.
3. The IS Code is incorporated as in force from time to time. Information on obtaining a free online copy of the IMO resolution or resolutions that contain the text of this Code is available from the AMSA website at http://www.amsa.gov.au. Information is also provided concerning access to these publications through libraries and for purchase.
4. SOLAS and MARPOL are of treaty status and are incorporated as amended and in force for Australia from time to time (see definition of SOLAS andMARPOL in Marine Order 1, definition of ***Safety Convention*** in section 14 of the Navigation Act, and definition of the Convention in subsection 3(1) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*. SOLAS and MARPOL, including any amendments, can be found in the Australian Treaties Series accessible from the Australian Treaties Library on the AustLII website at http://www.austlii.edu.au. Information about obtaining hard copies of SOLAS and MARPOL is available on the AMSA website at http://www.amsa.gov.au.
5. The ASEL may be viewed on the DAWR website at www.agriculture.gov.au. The manner of incorporation of the ASEL is as mentioned in subsection 3(1) of the *Australian Meat and Live-stock Industry (Standards) Order 2005*. At the time of making of the Order, the version of ASEL mentioned in subsection 3(1) was (Version 2.3) 2011.
6. International Electrotechnical Commission (IEC) standards and Australian Standards mentioned in the Order are incorporated as amended from time to time. Information concerning obtaining a copy of these standards through libraries, and their purchase, is available on the AMSA website at http://www.amsa.gov.au. Information is also provided concerning access for viewing these standards, free of charge, at an AMSA office.
7. The *UN Recommendations on the Transport of Dangerous Goods — Manual Test and Criteria (6th edition)* is available for free from the United Nations Economic Commission for Europe’s (UNECE) website at <https://www.unece.org/>. The 6th edition is incorporated into this Order.

**Contents of this instrument**

1. Division 1 (Preliminary) contains 8 provisions that assist the operation, interpretation and administration of the Order.
2. Section 1 sets out the name of this Order.
3. Section 1A provides for the date of commencement of the Order.
4. Section 1B provides that *Marine Order 43 (Cargo and handling – livestock) 2006* is repealed.
5. Section 2 states the purpose of the Order.
6. Section 3 sets out the powers in the Navigation Act that enable the Order to be made.
7. Section 4 sets out definitions of terms used in the Order and provides interpretation assistance for certain expressions.
8. Section 5 provides interpretation assistance for certain expressions.
9. Section 6 states the application of the Order.
10. Section 7 specifies the decisions under the Order that are subject to merits review.
11. Section 8 provides a savings provision.
12. Division 2 (Loading) contains 4 provisions.
13. Section 9 provides that the master of the vessel is required to give AMSA notice of the intention to load livestock on to the vessel.
14. Subsection 10(1) requires the master of the vessel to ensure that prior to loading livestock, AMSA has carried out a pre-loading inspection, and AMSA has notified the master that loading of livestock may commence. Subsection (1) imposes a criminal penalty.
15. Subsections (2) and (3) specify when a pre-loading inspection is not required. Subsections (4) provides that an offence against subsection (1) is a strict liability offence, and subsection (5) imposes a civil penalty. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying livestock, the safety of people on the vessel, and the safe carriage and stowage of livestock. In particular, to prevent livestock from being loaded onto a noncompliant vessel.
16. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was $210.
17. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the master of the vessel, the livestock operator and the crew from operating a vessel unsafely and prevent unlawful activity.
18. Subsection 11(1) requires the master of the vessel to ensure that the vessel has the ability to comply with the stability criteria set out in the IS Code and Schedule 1 of the Order at loading of the vessel and all stages of the voyage. Subsection (1) imposes a criminal penalty.
19. Subsection (2) provides that an offence against subsection (1) is a strict liability offence and subsection (3) imposes a civil penalty. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying livestock, the safety of people on the vessel, and the safe carriage and stowage of livestock. In particular, to ensure that the movement and weight of livestock does not adversely affect the stability of the vessel.
20. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was $210.
21. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the master of the vessel, the livestock operator and the crew from operating a vessel unsafely, and prevent unlawful activity at loading of the vessel and all stages of the voyage.
22. Subsection 12(1) requires the master of the vessel to ensure compliance with specific ACCL requirements when livestock are on board. Subsection (1) imposes a criminal penalty.
23. Subsection (2) provides that an offence against subsection (1) is a strict liability offence and subsection (3) imposes a civil penalty. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying livestock, the safety of people on the vessel, and the safe carriage and stowage of livestock. In particular, to ensure continued compliance is maintained after the livestock have been loaded.
24. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was $210.
25. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the master of the vessel, the livestock operator and the crew from operating a vessel unsafely, and prevent unlawful activity.
26. Division 3 (Vessel operations) contains 5 provisions.
27. Subsection 13(1) requires the master of the vessel to provide AMSA with accurate details of the number, weight and kind of livestock loaded on the vessel. Subsection (1) imposes a criminal penalty.
28. Subsection (2) requires the person providing the information to the master to give accurate information. Subsection (2) imposes a criminal penalty.
29. Subsection (3) provides that an offence against subsection (1) or (2) is a strict liability offence, and subsection (4) imposes a civil penalty if a person contravenes subsection (1) or (2). Criminal and civil penalties are necessary to ensure the safety of the vessel carrying livestock, the safety of people on the vessel, and the safe carriage and stowage of livestock. In particular, to ensure the stability of the vessel.
30. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was $210.
31. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the vessel master, the livestock operator and the crew from operating a vessel unsafely, and prevent unlawful activity.
32. Subsection 14(1) requires the master of the vessel to take into account severe weather conditions when planning the voyage. Subsection (1) imposes a criminal penalty.
33. Subsection (2) provides that an offence against subsection (1) is a strict liability offence and subsection (3) imposes a civil penalty. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying livestock, the safety of people on the vessel, and the safe carriage and stowage of livestock. In particular, severe weather conditions create an added risk to the safety of the crew and the vessel carrying livestock.
34. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was $210.
35. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the vessel master, the livestock operator and the crew from operating a vessel unsafely, and prevent unlawful activity.
36. Subsection 15(1) requires the master of the vessel to ensure the requirements as described in the records of equipment are maintained in a serviceable condition. Subsection (1) imposes a criminal penalty.
37. Subsection (2) provides that an offence against subsection (1) is a strict liability offence and subsection (3) imposes a civil penalty. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying livestock, the safety of people on the vessel, and the safe carriage and stowage of livestock. In particular, to ensure continued compliance is maintained after the livestock have been loaded.
38. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was $210.
39. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the vessel master, the livestock operator and the crew from operating a vessel unsafely, and prevent unlawful activity.
40. Subsection 16(1) deals with alterations of livestock structures, livestock equipment or arrangements for the carriage of livestock during the voyage. Specifically, a person must not make any alterations without the express authorisation of the master of the vessel. Subsection (1) imposes a criminal penalty.
41. Subsection (2) provides that an offence against subsection (1) is a strict liability offence and subsection (3) imposes a civil penalty. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying livestock, the safety of people on the vessel, and the safe carriage and stowage of livestock. In particular, to ensure continued compliance is maintained after the livestock have been loaded.
42. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was $210.
43. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the vessel master, the livestock operator and the crew from operating a vessel unsafely, and prevent unlawful activity.
44. Strict liability is imposed in respect of limited offences for specific reasons. These reasons include public safety and the public interest and ensuring that the regulatory scheme is observed where the sanction of criminal penalties is justified. They also arise in a context where a defendant can reasonably be expected, because of his or her involvement in marine activities, to know what the requirements of the law are, and the mental, or fault, element can justifiably be excluded.
45. Section 17 sets out the powers of an inspector to give notice that requires a person to take proper precautions in specified circumstances.
46. Division 4 (Restrictions on carriage of livestock) contains 5 provisions.
47. Section 18 requires livestock to be contained.
48. Section 19 requires that livestock structures, equipment or arrangements should not interfere with the safe operation of the vessel. Firefighting and all lifesaving equipment’s should have easy access at all times. Additionally, measures must be taken to ensure that a significant rise in temperature does not occur in the space where livestock are carried, where the casing or bulkhead of any engine room, boiler room or heated fuel tank form the boundary of the space.
49. Section 20 sets out the requirements for dangerous goods while carrying livestock.
50. Subsection 21(1) provides that all new vessels will be approved to carry livestock only in one tier. Subsection 21(2) allows vessels constructed or converted for carriage of livestock before 1 July 2018, to carry sheep, pigs and goats in two tiers up until 31 December 2019. From 1 January 2020, all vessels will be required to carry livestock only in one tier.
51. Section 22 details the requirements for construction and maintenance of livestock structures, connections and equipment.
52. Division 5 (Australian certificate for the carriage of livestock) contains 12 provisions.
53. Section 23 requires a vessel that is permanently equipped to carry livestock to have an Australian certificate for the carriage of livestock (ACCL) or an interim ACCL.
54. Section 24 provides that a person may apply to AMSA for an ACCL for a regulated Australian vessel in accordance with Division 3 of Marine Order 1other than section 17, and a foreign vessel in accordance with Division 3 of Marine Order 1.
55. Section 25 specifies particular requirements that must be met before AMSA will issue an ACCL.
56. Section 26 sets out the criteria for issue of an ACCL for a foreign vessel and a registered Australian vessel.
57. Section 27 provides that once an ACCL or interim ACCL is issued, the vessel must continue to comply with the requirements specified in in this section.
58. Section 28 specifies the duration for an ACCL, and conditions under which an ACCL ceases to be in force.
59. Section 29 specifies the duration for an interim ACCL, and conditions under which an interim ACCL ceases to be in force.
60. Section 30 provides that an ACCL must be surveyed and endorsed annually. This section provides that AMSA may endorse an ACCL if particular requirements are met.
61. Section 31 sets out the variation criteria for an ACCL. AMSA may vary an ACCL if the criteria are met.
62. Section 32 details the criteria for revocation of an ACCL or an interim ACCL.
63. Subsection 33(1) requires the livestock operator of the vessel to ensure that certain documents are kept on board when the vessel is engaged in the loading or carriage of livestock. Subsection (1) imposes a criminal penalty.
64. Subsection (2) provides that an offence against subsection (1) is a strict liability offence and subsection (3) imposes a civil penalty. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying livestock, the safety of people on the vessel, and the safe carriage and stowage of livestock. In particular, to ensure compliance is maintained after the livestock have been loaded.
65. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was $210.
66. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the vessel master, the livestock operator and the crew from operating a vessel unsafely, and prevent unlawful activity.
67. Subsection 34(1) requires the livestock operator of the vessel for which an ACCL or interim ACCL has been issued to notify AMSA when certain changes occur. Subsection (1) imposes a criminal penalty.
68. Subsection (2) provides that an offence against subsection (1) is a strict liability offence and subsection (3) imposes a civil penalty. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying livestock, the safety of people on the vessel, and the safe carriage and stowage of livestock. In particular, to ensure changes are not made without AMSA’s knowledge once the ACCL or interim ACCL has been issued.
69. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was $210.
70. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the vessel master, the livestock operator and the crew from operating a vessel unsafely, and prevent unlawful activity.
71. Division 6 (Livestock services) contains 3 provisions.
72. Section 35 requires a vessel permanently equipped for the carriage of livestock, to be fitted with systems and equipment that ensure the welfare of livestock.
73. Section 36 details the requirement for a backup system for feeding and watering in case problems occur with the automatic system.
74. Section 37 requires a vessel carrying livestock, to carry a humane killing device for each species.
75. Division 7 (Fire prevention and extinction) contains 3 provisions
76. Section 38 specifies particular firefighting appliances to be on board, and requirements for their positioning and capabilities.
77. Section 39 requires the vessel to carry a fire hose, necessary connection and nozzle capable of directing water in the form of a spray and a jet as specified. Subsection (3) requires the master of the vessel to ensure that each fire hose, with its connections and nozzle, is kept in a conspicuous position near the hydrant and close to the area it is intended for use. Subsection (3) imposes a criminal penalty.
78. Subsection (4) provides that an offence against subsection (3) is a strict liability offence and subsection (4) imposes a civil penalty. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying livestock, the safety of people on the vessel, and the safe carriage and stowage of livestock. In particular, to ensure that there is a means to extinguish a fire in a space where livestock are carried.
79. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was $210.
80. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the vessel master, the livestock operator and the crew from operating a vessel unsafely, and prevent unlawful activity.
81. Section 40 details other fire prevention measures for the safety of the vessel and its cargo of livestock.
82. Division 8 (Bulk fodder and dust laden atmospheres) contains 7 provisions
83. Section 41 specifies that the areas of the vessel where flammable dust could be present must be classified in accordance with the standard mentioned. If electrical equipment is installed in those areas, it must be installed and maintained in accordance with the standards mentioned.
84. Section 42 requires the light switches in areas where fodder dust is present to be on the bridge. This is to minimise fire risk when switching the lights on or off in those areas.
85. Section 43 implements a new policy. Incidents have been reported involving fodder fires in fodder tanks on board vessels. The fires are believed to have been caused by increased levels of oil and moisture content of fodder above the level specified, which creates a favourable environment for spontaneous combustion.
86. Section 44 requires the master of the vessel to ensure that the fodder is kept consistently dry and protected from the weather, sea and temperature fluctuations to minimise the risk of fire.
87. Section 45 requires a vehicle and separate blower trailer used to load fodder through portable piping, to be earthed to prevent electrocution.
88. Section 46 implements a new policy in relation to the emptying of fodder tanks.
89. As vessels are increasingly being equipped to carry many more fodder tanks, this section specifies the requirements for when the tanks need to be emptied and cleaned, when fodder can be loaded into partially filled fodder tanks, and safe fodder tank entry procedures.
90. Subsection 47(1) requires the master of the vessel to keep records with details of emptying of fodder tanks. Subsection (1) imposes a criminal penalty.
91. Subsection (2) provides that an offence against subsection (1) is a strict liability offence and subsection (3) imposes a civil penalty. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying livestock, the safety of people on the vessel, and the safe carriage and stowage of livestock. In particular, to ensure the risk of fodder fires through fodder self-heating is mitigated.
92. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was $210.
93. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the vessel master, the livestock operator and the crew from operating a vessel unsafely, and prevent unlawful activity.
94. Division 9 (Access – people and livestock) contains 5 provisions.
95. Section 48 provides the requirements for means of egress and access in livestock spaces.
96. Section 49 details access requirements for people near a pen and specifies the minimum passageway width.
97. Section 50 deals with the passageway and walkway heights.
98. Subsection 51(1) requires the master of the vessel to ensure that the access ways and passage ways are always kept clear. Subsection (1) imposes a criminal penalty.
99. Subsection (2) provides that an offence against subsection (1) is a strict liability offence and subsection (3) imposes a civil penalty. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying livestock, the safety of people on the vessel, and the safe carriage and stowage of livestock. In particular, to ensure the safety of the crew working in the livestock space.
100. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was $210.
101. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the vessel master, the livestock operator and the crew from operating a vessel unsafely, and prevent unlawful activity.
102. Section 52 specifies the requirements for a suitable means of access to be provided for the loading and unloading of livestock and specifies the placement and construction of such access.
103. Division 10 (Vessel requirements – all species of livestock) contains 5 provisions.
104. Section 53 specifies ramp requirements for all species of livestock.
105. Section 54 lists additional requirements for moving cattle.
106. Section 55 sets out the safety and strength requirements for a device used as a means of closing off access to pens or stalls.
107. Section 56 requires pens or stalls on the uppermost deck of an exposed deck to have a roof, which complies with the requirements specified, to protect livestock from inclement weather and heat.
108. Section 57 details the requirements for protecting livestock, pens, stalls and feeding and watering equipment against sea spray and seawater.
109. Division 11 (Species requirements) contains 5 subdivisions.
110. Subdivision 11.1 (Sheep, pigs and goats) contains 4 provisions.
111. Section 58 specifies the requirements for the construction and dimensions of pens and adjacent passageways, other than open structures above the weather deck, for sheep, pigs and goats.
112. Section 59 details the strength requirements of pen structures for sheep, pigs and goats using specific formulas.
113. Section 60 specifies requirements in relation to walkways and passageways for sheep, pigs and goats.
114. Section 61 details additional requirements for goats.
115. Subdivision 11.2 (Cattle) contains 3 provisions.
116. Section 62 specifies the dimension requirements for pens and adjacent passageways for cattle.
117. Section 63 details the strength requirements of pens and stall structures for cattle using specific formulas.
118. Section 64 specifies requirements in relation to means of access and passageways for cattle.
119. Subdivision 11.3 (Horses) contains 4 provisions.
120. Section 65 requires each horse to be carried in a separate stall, unless prior to loading an approved veterinary officer accepts that horses may be carried in pens.
121. Section 66 specifies the dimension requirements for stalls and adjacent passageways for horses.
122. Section 67 details the strength requirements of stall structures for horses.
123. Section 68 specifies the requirements in relation to arrangement of horse stalls and pens including access arrangements, floor strength, provision of ramps, exposed deck protection and food and water arrangements. Subsection (8) requires the master of the vessel to ensure that a set of bolt cutters that can cut the chain is carried and kept readily available if the cross ties are made of chain. Subsection (8) imposes a criminal penalty.
124. Subsection (9) provides that an offence against subsection (8) is a strict liability offence and subsection (10) imposes a civil penalty. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying livestock, the safety of people on the vessel, and the safe carriage and stowage of livestock. In particular, to ensure that a person can safely release a horse in an emergency if necessary.
125. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was $210.
126. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the vessel master, the livestock operator and the crew from operating a vessel unsafely, and prevent unlawful activity.
127. Subdivision 11.4 (Camels) contains 3 provisions. This is a new subdivision addressing the new policy.
128. Section 69 specifies the dimension requirements for pens and adjacent passageways for camels.
129. Section 70 details the strength requirements of pen and stall structures for camels using specific formulas.
130. Section 71 specifies provides that as camels can be difficult to move around a vessel and manage, camel pens are required to be located near the entry point of the vessel, be non-contiguous with pens carrying other livestock, and camels in a pen must be of similar size and gender.
131. Subdivision 11.5 (Other species of livestock) contains only one provision
132. Section 72 specifies that if livestock other than sheep, pigs, goats, cattle, horses, or camels are to be carried, a pen or stall must be approved by AMSA and constructed to provide safe carriage and care of that livestock and ensure the safety of people on the vessel carrying livestock.
133. Division 12 (Hospital pens) contains 3 provisions.
134. Section 73 details the hospital pen construction requirements for each species of livestock.
135. Section 74 specifies the requirements in relation to location, size and total area of hospital pens for sheep, pigs and goats, and when AMSA approval for another dimension may be granted.
136. Section 75 specifies the location, size and total area of hospital pens for cattle.
137. Division 13 (Carriage of livestock in portable equipment) contains 3 provisions.
138. Section 76 provides that for the use of portable equipment on a livestock vessel, only the provisions in Division 13, and sections 9, and 84 to 87, apply.
139. Section 77 specifies the approval requirement of portable equipment.
140. Section 78 specifies the requirements for portable equipment for the carriage of livestock.
141. Division 14 (Short voyages) contains 5 provisions.
142. Section 79 details the pen requirements for any species other than sheep, cattle or horses for short voyages.
143. Section 80 specifies that parts of this Order do not apply, if for short voyages livestock are carried in specified transport units, in accordance with applicable state and territory laws of the port from which the livestock was shipped.
144. Section 81 requires the master of the vessel to ensure that certain livestock transport units are stowed and secured properly for short voyages. Subsection (1) imposes a criminal penalty.
145. Subsection (2) provides that an offence against subsection (1) is a strict liability offence and subsection (3) imposes a civil penalty. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying livestock, the safety of people on the vessel, and the safe carriage and stowage of livestock. In particular, to ensure the stability of the vessel.
146. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was $210.
147. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the vessel master, the livestock operator and the crew from operating a vessel unsafely, and prevent unlawful activity.
148. Section 82 details the watering requirements for livestock for short voyages. Subsection (3) requires the master of the vessel to ensure that livestock are watered at least once every 24 hours that the livestock are on board. Subsection (3) imposes a criminal penalty.
149. Subsection (4) provides that an offence against subsection (3) is a strict liability offence and subsection (5) imposes a civil penalty. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying livestock, the safety of people on the vessel, and the safe carriage and stowage of livestock. In particular, to ensure that the livestock are watered in accordance with the minimum standard.
150. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was $210.
151. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the vessel master, the livestock operator and the crew from operating a vessel unsafely, and prevent unlawful activity.
152. Section 83 details the ventilation requirements for short voyages.
153. Division 15 (Reports and investigations) contains 4 provisions.
154. Section 84 requires the master of the vessel to provide AMSA and DAWR with a report in the prescribed form, after the completion of a voyage involving the carriage of livestock.
155. Section 85 deals with notifiable incidents. Subsection (1) requires the master of the vessel to provide AMSA with a report containing specified information if the reportable mortality level for a species is reached during a voyage. This new provision incorporates the reportable mortality levels in the Order rather than referring to the ASEL. Subsection (1) imposes a criminal penalty.
156. Subsection (2) provides that an offence against subsection (1) is a strict liability offence and subsection (3) imposes a civil penalty. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying livestock, the safety of people on the vessel, and the safe carriage and stowage of livestock. In particular, to ensure that AMSA is made aware if a reportable mortality level is reached.
157. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was $210.
158. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the vessel master, the livestock operator and the crew from operating a vessel unsafely, and prevent unlawful activity.
159. Subsection 86 details the investigation process for notifiable incidents relating to the reportable mortality level for livestock. Subsection (4) requires the master or livestock operator of the vessel to provide AMSA with information if requested under subsection (3) in the course of AMSA’s investigation into the cause of death of livestock. Subsection (4) imposes a criminal penalty. This is necessary to ensure the safety of the vessel carrying livestock, the safety of people on the vessel, and the safety of the cargo of live animals.
160. Subsection (5) provides that AMSA may prohibit, or impose conditions on, the loading of livestock onto a vessel. Subsection (6) requires the master of the vessel to comply with a prohibition or condition imposed in relation to loading livestock onto a vessel. Subsection (6) imposes a criminal penalty.
161. Subsection (7) provides that an offence against subsection (4) or (6) is a strict liability offence and subsection (8) imposes a civil penalty. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying livestock, the safety of people on the vessel, and the safe carriage and stowage of livestock. In particular, to ensure that AMSA can investigate if a reportable mortality level is reached.
162. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was $210.
163. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the vessel master, the livestock operator and the crew from operating a vessel unsafely, and prevent unlawful activity.
164. Section 87 specifies the actions that AMSA must consider following the completion of an investigation report for a notifiable incident relating to the reportable mortality level for livestock. Subsection (3) and (4) specifies the circumstances where AMSA may give a direction to the master of the vessel, or the livestock operator, or both, requiring additional precautions or conditions for the carriage of livestock.
165. Subsection (5) requires the person who receives the direction given by AMSA to comply with that direction. Subsection (5) imposes a criminal penalty.
166. Subsection (6) provides that an offence against subsection (5) is a strict liability offence, and subsection (7) imposes a civil penalty if the person contravenes subsection (5). Criminal and civil penalties are necessary to ensure the safety of the vessel carrying livestock, the safety of people on the vessel, and the safe carriage and stowage of livestock. In particular, to ensure that the issue raised is rectified.
167. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was $210.
168. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the vessel master, the livestock operator and the crew from operating a vessel unsafely, and prevent unlawful activity.
169. Schedule 1 (Stability criteria for livestock carriers) contains 3 parts and specifies the method for determining a ship’s compliance with the stability criteria required for livestock carriers.
170. Schedule 2 (Provision of livestock services) contains 5 parts.
171. Part 1 details requirements for sources of electrical power for livestock services.
172. Part 2 details ventilation requirements and includes implementation of a new policy regarding ventilation on open decks. A decision by the government to implement air distribution requirements is also addressed in this part.
173. Part 3 sets out requirements for lighting.
174. Part 4 details the requirements for drainage and includes implementation of a new policy regarding the drainage of fluids.
175. Part 5 details the requirements for fodder and water arrangements.

**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. The purpose of this Order is to put in place safety measures for the carriage of livestock cargo on vessels. This Order gives effect to regulation 19.4 of Chapter II-2 and Parts A and D of Chapter VII of SOLAS and, in particular, the International Maritime Dangerous Goods Code (IMDG Code) and the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships (INF Code). This Order also prescribes the manner of giving notice of intention to ship dangerous goods for section 119 of the Navigation Act.
2. This Order repeals and replaces *Marine Order 43 (Cargo and cargo handling - livestock) 2006.*

Human rights implications

1. Subsections 10(1), 11(1), 12(1), 13(1), 13(4), 14(1), 15(1), 16(1), 33(1), 34(1), 39(3), 47(1), 51(1), 68(8), 81(1), 82(3), 85(1), 86(4), 86(6) 87(3) of this Order create strict liability offences.
2. Offences that are strict liability 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.
3. Strict liability removes the requirement that the prosecution prove the fault element of an offence, which would otherwise attach to a physical element of that offence. The application of strict liability in relation to these particular offences is appropriate, noting that:
* the penalties for the relevant offences do not include imprisonment or exceed 60 penalty units;
* for these offences, strict liability is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct;
* it is necessary to ensure the integrity of the regulatory regime in question;
* there are legitimate grounds for penalising persons lacking fault, because he or she will be placed on notice to guard against the possibility of any contravention; and
* there is general public support and acceptance for both the measure and the penalty.
1. Strict liability is imposed in respect of a limited number of offences for specific reasons. These reasons include ensuring that the safety of the crew on board a vessel and the public interest of ensuring that the regulatory scheme is observed where the sanction of criminal and civil penalties are justified. They also arise in a context where a defendant can reasonably be expected, because of his or her involvement in marine activities, to know what the requirements of the law are, and the mental, or fault, element can justifiably be excluded.
2. The objective of these offences is to ensure that the master of the vessel and livestock operators ensure that persons involved in loading, stowage, unloading and carriage of livestock cargo are kept safe and the livestock are kept free from harm or disease. Livestock require careful management during transport to ensure safety of the vessel and safe stowage and carriage of the livestock which includes enforcing measures such as segregation from other goods and livestock, feeding, watering, general health maintenance, and effluent management.
3. The offences are aimed at the proper identification of all livestock cargo through adequate documentation and also the safe handling, containment and carriage of livestock cargo. Incidents in port or at sea pose particular logistical problems for seafarers and rescue authorities due to the likely isolated location of incidents. Incidents posing a significant risk to life and safety of navigation include the spontaneous combustion of fodder due to poorly maintained fodder bins. Incidents posing a significant risk of harm to the marine environment and safety of navigation include spillage of livestock effluence into the sea, or livestock lost overboard or disposed of while at sea, necessitating the immediate reporting of such events.
4. Strict liability is imposed for breaches in this Order to ensure compliance with internationally recognised measures that are intended to create world-wide uniformity of rules for the transport of livestock by sea. The penalty for an offence is relatively low (maximum of 50 penalty units for an individual) and within the limitation imposed by paragraph 341(1)(a) of the *Navigation Act*. It is long standing practice to impose strict liability for breaches in marine orders in circumstances requiring deterrence and where breaches pose serious threats to life, safety of navigation or the marine environment.
5. This Order also creates civil penalties for failure to comply with offences. The civil penalty provisions are authorised by paragraph 341(1)(b) of the *Navigation Act*. Having regard to the objectives of the civil penalty provisions and the relatively low level of penalty (the same maximum amounts as for an offence), the civil penalties should not be considered to be criminal matters for human rights law.
6. It is considered any limitation on human rights as a result of the imposition of offences that are strict liability and the creation of civil penalties is reasonable, necessary and proportionate to ensure the safe shipment of dangerous goods and the protection of the marine environment.

Conclusion

1. AMSA considers that this Order is compatible with human rights. To the extent that it limits rights or freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies, the limitation is reasonable, necessary and proportionate.

**Making the instrument**

1. This Order 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*.