

Explanatory Statement

Marine Order 11 (Living and working conditions on vessels) Amendment Order 2018 (Order 2018/12)

Authority

1. The following provisions of the *Navigation Act 2012* (the Navigation Act) provide for this Order to be made.
2. Section 42 provides that, for regulated Australian vessels, regulations may be made about maritime labour certificates.
3. Subsection 55(1) provides that regulations may be made about information that an owner of a regulated Australian vessel must make available to the vessel's seafarers.
4. Section 65 provides that, for regulated Australian vessels and foreign vessels, regulations may be made about the health of seafarers.
5. Section 74 provides that, for regulated Australian vessels and foreign vessels, regulations may be made about accommodation for seafarers on vessels.
6. Section 77 provides that regulations may be made about complaints and legal proceedings about seafarer employment.
7. Section 314 provides that regulations may be made about particular matters relating to certificates.
8. Paragraph 340(1)(i) provides that regulations may be made to give effect to the Maritime Labour Convention.
9. Subsection 339(1) provides that regulations may be made prescribing matters that are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.
10. Subsection 341(1) provides that the regulations may provide for the imposition of penalties and civil penalties for a contravention of the regulations.
11. Subsection 342(1) provides that AMSA may make orders about anything that may or must be made by the regulations.
12. 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.
13. This Order is a legislative instrument for the *Legislative Instruments Act 2003*.

Purpose

14. This Order amends *Marine Order 11 (Living and working conditions on vessels) 2015* (Marine Order 11) to ensure that certification requirements under the Navigation Act that apply to regulated Australian vessels continue to be consistent with the Maritime Labour Convention.

Overview

15. This Order amends Marine Order 11 to give effect to a change to the Maritime Labour Convention that comes into effect internationally on 8 January 2019. The change extends the duration period of an expiring maritime labour certificate when a new replacement certificate cannot be issued and placed on board before expiry. Other amendments are minor for clarification and also eliminate unintended errors in the text.

Consultation

16. A copy of the draft of this Order was placed on the AMSA website for public comment for 4 weeks. Over 120 stakeholders including ship operating companies, seafarer representative organisations, classification societies, shipping industry peak bodies and interested government departments and agencies were invited to participate in the consultation process. Two comments were received that addressed the scope or application of the changes being made. The comments were taken into account in the preparation of the Order.

17. The Office of Best Practice Regulation (OBPR) was also consulted and considered that changes made by the Order have regulatory impacts of a minor or machinery nature and no regulation impact statement was required. The OBPR reference number is 24290.

Documents incorporated by reference

18. Parts of the following are incorporated by reference or mentioned in this document:

- Maritime Labour Convention
- Part C1 of the NSCV
- ICS Guidance on Eliminating Shipboard Harassment and Bullying
- *Fair Work Act 2009*
- *Code on noise levels on board ships*

19. The manner of incorporation of the Maritime Labour Convention is as in force from time to time (see definition section 14 of the Navigation Act). The Convention is a treaty and available for free on the Australian Treaties Database at <http://www.info.dfat.gov.au/treaties>.

20. The manner of incorporation of Part C1 of the NSCV is a particular point in time, being 1 January 2016. The latest edition of Part C1 of the NSCV came into effect on this date. The NSCV is available for free on AMSA's website at <http://www.amsa.gov.au>.

21. The mention of the ICS Guidance on Eliminating Shipboard Harassment and Bullying is a reference to the latest edition of that guidance available for free on the ICS website at www.ics-shipping.org.

22. The mention of the *Fair Work Act 2002* is subject to section 10 of the *Acts Interpretation Act 1901* and its mention is as in force from time to time.

23. The *Code on noise levels on board ships* is an IMO code available for free from the IMO website at <http://www.imo.org>. Information on obtaining copies of IMO documents is also on AMSA's website: <http://www.amsa.gov.au>. The code is incorporated into Marine Order 11 as in force from time to time.

Commencement

24. This Order commenced on 8 January 2019.

Contents of this instrument

25. Section 1 sets out the name of the Order.

26. Section 2 provides for the commencement of the Order.

27. Section 3 provides that Schedule 1 amends Marine Order 11.

28. Item 1 of Schedule 1 substitutes subsection 8(2) to allow AMSA to approve the use of an equivalent if satisfied that the vessel has adequate arrangements to protect the working and living conditions of its seafarers, and that approving the use of the equivalent would not contravene paragraph 4 of Article VI of the Maritime Labour Convention. The decision by AMSA to approve the use of an equivalent is subject to internal and external merits review under sections 16 and 17 of *Marine Order 1 (Administration) 2013* as the decision is a reviewable decision made under section 15 of that Order.

29. Item 2 of Schedule 1 substitutes section 38 which relieves vessels <200 GT that comply with Section C1 of the NSCV in effect on 1 January 2016, and are not proceeding on an overseas voyage, from the obligation to comply with Division 6.

30. Item 3 of Schedule 1 amends paragraph 52(2)(a) to correct the name of the *Code on noise levels on board ships*.

31. Item 4 of Schedule 1 amends paragraph 52(2)(b) to correct the name of the *Code on noise levels on board ships*.

32. Item 5 of Schedule 1 substitutes section 79 to make clear that in exercising its power to issue a declaration of maritime labour compliance, AMSA will comply with the requirements of paragraph 10 of MLC Standard A5.1.3. The decision by AMSA to issue a declaration is made subject to merits review under section 9 of the Order. As a reviewable decision, the process for internal and external review set out in *Marine Order 1 (Administration) 2013* is applied. The requirement to have a declaration of maritime labour compliance is moved to section 80 to improve readability through better grouping of vessel documentation requirements — see paragraph below.

33. Item 6 of Schedule 1 adds new paragraph (b) to subsection 80(1). The requirement in paragraph (b) describes the requirement to carry a declaration of maritime labour compliance which is a pre-existing documentation requirement being moved from section 79 so documentation requirements do not unnecessarily span two provisions. The requirement in section 80 is a strict liability offence with a civil penalty also applying. The penalty for 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.

34. Item 7 of Schedule 1 substitutes section 83 inserting a new provision allowing the expiry of a maritime labour certificate to extend for a further period not exceeding 5 months from the expiry date of the existing certificate. The period that a maritime labour certificate is in force may be extended if a renewal inspection has been completed before the expiry of the existing certificate, the renewal inspection demonstrates compliance with the Maritime Labour Convention and Marine Order 11, and the new certificate cannot be issued or made available on board the vessel before the expiry of the existing certificate. This section gives effect to paragraphs 3 and 4 of MLC Standard A5.1.3.

35. Item 8 of Schedule 1 substitutes subparagraph 88(a)(iii) to closer reflect the wording used in paragraph 5 of MLC Standard A5.1.3.

36. Item 9 of Schedule 1 substitutes the note for section 92 to communicate that a seafarer may take action under the *Fair Work Act 2009* to stop being bullied at work. The note also provides publication information for the *Guidance on Eliminating Shipboard Harassment and Bullying*.

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 *Navigation Act 2012* and amends Marine Order 11 to give effect to a change to the Maritime Labour Convention that comes into effect internationally on 8 January 2019. The change extends the duration of a pre-existing maritime labour certificate when a new replacement certificate cannot be issued and placed on board in a timely manner following a renewal inspection. Other amendments are minor for clarification including rearrangement of text to improve readability of provisions or for the elimination of unintended errors.

Human rights implications

39. The human rights implications for Marine Order 11 were identified when the instrument commenced on 1 May 2015. See explanatory statement for the Order as made (F2015L00609) that described its requirements and prescribed matters as being consistent with the right to work (International Covenant on Economic Social Cultural Rights), freedom of movement and freedom of expression (International Covenant on Civil Political Rights), minimum age for employment (Convention of Rights of the Child).

40. The amendments in this instrument do not change the impact on the relevant rights or freedoms (where engaged in the original instrument). The amendments allow AMSA to extend certificate duration in specified circumstances and clarify text or meaning.

41. Item 6 of Schedule 1 substitutes elements of the offence in section 80 in order to consolidate the carriage requirements for vessel documentation. This change eliminates the need for an overlapping requirement in section 79 that concerns the declaration of maritime labour compliance.

42. Section 80 currently imposes strict liability to ensure compliance with the Maritime Labour Convention being internationally recognised measures intended to create world-wide uniformity of rules for the health and well-being of seafarers who work in an isolated environment at sea. A vessel and its documentation is subject to inspection in ports, including foreign ports, and possible detention incentivises shipowners' awareness, implementation and compliance with Maritime Labour Convention requirements.

43. There is no change to the penalty for the offence which 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. A civil penalty for failure to comply with the offence also continues to be applied to section 80. 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 and the relatively low level of penalty (the same maximum amounts as for an offence), the civil penalty is not considered to be a criminal matter for human rights law.

44. A strict liability offence may engage and limit the presumption of innocence mentioned in Article 14 of the ICCPR. The civil penalty provision may engage the criminal process provisions under Articles 14 and 15 of the ICCPR. However, if any amendment in this instrument is considered to limit relevant human rights or freedoms as a result of the amendment to section 80 that limit is reasonable, necessary and proportionate to ensure the health and well-being of seafarers.

Conclusion

45. AMSA considers that this instrument is compatible with human rights and freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies.

Making the instrument

46. 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*.