

## **Explanatory Statement**

### **Marine Order 63 (Vessel reporting systems) 2019 (Order 2019/6)**

#### **Authority**

1. Section 221 of the *Navigation Act 2012* (Navigation Act) provides that the regulations may provide for reporting requirements for foreign vessels that are in, entering or leaving a prescribed area, and for regulated Australian vessels in any area.
2. 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.
3. Paragraph 340(1)(a) of the Navigation Act provides that the regulations may give effect to SOLAS.
4. Subsection 341(1) of the Navigation Act 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 provides that AMSA may make a Marine Order about anything that must or may be made by the regulations.
6. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power in an Act to make a legislative instrument includes the power to repeal or amend the instrument, subject to any conditions that apply to the initial power.
7. This Marine Order is a legislative instrument for the *Legislation Act 2003*.

#### **Purpose**

8. This Marine Order gives effect to Chapter 5 of the Annex to the SAR Convention and Regulation 11 of Chapter V of SOLAS.
9. It also establishes a system for the reporting of the movement of vessels in prescribed areas known as the MASTREP and REEFREP areas.

#### **Overview**

10. The reissue of this Marine Order is necessary to give effect to IMO Resolution MSC.436(99), which recognises providers other than Inmarsat plc as having met all of the eligibility requirements to provide mobile satellite services within the Global Maritime Distress Safety System (GMDSS). The Marine Order previously made reference to Inmarsat only.
11. The international date of entry into force of IMO Resolution MSC.436(99) is 1 January 2020.

#### **Consultation**

12. A draft of this Marine Order was placed on the AMSA website for public comment on 4 September 2019 for a consultation period of 4 weeks. A copy of the draft Marine Order was also placed on social media including Facebook and Instagram for public comment. Around 160 stakeholders were emailed a copy of the draft Marine Order with comment invited. Stakeholders included vessel traffic management service providers, pilotage providers, ship operators, recognised organisations, industry peak bodies and various government departments and agencies. There were two submissions received on the draft Marine Order, with both parties stating that they had no issue with the proposed changes.
13. The Office of Best Practice Regulation (OBPR) was also consulted and considered that changes made by the Order had regulatory impacts of a minor or

machinery nature and no regulation impact statement was required. The OBPR reference number is 25521.

### **Documents incorporated by reference**

14. This Marine Order incorporates by reference parts of the following documents:

- *Marine Order 1 (Administration) 2013*
- *Marine Order 64 (Vessel traffic services) 2013*
- *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*
- *International Convention for the Safety of Life at Sea (SOLAS)*
- *International Convention on Maritime Search and Rescue (SAR Convention)*
- *International Convention for the Prevention of Pollution from Ships (MARPOL)*
- *International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel (INF Code)*
- IMO GISIS module *Radiocommunications and Search and Rescue*, as amended from time to time
- *Mandatory ship reporting systems*, adopted as IMO Resolution MSC.52(66), as amended from time to time.
- *Revised guidelines for the onboard operational use of shipboard automatic identification systems (AIS)*, adopted by IMO Resolution A.1106(29), as amended from time to time.
- Admiralty List of Radio Signals (Latest edition)
- *MASTREP and Australian Mandatory Reporting Guide* (Latest edition)
- *REEFVTS User Guide* (Latest edition)
- *IMO Standard Marine Communications Phrases* (Latest edition).

15. 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 Orders 1 and 64 are adopted as in force from time to time because each is adopted by reference to its title in this Marine Order. Section 10 also applies to *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*. These laws are available on the Federal Register of Legislation.

16. SOLAS, SAR Convention and MARPOL are incorporated as amended and in force from time to time. These Conventions are in the Australian Treaties Library accessible online at the AustLII website at <http://www.austlii.edu.au> or the Australian Treaties Database at <http://www.info.dfat.gov.au/treaties>.

17. Information on obtaining copies of any International Maritime Organization (IMO) Resolution, IMO document or other document mentioned in this Marine Order is available from the Marine Orders link at <http://www.amsa.gov.au>.

### **Commencement**

18. This Marine Order commenced on 1 January 2020.

### **Contents of this instrument**

19. Division 1 (Preliminary) contains 6 provisions that assist the operation, interpretation and administration of the Marine Order.

20. Section 1 sets out the name of the Marine Order.
21. Section 1A provides for the commencement of the Marine Order.
22. Section 1B provides that *Marine Order 63 (Vessel reporting systems) 2015* is repealed.
23. Section 2 states the purpose of the Marine Order.
24. Section 3 sets out the powers in the Navigation Act that enable the Marine Order to be made.
25. Section 4 sets out definitions of terms used in the Marine Order.
26. Section 5 explains geographic positions.
27. Section 6 states the application of the Marine Order.
28. Division 2 (Reporting requirements and other matters) contains 3 provisions that deal with reporting requirements and the prescribed areas for reporting.
29. Section 7 creates an obligation for the master of a vessel to report in accordance with Schedule 3 if the vessel is in the MASTREP area. It is a strict liability offence with civil penalty applying. 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.
30. Section 8 creates an obligation for the master of a vessel in, or in the process of entering, the REEFREP to report to REEFVTS in accordance with Schedule 4. It is a strict liability offence with civil penalty applying. 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. Section 9 prescribes the areas for definition of *prescribed area* in subsection 221(3) of the Navigation Act. The MASTREP area is defined in section 4 as the area, for which JRCC Australia is responsible, described in IMO GISIS module *Radiocommunications and Search and Rescue*, as amended from time to time. The REEFREP area is defined in section 4 as the area for the mandatory ship reporting system mentioned in IMO Resolution MSC.52(66), as amended from time to time.
32. Schedule 1 (MASTREP area) illustrates the boundaries of the MASTREP area.
33. Schedule 2 (REEFREP area) illustrates the boundaries of the REEFREP area.
34. Schedule 3 (Reports for vessels in MASTREP area) contains 2 clauses and sets out the information to be included in a position report and the method for sending that report.
35. Schedule 4 (Reports for vessels in REEFREP area) contains 6 clauses and sets out the information to be included in an entry report, route deviation report, position report, defect report and final report, together with methods for sending such reports.

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

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

## Overview of the legislative instrument

37. This Marine Order is made under the *Navigation Act 2012*. It gives effect to the International Convention for the Safety of Life at Sea (SOLAS) and to the International Convention on Maritime Search and Rescue 1979 (the SAR Convention). The Order provides for mandatory reporting systems for vessels in the REEFREP area, which covers the Great Barrier Reef and the Torres Strait Islands, and in the MASTREP area, which is the area for which Australia has search and rescue responsibility.

38. The Marine Order sets out the vessels that are required to report and provides the information that must be reported. Vessels required to report in the MASTREP area report to AMSA's Joint Rescue Co-ordination Centre. Vessels required to report in the REEFREP area report to REEFVTS, a vessel tracking authority authorised under *Marine Order 64 (Vessel traffic services) 2013*.

## Human rights implications

39. Sections 7 and 8 of this Marine Order create offences to which strict liability applies. Strict liability offences allow for the imposition of criminal liability without the need to prove fault (see section 6.1 of the *Criminal Code*).

40. Strict liability is justified for the offence in section 7 as the information provided in the required reports provides AMSA with the capability to significantly improve its pollution, marine casualty and search and rescue (SAR) incident responses through faster and more effective management of resources. This also ensures that only the closest vessels will be requested to assist in a SAR incident, reducing the need for vessels to steam long distances from their intended voyage plan. 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 of Marine Orders in circumstances requiring deterrence and where breaches pose serious threats to life, safety of navigation or the marine environment.

41. Strict liability is justified for the offence in section 8 as the information provided in the required reports improves navigational safety in the Torres Strait and inner route of the Great Barrier Reef, by giving information to vessels about potential traffic conflicts and navigational information. Vessel reporting also lowers the risk of maritime incidents in the region that may result in ship-sourced pollution or damage to the marine environment and enables the REEFVTS to respond quickly to a marine incident. It is long standing practice to impose strict liability for breaches of Marine Orders in circumstances requiring deterrence and where breaches pose serious threats to life, safety of navigation or the marine environment.

42. 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). Sections 7 and 8 of the Order also create civil penalties. A civil penalty provision may engage the criminal process provisions under Articles 14 and 15 of the ICCPR.

43. The civil penalty provisions relate to the master of a vessel rather than the community at large and are regulatory in nature. 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 (which are protective, preventative, disciplinary or regulatory in nature), and the relatively low level of penalty, the civil penalties should not be considered to be criminal matters for human rights law.

44. It is considered any limitation on human rights as a result of the creation of offences that are strict liability and the creation of the civil penalties is reasonable,

necessary and proportionate for achieving the objectives of safety of life at sea and prevention of pollution.

### **Conclusion**

45. AMSA considers that this Marine Order 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 the saving of lives at sea and the prevention of pollution in a fragile marine environment.

### **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*.