

Explanatory Statement

Marine Order 505 (Certificates of competency — national law) 2022 (Order 2022/1)

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 Marine Order to be made.
2. Division 4 of Part 4 of the national law provides for a number of matters to be prescribed for certificates of competency including who must have a certificate, how to apply, and the criteria for the issue, variation, suspension and revocation of certificates.
3. Division 5 of Part 4 of the national law provides for matters that can be prescribed in the regulations for certificates issued under the national law.
4. Subsection 159(1) of the national law 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 national law.
5. Paragraph 159(2)(g) provides that the regulations may prescribe standards for the qualifications of crew and masters of domestic commercial vessels.
6. Section 162 provides that the regulations may prescribe penalties for offences against the regulations, and civil penalties for contraventions of the regulations.
7. Subsection 163(1) provides that the National Regulator (the Australian Maritime Safety Authority (AMSA) under section 9 of the national law) may make a Marine Order about matters that can be provided for by regulation.
8. Section 164 of the national law allows a Marine Order to provide for any matter by applying, adopting or incorporating any matter contained in any written instrument in force or existing from time to time.
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 Marine Order is a legislative instrument for the *Legislation Act 2003*.

Purpose

11. This Marine Order repeals and replaces *Marine Order 505 (Certificates of competency — national law) 2013*. It also replaces Part D (Crew competencies) of the National Standard for Commercial Vessels (NSCV).

Overview

12. The Marine Order sets out the certificates that are required for the performance of listed duties and functions by the master and crew on a domestic commercial vessel. It prescribes for the national law matters about applying for certificates of competency and about the issue, variation, suspension and revocation of these certificates.
13. The Marine Order also provides for reissue and endorsement of certificates. Provision is made for regulatory action by the National Regulator and for the approval of organisations to conduct final assessments for the issue of certificates.
14. Under the national law, it is an offence for a person to perform duties or functions for which a certificate of competency is required if the person does not

have the certificate. Similarly, the owner or master of a domestic commercial vessel commits an offence if they cause or permit another person to perform duties or functions without the required certificate.

Consultation

15. Prior to the commencement of drafting this Marine Order, extensive policy consultation was undertaken with industry. An Industry Reference Group comprising representatives from the domestic commercial vessel sector was extensively consulted throughout the drafting process. The Marine Order was released for public consultation from 5 August to 29 September 2019. During this period, 14 information sessions attended by 387 people were conducted around the country. Submissions were received from 565 members of the public during this consultation period.

16. The Marine Order was again released for external consultation from 20 September to 14 November 2021. On this occasion, 152 members of the public provided feedback. Submissions received following both periods of external consultation covered such matters as eligibility requirements for certificates and the duties and functions able to be performed while holding specified certificates. Submissions from external consultations and continuing discussion with the Industry Reference Group were taken into account in the preparation of the final draft.

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 24988.

Documents incorporated by reference

18. Parts of the following documents are incorporated by reference in this Marine Order:

- AMSA Mandated Practical Assessment (AMPA)
- *Marine Order 70 (Seafarer certification) 2014* (Marine Order 70)
- *Trans-Tasman Mutual Recognition Act 1997*
- Standards for the medical examination of domestic seafarers
- *Marine Order 501 (Administration — national law) 2013* (Marine Order 501)
- *Marine Order 504 (Certificates of operation and operation requirements — national law) 2018* (Marine Order 504)
- MAR Maritime Training Package
- *Navigation Act 2012*
- NSCV Part B
- *Standards for Registered Training Organisations (RTOs) 2015*

19. The latest version of the AMPA is incorporated. This document, which sets out the requirements for the conduct of final assessments by registered training organisations for the issue of certificates of competency, is available on the AMSA website.

20. 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*), the manner of incorporation of the *Trans-Tasman Mutual Recognition Act 1997*, the *Navigation*

Act 2012, Marine Orders 70, 501 and 504 and the *Standards for Registered Training Organisations (RTOs) 2015* is as in force from time to time because they are adopted by reference to their title in this Marine Order.

21. Marine Orders can be accessed through the marine orders link on the AMSA website at: <http://www.amsa.gov.au> and are available for free download from the Federal Register of Legislation through that link. The *Trans-Tasman Mutual Recognition Act 1997*, the *Navigation Act 2012* and the *Standards for Registered Training Organisations (RTOs) 2015* are also available for free download from the Federal Register of Legislation.

22. The Standards for the medical examination of domestic seafarers are incorporated as existing from time to time. The Standards are a document prepared by AMSA to assist medical practitioners in the conduct of medical examinations to issue a Certificate of Medical Fitness Domestic Seafarers which is a requirement for the issue of a certificate of competency. The Standards are available on the AMSA website at <http://www.amsa.gov.au>.

23. The latest version of the MAR Maritime Training Package is incorporated into the Marine Order. This package contains details of maritime courses that are eligibility requirements for obtaining specified certificates of competency. The MAR Maritime Training Package is developed by Australian Industry Standards and is available at: training.gov.au.

24. NSCV Part B is incorporated as existing from time to time. It is available for free from the AMSA website at: <http://www.amsa.gov.au>.

Commencement

25. This Marine Order commenced on 1 January 2023.

Contents of this instrument

26. Division 1 (Preliminary) contains 8 provisions that assist the operation, interpretation and administration of the Marine Order.

27. Section 1 sets out the name of the Marine Order.

28. Section 1A provides that the Marine Order commences on 1 January 2023.

29. Section 1B provides for the repeal of *Marine Order 505 (Certificates of competency — national law) 2013*.

30. Section 2 states the purpose of the Marine Order, which is to provide for certificates of competency and set out standards for the qualifications of the crew and masters on domestic commercial vessels.

31. Section 3 sets out the powers in the national law that provide for the Marine Order to be made.

32. Section 4 sets out definitions of terms used in the Marine Order.

33. Section 5 provides a table to determine the propulsion power of a vessel.

34. Section 6 contains information on the making of applications about matters related to certificates of competency that are mentioned in the national law or the Marine Order.

35. Division 2 (Certificates of competency) contains 11 provisions and deals with a number of matters about certificates of competency, including the requirement to hold one, the kinds of certificate, the criteria for issue, qualifying sea service, conditions and endorsements on certificates and the form of certificates.

36. Section 7 outlines the situations in which a certificate of competency is required. Apart from the circumstances listed in subsections (1) to (6), a person must hold the appropriate certificate of competency to perform the duties or functions set out in Schedule 1.
37. Section 8 lists the different kinds of certificates of competency.
38. Section 9 prescribes the criteria for the issue of a certificate of competency, for an initial issue and for a subsequent issue (reissue or renewal), for paragraph 60(1)(b) of the national law. Amongst other criteria, the applicant must meet the eligibility requirements and qualifying sea service mentioned in Schedule 3 for the kind of certificate. The decision not to issue a certificate of competency is reviewable under section 139 of the national law.
39. Section 10 describes some matters about qualifying sea service, which is a requirement for the issue of some certificates. The section provides that qualifying sea service must be calculated in accordance with Schedule 4.
40. Section 11 provides that the National Regulator may offer a different certificate to the one applied for.
41. Section 12 sets out the information that must be included in the certificate of competency.
42. Section 13 prescribes the conditions that attach to a certificate of competency for paragraph 60(4)(ab) of the national law.
43. Section 14 provides that a person may apply for certain endorsements set out in Schedule 5 to enable the performance of specified extra duties. A decision not to endorse a certificate is made reviewable under Marine Order 501.
44. Section 15 enables the National Regulator to find that training performed by a person applying for a certificate or endorsement is equivalent to the training set out in the eligibility requirements in Schedules 3 or 5.
45. Section 16 enables the National Regulator to find that sea service performed by a person applying for a certificate or endorsement is equivalent to the sea service set out in Schedules 3 or 5.
46. Section 17 provides that the National Regulator may give information about a person's certificate of competency to a foreign administration, certain State or Territory agencies and the owner of a vessel on which the person works or may work in the future.
47. Division 3 (Variation, suspension and revocation of certificates of competency) has 4 provisions.
48. Section 18 prescribes the criteria for the variation of a certificate of competency for paragraphs 62(1)(b) and 62(2)(a) of the national law. A decision about varying a certificate is reviewable under section 139 of the national law.
49. Section 19 prescribes the criteria for the suspension of a certificate of competency under paragraph 63(1)(b) of the national law and the purposes for suspension of a certificate of competency under subsection 63(2A) of the national law. It also prescribes the period of suspension for paragraph 63(3)(b) of the national law. A decision about suspending a certificate of competency is reviewable under section 139 of the national law.
50. Section 20 prescribes the criteria for the revocation of a certificate of competency for paragraphs 64(1)(b) and 64(2)(a) of the national law. A decision

about revoking a certificate of competency is reviewable under section 139 of the national law.

51. Section 21 prescribes for section 84 of the national law that a revoked certificate of competency must be delivered to the National Regulator within 90 days of the certificate being revoked.

52. Division 4 (Time before issue of certificate — signed declaration by final assessor) contains 3 provisions to provide in certain cases for the performance of duties and functions after an applicant has been assessed but before they have been issued with a certificate by the National Regulator.

53. Section 22 sets out when the Division applies.

54. Section 23 provides that a person to whom the Division applies may undertake duties or functions without a certificate normally required for those duties or functions, for a period of 60 days after final assessment or less if the National Regulator decides the application within that 60 day period.

55. Section 24 sets out 2 matters about the assessor's final assessment.

56. Division 5 (Regulatory action) contains 1 provision.

57. Section 25 sets out the circumstances in which the National Regulator may require the holder of a certificate of competency to perform regulatory action. A decision to require a person to perform regulatory action is made reviewable under Marine Order 501.

58. Division 6 (Approval of organisations to conduct final assessments) contains 6 provisions.

59. Section 26 provides for an application to the National Regulator for approval of an organisation to conduct final assessments. Final assessments are an eligibility requirement mentioned in Schedule 3, for the issue of several certificates of competency.

60. Section 27 provides that the National Regulator may approve an organisation to conduct final assessments if the criteria in Schedule 6 are met.

61. Section 28 provides that an approval to conduct final assessments is subject to the conditions set out in Schedule 7 and any additional condition that the National Regulator attaches to the approval.

62. Section 29 provides for an initial approval period of 9 months which can be extended up to 3 years, with further extensions of 3 years, if criteria continue to be met.

63. Section 30 provides for variation, suspension and revocation by the National Regulator of an approval to conduct final assessments.

64. Section 31 provides for review of decisions under Marine Order 501 in relation to the approval to conduct final assessments, and extensions, variations, suspensions and revocations of approvals.

65. Division 7 (Transitional and savings) contains 2 provisions.

66. Section 32 provides what is to happen to applications made but not decided before the Marine Order commences.

67. Section 33 preserves approvals to conduct final assessments that were in force immediately prior to the commencement of the Marine Order.

68. Schedule 1 sets out the duties and functions for which a certificate of competency is required. It lists the kinds of certificates mentioned in section 8 and

sets out for each certificate the duties and functions that necessitate holding that certificate. Section 7 references Schedule 1 and must be read together with the Schedule.

69. Schedule 2 lists the seafarer certificates that correspond to certificates of competency. Subsection 7(2) provides that a person who holds a seafarer certificate listed in Schedule 2 may undertake the duties and functions of the corresponding certificate of competency without the need to hold that certificate of competency.

70. Schedule 3 lists for each kind of certificate the eligibility requirements and qualifying sea service requirements. These are criteria for the issue of a certificate, mentioned in section 9.

71. Schedule 4 sets out how to calculate qualifying sea service.

72. Schedule 5 provides the endorsements that can be sought for some certificates of competency and the requirements to obtain those endorsements.

73. Schedule 6 lists the criteria for approval of an organisation to conduct final assessments.

74. Schedule 7 lists the conditions on the approval of an organisation to conduct final assessments.

Statement of compatibility with human rights

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

Overview of the legislative instrument

76. The Marine Order sets out the certificates that are required for the performance of listed duties and functions by the master and crew on a domestic commercial vessel. It prescribes matters about applying for certificates of competency and about the issue, variation, suspension and revocation of these certificates.

77. The Marine Order also provides for reissue and endorsement of certificates. Provision is made for regulatory action by the National Regulator (the Australian Maritime Safety Authority) and for the approval of organisations to conduct final assessments for the issue of certificates.

78. The Marine Safety (Domestic Commercial Vessel) National Law, under which this Marine Order is made, makes it an offence for a person to perform duties or functions for which a certificate of competency is required if the person does not have the certificate. Similarly, the owner or master of a domestic commercial vessel commits an offence if they cause or permit another person to perform duties or functions without the required certificate.

Human rights implications

79. By setting out requirements for gaining a certificate of competency, without which named functions and duties cannot be performed, this instrument engages the right to work. Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right to work, defined as the opportunity of everyone to gain their living by freely chosen or accepted work.

80. Ensuring that the master and crew of a domestic commercial vessel are qualified and have appropriate experience for the tasks they perform, is critical to safe operations on the water and, for the crew, contributes to safe working conditions, recognised by Article 7 ICESCR as a necessary element of just and favourable conditions of work.

81. The instrument further engages the right to work by setting up a process for the approval of organisations to conduct final assessments before applicants for certificates of competency can be issued with their certificates. Final assessments are one of the requirements for gaining certain certificates of competency. An organisation can only be approved to conduct final assessments if the National Regulator is satisfied of a number of matters that show suitability and competence for assessing certificate applicants at appropriate levels. The approval process restricts the ability to perform this kind of work.

82. To ensure the integrity of the certificate of competency qualifications, it is imperative that those conducting the final assessment of an applicant's skills, have the necessary skills and experience themselves. This ensures that issued certificates of competency are a good measure of the competence of the crew and master. That competence is critical to safe operations on the water and contributes to safe working conditions.

Conclusion

83. 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 directed, measured and proportionate for ensuring the safety of domestic commercial vessel operations and the preservation of life of crew and passengers.

Making the instrument

84. 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*.