

## Explanatory Statement

### Marine Orders Amendment (Marine Order 505 — consequential changes) Order 2022 (Order 2022/2)

#### 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. Subsection 159(1) of the national law provides for regulations to be made that are necessary or convenient for carrying out or giving effect to the national law.
3. 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.
4. Subsection 339(1) of the *Navigation Act 2012* (Navigation Act) provides for regulations to be made that are necessary or convenient for carrying out or giving effect to the Navigation Act.
5. Subsection 342(1) of the Navigation Act provides that AMSA may make a Marine Order about matters that can be provided for by regulation.
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 Order was made under subsection 342(1) and is a legislative instrument for the *Legislation Act 2003*.

#### Purpose

8. This Marine Order makes amendments consequential on the making of *Marine Order 505 (Certificates of competency — national law 2022)* (Marine Order 505 2022) to the following Marine Orders:
  - *Marine Order 504 (Certificates of operation and operation requirements — national law) 2018* (Marine Order 504)
  - *Marine Order 21 (Safety and emergency arrangements) 2016* (Marine Order 21)
  - *Marine Order 71 (Masters and deck officers) 2014* (Marine Order 71)
  - *Marine Order 72 (Engineer officers) 2014* (Marine Order 72).

#### Overview

9. This Marine Order corrects a number of references that have become outdated as a result of the making of Marine Order 505 2022 that repealed *Marine Order 505 (Certificates of competency — national law) 2013*. Marine Order 505 2022 also replaces Part D (Crew competencies) of the National Standard for Commercial Vessels (NSCV).

#### Consultation

10. During the making of Marine Order 505 2022, extensive consultation occurred as follows.
11. Policy consultation was undertaken with industry before the commencement of drafting. An Industry Reference Group comprising representatives from the domestic commercial vessel sector was extensively consulted throughout the drafting process. Marine Order 505 2022 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.

12. Marine Order 505 2022 was again released for external consultation from 20 September to 14 November 2021. On this occasion, 152 members of the public provided feedback. Submissions from external consultations and continuing discussion with the Industry Reference Group were taken into account in the preparation of the final draft.

13. The majority of the changes made in this Marine Order consequential on the making of Marine Order 505 2022 are name changes only, for example updating a reference to the 2022 version of Marine Order 505. Some other changes are necessary because NSCV Part D will no longer operate and because MO505 2022 has introduced new terms, new certificates and new descriptions of functions and duties attached to the kinds of certificates of competency. All of these matters have been extensively consulted on.

14. This Marine Order makes consequential changes to 3 Marine Orders made under the Navigation Act and to one national law Marine Order (Marine Order 504). In the case of Marine Order 504, the changes made are the minimum required to provide a legislative basis for the continued operation of the Marine Order. In the meantime, Marine Order 504 is currently undergoing a review with public consultation on policy changes sought for the Order.

15. As a result of the extensive consultation that occurred for the making of Marine Order 505 2022, AMSA is satisfied that anyone affected by changes made in this Marine Order as a consequence of Marine Order 505 2022 has been appropriately consulted.

16. The changes made by this Marine Order have regulatory impacts of a minor or machinery nature and no regulation impact statement was required. The OBPR reference number is 43657.

### **Documents incorporated by reference**

17. This Marine Order does not incorporate any documents by reference.

### **Commencement**

18. This Marine Order commences immediately after the commencement of Marine Order 505 2022.

### **Contents of this instrument**

19. Section 1 sets out the name of this Marine Order.

20. Section 2 provides for the commencement of the Marine Order.

21. Section 3 provides that Schedule 1 sets out the consequential amendments to Marine Orders.

22. Division 1 of Schedule 1 amends Marine Order 504.

23. Item 1 omits a definition that is no longer used in the Marine Order because of other redrafting.

24. Item 2 inserts a definition of Marine Order 505 2022 into the Marine Order.

25. Item 3 omits the definition of NSCV Part D which is no longer needed as material in NSCV Part D has been absorbed into Marine Order 505 2022.

26. Item 4 substitutes a new subclause 6(5) into Schedule 1 of Marine Order 504. The new subclause updates references so that Marine Order 505 2022 is referenced

instead of the 2013 version of the Marine Order and NSCV Part D. Other parts of the subclause have been changed to better reflect the description of the duties and functions for certificates under the updated Marine Order 505.

27. Item 5 removes a note from schedule 1 of Marine Order 504 because it refers to NSCV Part D.
28. Items 6 and 7 change references from NSCV Part D to Marine Order 505 2022.
29. Division 2 of Schedule 1 amends Marine Order 21.
30. Item 8 changes 3 references in Marine Order 21 to refer to the updated Marine Order 505 2022.
31. Division 3 of Schedule 1 amends Marine Order 71.
32. Item 9 substitutes new definitions for Master <24 m NC certificate of competency and Master <45 m NC certificate of competency to reflect the name of the 2022 version of Marine Order 505 and the creation of a new certificate.
33. Item 10 inserts a definition of National Regulator into the definition section of Marine Order 71.
34. Item 11 inserts the term ‘national law’ into a note in the definition section.
35. Item 12 changes mentions of Master<35 m to Master<45 m as MO505 2022 has some new certificates replacing existing certificates.
36. Division 4 of Schedule 1 amends Marine Order 72.
37. Item 13 substitutes a new definition of Engineer Class 3 NC certificate of competency to reflect the name of the 2022 version of Marine Order 505.
38. Item 14 substitutes a new definition of Marine Engine Driver Grade 1 NC certificate of competency to reflect the name of the 2022 version of Marine Order 505.
39. Item 15 inserts a definition of National Regulator into the definition section of Marine Order 72.
40. Item 16 inserts the term ‘national law’ into a note in the definition section.

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

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

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

42. The purpose of this Marine Order is to make consequential amendments to Marine Orders as a result of making *Marine Order 505 (Certificates of competency — national law) 2022* (Marine Order 505 2022) that repealed *Marine Order 505 (Certificates of competency — national law) 2013* and also replaced Part D (Crew competencies) of the National Standard for Commercial Vessels (NSCV).
43. The amendments are minor in nature and change references in Marine Orders that have become outdated as a result of the making of Marine Order 505 2022. Some of those references relate to certificates that no longer exist. However Marine Order 505 2022 provides for new certificates that can operate in the place of ones no longer existing. A person is not disadvantaged by holding a certificate that Marine order 505 2022 is replacing.
44. The Explanatory Statement to Marine Order 505 2022 discusses the extent to which that Marine Order engages the right to work and concludes that 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.

### Human rights implications

This Marine Order changes references and updates terminology following the making of Marine Order 505 2022. It does not engage any of the applicable rights or freedoms.

### Conclusion

AMSA considers that this Marine Order is compatible with human rights as it does not raise any human rights issues. It does not affect any rights or freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies.

### Making the instrument

45. 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*.