

Explanatory Statement

Marine Order 11 (Living and working conditions on vessels) 2024 (Order 2024/3)

Authority

1. The following provisions of the *Navigation Act 2012* (the 'Navigation Act') provide for this Marine 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. Subsection 309(2) provides that regulations may provide for the keeping of an official logbook including prescribing the entries to be made and the time of making the entries.
8. Section 314 provides that regulations may be made about particular matters relating to certificates.
9. Paragraph 340(1)(i) provides that regulations may be made to give effect to the Maritime Labour Convention.
10. Subsection 339(1) of the Navigation Act authorises the Governor-General to make regulations necessary or convenient for carrying out or giving effect to the Navigation Act.
11. Subsection 341(1) provides that the regulations may provide for the imposition of penalties and civil penalties for a contravention of the regulations.
12. Subsection 342(1) of the Navigation Act allows the Australian Maritime Safety Authority (AMSA) to make orders for any matter in the Act for which provision must or may be made by regulations.
13. 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.
14. This Marine Order was made under subsection 342(1) and is a legislative instrument for the *Legislation Act 2003*.

Purpose

15. This Marine Order repeals and replaces *Marine Order 11 (Living and working conditions on vessels) 2015*.
16. The Marine Order gives effect to the Maritime Labour Convention (MLC) by providing standards for: minimum requirements for seafarers working on vessels, conditions of employment, accommodation and food and catering, health protection, medical care, welfare and social security protection and protection against noise on board. The Order also gives effect to the Code on noise levels on board ships adopted by the International Maritime Organization (IMO) Resolution MSC 337(91).

17. For this reason, the Marine Order is exempt from sunseting under item 1, section 11 of the *Legislation (Exemptions and other matters) Regulation 2015*.

Overview

18. The replacement Marine Order implements amendments to the International Labour Organisation's (ILO) Maritime Labour Convention 2006 (MLC) that were approved by the 110th session of the International Labour Conference (ILO) on 6 June 2022 and which come into force on 23 December 2024.

19. The amendments to the Maritime Labour Convention that commenced on 23 December 2024 relate to the following:

- seafarers being informed of their rights;
- the prompt repatriation of seafarers including when they are deemed abandoned;
- seafarers being provided with appropriate social connectivity;
- quality free drinking water and balanced meals being provided on board for seafarers;
- the prompt disembarkation of seafarers in need of immediate medical care and access to medical facilities;
- appropriately sized personal protective equipment being available for seafarers;
- seafarer deaths being investigated, recorded, and reported annually to the ILO to be published in a global register;
- financial security by accepting the name of the registered owner when it is different from the shipowner.

20. Other changes to the Marine Order clarify:

- requirements for non-commercial and fishing vessels; and
- application to vessels <200 GT and vessels between <200 GT and <500 GT.

Consultation

21. A copy of the draft of this Marine Order was placed on AMSA's website on 3 June 2024 for public consultation with comments to be provided by 28 July 2024. Around 130 stakeholders were contacted by email and invited to comment. These included seafarer representative organisations, vessel operators, Shipping Consultative Forum and relevant government agencies. The review was also advised on social media and as an AMSA news article.

22. Five submissions were received and were considered during the preparation of the final Marine Order. They concerned:

- owner (instead of a 'person') having to apply for an exemption and equivalents;
- recruitment and placement services to be based in Australia;
- maximum of 11 months duration for a seafarer to be on board;
- seafarer's agreement termination event;
- ship owners' liability;

- application of the MLC to certain vessels in section 6 to include food and drinking water as provided in section 59.

23. The Office of Impact Analysis (OIA) considers that the changes made by the Marine Order have regulatory impacts of a minor or machinery nature and no regulation impact statement is required. The OIA reference numbers are OIA23-06229, 23-06166 and 23-06232.

Documents incorporated by reference

24. Parts of the following legislation are incorporated by reference in this Marine Order. The Acts of Parliament are subject to section 10 of the *Acts Interpretation Act 1901* and in force from time to time. The Marine Orders are adopted as in force from time to time 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*):

- *Crimes Act 1914*
- *Fair Work Act 2009*
- *Health Insurance Act 1973*
- *Marine Order 1 (Administration) 2013*
- *Marine Order 9 (Health — medical fitness) 2010*
- *Marine Order 15 (Construction — fire protection, fire detection and fire extinction) 2014*
- *Marine Order 28 (Operations standards and procedures) 2012*
- *Marine Order 50 (Special purpose vessels) 2012*
- *Marine Order 70 (Seafarer certification) 2014*
- *Marine Order 76 (Health—medical fitness) 2017*
- *Marine Orders – Part 14: Accommodation, Issue 1*
- *Poisons Standard 2015*
- *Seas and Submerged Lands (Territorial Sea Baseline Proclamation) 2016*
- *Shipping Registration Act 1981*
- *Therapeutic Goods Act 1989.*

25. The following documents referenced in this Marine Order are incorporated as amended from time to time and available from www.ilo.org, www.who.int or www.iso.org.

- *ILO Conventions No. 92 and 133*
- *ILO Code of Practice Ambient factors in the workplace, 2001*
- *Accident prevention on board ship and in port, published by ILO*
- *Guidelines for drinking-water quality, published by WHO*
- *International medical guide for ships, published by WHO*
- *ISO standard 7547/2002 Ships and marine technology — Air-conditioning and ventilation of accommodation spaces — Design conditions and basis of calculations*

- *Medical first aid guide for use in accidents involving dangerous goods, published jointly by the IMO, WHO and the ILO* (also known as the Chemicals Supplement to the *International medical guide for ships*, published by WHO).

26. The following documents, published by the IMO and referenced in this Marine Order, are incorporated as amended from time to time. The Conventions and Codes are in the Australian Treaties Library accessible online at the AustLII website at www.austlii.edu.au or the Australian Treaties Database at www.info.dfat.gov.au/treaties. A link to the Australian Treaties Library is available at the Marine Orders link on the AMSA website at www.amsa.gov.au. The Marine Orders link on the AMSA website also contains information on the access and purchase:

- *Maritime Labour Convention* (including MLC Standards, Regulations and Guidelines)
- *Code on noise levels on board ships adopted by IMO Resolution MSC 337(91)*
- *International Convention for the Safety of Life at Sea (SOLAS)*
- *International Maritime Dangerous Goods Code*
- *Special Purpose Code*
- *Standards of Training, Certification and Watchkeeping (STCW) Convention*
- *Standards of Training, Certification and Watchkeeping (STCW) Code*
- *Tonnage Convention*.

27. The following documents referenced in this Marine Order are the latest editions or as amended from time to time. They are available from AMSA's website at www.amsa.gov.au:

- *Medical carriage requirements* published by AMSA
- *National Standard for Commercial Vessels (NSCV)*.

28. The mention of the Reserve Bank of Australia exchange rate mentioned in this Marine Order is a reference to the exchange rate that is published daily available at www.rba.gov.au.

Commencement

29. This Marine Order commenced on 23 December 2024.

Contents of this instrument

Division 1 General

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

31. Section 1A provides for the commencement of the Marine Order.

32. Section 1 B provides for the repeal of *Marine Order 11 (Living and Working Conditions on vessels) 2015*.

33. Section 2 states the purpose of the Marine Order, which is to give effect to the Maritime Labour Convention.

34. Section 3 sets out the powers in the Navigation Act that enable the Marine Order to be made.

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

36. Section 5 provides for the interpretation of terms used in the Marine Order which are used in the Maritime Labour Convention.

37. Section 6 describes the application of the Marine Order to a regulated Australian vessel and a foreign vessel subject to the specified limitations.
38. Section 7 provides for deemed to comply provisions for older vessels constructed before 21 August 2013 if specified standards are met.
39. Section 8 provides a process for applications for an exemption of a vessel from a requirement of the Marine Order. AMSA may grant an exemption only if AMSA is satisfied that giving the exemption would not contravene the Maritime Labour Convention and has consulted in accordance with any requirements for consultation mentioned in the Convention that apply to the exemption.
40. Section 9 provides for applications for approval to use an 'equivalent' to a requirement of the Marine Order. Approval may only be given if AMSA is satisfied that the vessel has adequate arrangements to protect the working and living conditions of its seafarers and for a vessel to which the Maritime Labour Convention applies, approving the use of the equivalent would not contravene paragraph 4 of Article VI of the Convention.
41. Section 10 provides for the review of decisions and that for a decision made under the Marine Order, other than for a decision made under section 8, 9 or 10, the affected person may apply to the Australian Maritime Authority for internal review of the decision in accordance with section 17 of *Marine Order 1 (Administration) 2013*.
42. Section 11 specifies that the owner of a regulated Australian vessel must ensure that a copy of the Maritime Labour Convention is kept on board the vessel and available to seafarers. The section provides a strict liability offence for failure to do so and that a breach of this obligation may result in a criminal or civil penalty.
43. Section 12 specifies that the owner of a regulated Australian vessel must ensure that a copy of this Order, being *Marine Order 11 (Living and working conditions on vessels) 2024*, is carried on board the vessel. The section provides a strict liability offence for failure to do so and that a breach of this obligation may result in a criminal or civil penalty.

Division 2 Foreign vessels

44. Section 13 specifies requirements for a foreign vessel ≥ 500 GT and registered in a country where the Maritime Labour Convention is in force.
45. Section 14 specifies requirements for a foreign vessel ≤ 500 GT and registered in a country where the Maritime Labour Convention is in force.
46. Section 15 specifies requirements for the owner of a foreign vessel registered in a country where the Maritime Labour Convention is not in force.

Division 3 Recruitment and Replacement

47. Section 16 specifies that a seafarer recruitment and placement service may apply to AMSA for registration in accordance with the application process set out in *Marine Order 1 (Administration) 2013* and sets out the matters which AMSA may consider when deciding whether to register the service. The section provides a strict liability offence for providing services unless registered and that a breach of this obligation may result in a criminal or civil penalty.
48. Section 17 provides that registration as a seafarer recruitment and placement service is subject to the conditions mentioned in Schedule 1.
49. Section 18 sets out the circumstances in which AMSA may suspend or revoke the registration of a seafarer recruitment and placement service.

50. Section 19 sets out, for the purposes of subsection 54(5) of the Navigation Act, the circumstances in which the owner of a regulated Australian vessel may make a work agreement with a seafarer engaged through a seafarer recruitment and placement service in a country that has not ratified the Maritime Labour Convention. The section provides a strict liability offence and that a breach of this obligation may result in a criminal or civil penalty.

Division 4 Engagement and working conditions of seafarers

51. Section 20 specifies that a person must not employ or engage a person under 16 years to work on a regulated Australian vessel. The section provides a strict liability offence and that a breach of this obligation may result in a criminal or civil penalty. Subsection 20(4) sets out the circumstances in which a person may employ or engage a person under 18 years of age including that the working conditions mentioned in Schedule 2 for a person under 18 years are met.

52. Section 21 specifies the requirements with which a seafarers' work agreement must comply for the purposes of section 54(1) and (2) of the Navigation Act. An obligation is being imposed on the vessel owner to have a written agreement with a seafarer on commencement that contains prescribed minimum content (resulting in a standardised form set out in English language) that covers the employment terms and conditions. This document is known as a seafarer's work agreement. The provision requires the vessel owner to collect personal information about a seafarer. The provision is reasonable as it ensures transparency in relation to a seafarer's rights and entitlements for working on board a vessel.

53. Section 22 specifies the notice requirements for termination of a work agreement

54. Section 23 imposes a requirement on the owner of a vessel to give a seafarer the opportunity to seek advice and other assistance before signing a work agreement and specifies that no adverse action is to be taken against the seafarer for obtaining information or advice about the contents of the work agreement.

55. Subsection 24(1) specifies that the master of a vessel must ensure that a person on board the vessel does not take adverse action against a seafarer for being a member of, or failing to be a member of, an industrial association, or engaging in, or failing to engage in, industrial activity. Subsection 24(2) specifies that the owner of a vessel must not enter into a work agreement with a seafarer if the work agreement prohibits the seafarer from engaging in specified industrial activity. The section provides strict liability offences and that a breach of those obligations may result in a civil penalty only. Subsection 24(3) specifies vessels to which this section applies.

56. Section 25 specifies persons who the owner of a regulated Australian vessel must provide access to a copy of any work agreement kept on board the vessel. This provision involves the use and disclosure of personal information held by the vessel owner — an obligation is imposed on the vessel owner under section 25 to make available on the vessel a record of the seafarer's work agreement for access by the seafarer, the seafarer's representative, the master of the vessel, AMSA or a port State control officer of a country being visited by a regulated Australian vessel. The provision is reasonable as it is aimed at transparency and enforcement of a seafarer's rights and entitlements for working on board a vessel.

57. Section 26 provides that the owner of a regulated Australian vessel must ensure that each seafarer is given a record of service in the approved format.

58. Section 27 requires the owner of a regulated Australian vessel to comply with specified arrangements relating to: the timing of payment of wages to the seafarer; the provision of records of payment; facilitating transfer of a portion of the earnings of the seafarer to their family; determining the appropriate exchange rate for currency

exchange for any transfers; and a prohibition against keeping any additional set of records that contains false or misleading information in relation to the payment of wages. The section provides strict liability offences and that a breach of those requirements may result in a criminal or civil penalty. Subsections 27(8) and 27(9) ensure that the owner of a regulated Australian vessel must continue to comply with section 27 if the seafarer is held captive on or off a vessel as a result of an act of piracy or armed robbery against a ship and irrespective of whether or not the seafarer's work agreement has expired or terminated or been suspended during the period of captivity.

59. Subsections 28(1) and 28(2) require that the owner of a regulated Australian vessel must ensure that a seafarer has minimum specified hours of rest and that records of seafarer's daily hours of rest are maintained in accordance with *Marine Order 28 (Operations standards and procedures) 2015*. Section 28(3) specifies that the master must give each seafarer a copy of the record relating to him or her that is endorsed by the master and the seafarer. The section provides a strict liability offence and that a breach of these obligations may result in a criminal or civil penalty.

60. Section 29 specifies requirements for a notice of shipboard working arrangements that the owner of a regulated Australian vessel must post in a place on board the vessel that is easily accessible to seafarers.

61. Section 30 specifies that the master of a regulated Australian vessel when the vessel is in port must grant leave to go to shore to each seafarer on board the vessel who requests such leave.

62. Section 31 sets out the circumstances in which the owner of a regulated Australian vessel must provide repatriation to a seafarer at no cost to the seafarer.

63. Section 32 sets out the minimum costs that the owner of a vessel must meet when repatriating a seafarer.

64. Section 33 requires that the owner of a regulated Australian vessel must make transportation arrangements for repatriation by appropriate and expeditious means.

65. Section 34 sets out the timeframe within which a seafarer may claim repatriation benefits.

66. Section 35 sets out the circumstances in which AMSA will arrange for repatriation and the circumstances in which AMSA may recover its costs of repatriating a seafarer.

Division 5 Accommodation – vessel plans

67. Section 36 specifies vessel plans that must be approved for a vessel that is to be registered under the Shipping Registration Act 1981, prior to the commencement of construction of that vessel.

68. Section 37 sets out requirements for plan approval for which the owner of a regulated Australian vessel must obtain prior to substantial alteration or reconstruction of seafarer accommodation spaces.

Division 6 Accommodation — design and construction

69. Section 38 sets out requirements for minimum headroom for seafarer accommodation on a regulated Australian vessel.

70. Section 39 sets out requirements for the location of sleeping rooms on a regulated Australian vessel.

71. Section 40 sets out requirements for sleeping rooms for which the owner of a regulated Australian vessel must ensure compliance with.

72. Section 41 sets out requirements for sleeping berths for which the owner of a regulated Australian vessel must ensure compliance with.
73. Section 42 specifies areas for which the owner of a regulated Australian vessel must ensure are insulated to prevent condensation or overheating, and specifies spaces that must be insulated to prevent heat from those spaces from affecting adjoining accommodation or passageways.
74. Section 43 sets out requirements for steam pipes and exhaust pipes to or from machinery for which the owner of a regulated Australian vessel must ensure compliance with.
75. Section 44 specifies requirements for the storage of vessel batteries for which the owner of a regulated Australian vessel must ensure compliance with.
76. Section 45 specifies requirements for bulkhead and deckhead surfaces for which the owner of a regulated Australian vessel must ensure compliance with.
77. Section 46 specifies requirements for decks and flooring for which the owner of a regulated Australian vessel must ensure compliance with.
78. Section 47 specifies requirements for air conditioning for which the owner of a regulated Australian vessel must ensure compliance with.
79. Section 48 specifies requirements for heating for which the owner of a regulated Australian vessel must ensure compliance with.
80. Section 49 specifies requirements for lighting of sleeping rooms, mess rooms accommodation spaces and seafarer's sleeping berths for which the owner of a regulated Australian vessel must ensure compliance with.
81. Section 50 specifies requirements for mess rooms for which the owner of a regulated Australian vessel must ensure compliance with.
82. Section 51 clarifies that the requirements mentioned in this division do not apply to a regulated Australian vessel that is <200 GT if the vessel complies with section C1 of the National Standards for Commercial Vessels and is proceeding on a voyage other than an overseas voyage.

Division 7 Accommodation – general requirements

83. Section 52 specifies requirements for noise levels for which the owner of a regulated Australian vessel must ensure compliance with if the vessel is constructed after 20 August 2013 and ≥ 500 GT.
84. Section 53 specifies requirements for inspection of accommodation spaces that the master of a regulated Australian vessel must ensure compliance with.

Division 8 Accommodation – sanitary and laundry facilities

85. Section 54 specifies that the owner of a regulated Australian vessel must ensure seafarers have convenient access on the vessel to sanitary facilities that meet the requirements mentioned in Schedule 8 and provides that an application may be made for an exemption for a vessel of <3000 GT.
86. Section 55 specifies the requirements for laundry facilities for which the owner of a regulated Australian vessel must ensure are available to seafarers.

Division 9 Hospital facilities

87. Section 56 specifies requirements for hospital accommodation that the owner of a regulated Australian vessel carrying at least 15 seafarers engaged in a voyage of at least 72 hours must ensure is provided.

Division 10 Recreational facilities

88. Section 57 specifies requirements for recreational facilities, amenities and services that the owner of a regulated Australian vessel must ensure compliance with.

89. Section 58 specifies that the owner of a regulated Australian vessel must ensure that the vessel has a separate office or a common vessel's office for use by deck and engine seafarers, and that a vessel of <3000 GT may apply for an exemption from that requirement.

Division 11 Provisions

90. Section 59 specifies requirements for the quality of food and water that the owner of a regulated Australian vessel must ensure is carried on board the vessel.

91. Section 60 specifies requirements for catering on board a vessel that the owner of a regulated Australian vessel must ensure compliance with.

92. Section 61 specifies requirements for persons who work on a vessel as a cook and for the training of persons processing food in the galley that the owner of a regulated Australian vessel must ensure compliance with.

93. Section 62 specifies that the owner of a regulated Australian vessel must ensure that the vessel has a galley for the preparation of food which is constructed in accordance with the requirements at schedule 10, is equipped with specified equipment which is constructed of material which can easily be kept clean, and that the master must ensure that the gallery and its equipment are kept in a clean and orderly manner at all times.

94. Section 63 sets out the requirements for the storage of food on board a regulated Australian vessel to minimise the risk of the growth of pathogenic micro-organisms present in the food and to prevent the formation of toxins in the food including: obligations on the owner of an regulated Australian vessel to ensure that seafarers have dry provision stores that meet the requirements mentioned in Schedule 11, and provide cold storage and refrigerators that are adequate for the storage of provisions; and obligations on the master of a regulated Australian vessel must ensure that food is stored appropriately and kept below specified temperatures to protect against the likelihood of contamination or deterioration of the quality and suitability of food. A strict liability offence is provided for a breach of the obligation by the master which may result in a criminal or civil penalty.

95. Section 64 specifies the weekly inspections that the master of a regulated Australian vessel must ensure are carried out and documented for food, drinking water, storage areas and galleys.

Division 12 Health

96. Section 65 specifies measures that the owner of a regulated Australian vessel must put in place for the health protection, medical care and essential dental care for seafarers on board the vessel.

97. Section 66 specifies the circumstances in which the owner of a regulated Australian vessel must ensure that a seafarer in need of immediate medical care is promptly transported to shore and taken without delay to medical facilities onshore.

98. Section 67 specifies the circumstances in which the owner of a regulated Australian vessel must provide medical services to a seafarer at no charge.

99. Section 68 specifies requirements for exchange of medical information between a vessel and shore concerning an ill or injured seafarer and imposes obligations on the owner of a vessel with respect to confidentiality and use of information. The design of

approved forms take into account the *Privacy Act 1988* and AMSA's policies for the handling of personal information.

100. Section 69 specifies requirements for subsections 66(1) and 67(1) of the Navigation Act concerning medical supplies and information required to be carried on board the vessel and imposes obligations on the owner and master of a regulated Australian vessel with respect to the carriage of that equipment. AMSA may, on application, approve the use of an equivalent for some requirements in accordance with section 9. The section provides strict liability offences for the owner and master and that a breach of obligations may result in a criminal or civil penalty.

101. Section 70 specifies the distances of travel for paragraphs 72(1)(b) and (2)(b) and 73(1)(b) and (2)(b) of the Navigation Act for which the owner and master of a vessel must ensure that a medically qualified practitioner is carried on board the vessel and prescribes the minimum level of medical training for that medical practitioner.

102. Section 71 specifies requirements for a register of controlled drugs that the owner of a regulated Australian vessel must ensure is kept on board and requires that the master or owner must ensure that any loss or theft of any controlled drug is recorded and reported to law enforcement agencies. The section provides strict liability offences and that a breach of those obligations may result in a criminal or civil penalty. The use of personal information in the register of control drugs is considered necessary for monitoring and risk management purposes due to the nature of these drugs being a hazard to human health if used inappropriately. The register is retained on board the vessel with access generally controlled by the master of the vessel or another person specified in the vessel's safety management system.

Division 13 Welfare of seafarers

103. Section 72 imposes an obligation on the master of a regulated Australian vessel to ensure that the forwarding of seafarer's mail as reliable and expeditious as possible.

104. Section 73 specifies requirements for the owner of a regulated Australian vessel to ensure that a seafarer may have visitation on board the vessel.

105. Section 74 specifies requirements for the master of a regulated Australian when the vessel is in a port to ensure that a seafarer has access to shore based welfare facilities and access to visits from shore based welfare providers.

Division 14 Safety Protection for seafarers

106. Section 75 specifies requirements that the owner of a regulated Australian vessel must put in place for the provision of personal protective equipment.

Division Shipowners liability

107. Section 76 specifies requirements for the owner of a vessel to demonstrate to AMSA's satisfaction that the owner has financial security to meet liability arising from death or long-term disability of a seafarer because of occupational injury, illness or hazard or abandonment of a seafarer. The section provides strict liability offences and that a that a breach of those obligations may result in a criminal or civil penalty. The use of personal information mentioned in paragraph 76(3)(f) is necessary so that seafarers can make contact with the vessel's security provider to pursue their entitlements in a timely manner. The person specified as contact on the security document is likely to be aware of their role as contact for the matters mentioned as a representative of the financial security provider.

108. Section 77 sets out the liability of the owner of a regulated Australian vessel for a seafarer's wages if a seafarer is incapacitated for work because of sickness or injury. The section provides strict liability offences and that a breach of those obligations may result in a criminal or civil penalty.

109. Section 78 sets out circumstances in which the owner of a regulated Australian vessel is not liable for the injury, sickness, death or infirmity of a seafarer.

110. Section 79 specifies measures that the owner of a regulated Australian vessel must take to safeguard property of a seafarer left on board by a sick, injured or deceased seafarer. The section provides a strict liability offence and that a breach of the obligation may result in a criminal or civil penalty.

Division 16 Maritime labour certificates and declarations of maritime labour compliance

111. Section 80 specifies kinds of maritime labour certificates for subsection 43(1) of the Navigation Act, and that a regulated Australian vessel must have a maritime labour certificate for paragraphs 47(1)(a) and 48(1)(a) of the Navigation Act if the vessel is ≥ 500 GT, and proceeding on an overseas voyage or for use on an overseas voyage. The owner of a vessel that is not a vessel required to have a maritime labour certificate may apply to have a maritime labour certificate.

112. Section 81 specifies the circumstances in which AMSA may issue a declaration of maritime labour compliance.

113. Section 82 specifies requirements for a maritime labour certificate or interim maritime labour certificate which the master of a regulated Australian vessel of ≥ 500 GT must ensure are carried on board the vessel. The section provides a strict liability offence and that a breach of the obligation may result in a criminal or civil penalty.

Division 17 Maritime labour certificates

114. Section 83 provides that for subsection 43(2) of the Navigation Act, an application for a maritime labour certificate (MLC) must be made to an issuing body in writing

115. Section 84 specifies the criteria for the issue of a maritime labour convention for the purposes of paragraph 44(1)(b) of the Navigation Act.

116. Section 85 specifies that a maritime labour certificate (MLC) is in force for a period determined by the issuing body to a maximum of 5 years, and outlines the circumstances in which the issuing body may vary the time a certificate ceases to be in force to further maximum period of 5 months.

117. Section 86 specifies timeframes and requirements for record keeping for which the owner of regulated Australian vessel for which a maritime labour certificate is in force must ensure compliance with. The section provides a strict liability offence and that a breach of the obligations may result in a criminal or civil penalty.

118. Section 87 specifies the criteria that must be met for the renewal of a maritime labour certificate for the purposes of paragraph 44(1)(b) of the Navigation Act and specifies the time of commencement of the new certificate.

119. Section 88 specifies the criteria for revocation of a maritime labour certificate.

Division 18 Interim maritime labour certificate (MLC)

120. Section 89 specifies requirements for an application for an interim maritime labour certificate (MLC) for subsection 43(1) of the Navigation Act.

121. Section 90 specifies the criteria for the issue of an interim maritime labour certificate

122. Section 91 provides that an interim maritime labour certificate expires 6 months, or a shorter period determined by the issuing body, after it is issued.

Division 19 Onboard complaints

123. Section 92 sets out the requirements for an onboard complaint procedure that the owner of a regulated Australian vessel must ensure that the vessel has for a seafarer to make a complaint alleging a breach of the Maritime Labour Convention. The section provides a strict liability offence and that a breach of the obligation may result in a criminal or civil penalty.

124. Section 93 specifies that the owner of a regulated Australian vessel must ensure that a copy of the onboard complaint procedure is available to seafarers on board the vessel. The section provides a strict liability offence for failure to do so and that a breach of the obligation will result in a civil penalty unit.

125. Section 94 sets out requirements for a master to follow if a complaint is not resolved on board the vessel. The section provides a strict liability offence and that a breach of the obligation may result in a criminal or civil penalty.

126. Section 95 specifies requirements for the recording of complaints by the master of a regulated Australian vessel for a complaint that is made on board by a seafarer. The section provides a strict liability offence and that a breach of the obligation may result in a criminal or civil penalty.

127. Section 96 provides that a person must not take adverse action against a seafarer in response to the seafarer making or proposing to make a complaint. A breach of this obligation may result in a civil penalty.

Division 20 Onshore Complaints

128. Section 97 provides that a seafarer on a vessel that is in an Australian port, or is on a voyage to an Australian port, or other person with an interest in a vessel's living and working conditions of a vessel that is in an Australian port, or is on a voyage to an Australian port, may report a complaint alleging a breach of the Maritime Labour Convention to AMSA and specifies the actions that AMSA must take on receipt of such a complaint.

Division 21 Official logbook

129. Section 98 specifies requirements for the matters mentioned in schedule 12 that must be entered in the official log book by the master of a regulated Australian vessel for events that occur while the person is the master of the vessel.

Schedules

130. Schedule 1 specifies the conditions of registration for a seafarer and placement service.

131. Schedule 2 specifies the working conditions for seafarers under 18 years for subsection 20(5).

132. Schedule 3 specifies the information that must be contained in a seafarer's work agreement for paragraph 21(1)(a). The collection of personal information in the work agreement is reasonable to identify the parties to the agreement and the key particulars of the employment relationship which provides clarity and understanding of a seafarer's employment rights and entitlements. A copy of the agreement will be retained by the owner and seafarer.

133. Schedule 4 specifies the requirements for sleeping rooms for paragraph 40(1)(b).
134. Schedule 5 specifies the requirements for sleeping berths for subsection 41(1).
135. Schedule 6 specifies the requirement for heating systems required for seafarer accommodation areas on the vessel in accordance with section 48.
136. Schedule 7 specifies the requirements for the mess room that must be available to all seafarers for the purposes of section 50.
137. Schedule 8 specifies requirements for sanitary and laundry facilities that must be available to seafarers for section 54.
138. Schedule 9 specifies the requirements for hospital accommodation that must be provided on the vessel for section 56.
139. Schedule 10 specifies the recreational facilities, amenities and services that must be provided on the vessel for section 57.
140. Schedule 11 specifies the requirements for dry provisions stores that must be provided for subsection 63(2).
141. Schedule 12 specifies the matters which the master of a regulated Australian vessel must ensure are recorded by an entry in the official logbook, for events that occur while the person is the master of the vessel for section 98. The personal information mentioned in clauses 5 and 6 is considered either a collection or a use of personal information that is necessary for safeguarding security and safety of life at sea by documenting information potentially significant because of its impact on the navigation or operation of the vessel. The official logbook must be retained on the vessel with access by the master and crew.

Statement of compatibility with human rights

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

Overview of the legislative instrument

143. This Marine Order is made under the Navigation Act 2012 (the Navigation Act). It gives effect to the International Labour Organization's (ILO) Maritime Labour Convention 2006, and the Code on noise levels on board ships adopted by the International Maritime Organization (IMO) Resolution MSC 337(91). As such, the Marine Order provides standards for: minimum requirements for seafarers working on vessels, conditions of employment, accommodation and food and catering, health protection, medical care, welfare and social security protection and protection against noise on board.

Human rights implications

144. The Maritime Labour Convention recognises that seafarers need protection taking into account their unique working and living conditions in an isolated environment at sea. The Convention provides for internationally recognised measures intended to create world-wide uniformity of rules for the health and well-being of seafarers. Seafarers are considered vulnerable as they are remote from shore assistance and face difficulties not experienced by other employees in striving for appropriate working conditions. The subject matter of this Marine Order, necessary to give effect to the Convention, is consistent with the objectives of the applicable human rights and freedoms in particular:

- the right to decent work and working conditions that are just and favourable, the right to an adequate standard of living, and the right to health (see Articles 6,

7, 11 and 12 of the International Covenant on Economic, Social and Cultural Rights);

- freedom of movement and freedom of expression (see Articles 12 and 19 of the International Covenant on Civil and Political Rights); and
- the right to freedom of association with others (see Article 22 of the International Covenant on Civil and Political Rights); and
- minimum age for employment (see Article 32 of the Convention on the Rights of the Child).

145. The subject matter of this Marine Order, promoting the health and wellbeing of seafarers, includes:

- recruitment and placement;
- content of work agreements and payment of wages;
- hours of work and rest;
- appropriate provisioning of vessels;
- minimum working age of 16 years and requirements for working conditions for seafarers under the age of 18 years;
- medical care and treatment including hospital facilities on vessels;
- minimum accommodation standards including sanitary and laundry facilities;
- repatriation obligations for vessel owners;
- seafarer complaints and their investigation; and
- access to welfare agencies.

146. The Marine Order includes a number of offences to which strict liability applies. Civil penalties have also been created. Strict liability offences 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.

147. Strict liability is imposed to ensure the protection of the health and wellbeing of seafarers. The penalties are relatively low (maximum of 50 penalty units for an individual) and are within the limitation imposed by paragraph 341(1)(a) of the Navigation Act.

148. The civil penalty provisions are directed at owners of vessels 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 and the relatively low level of penalty, the civil penalties should not be considered to be criminal matters for human rights law.

149. At the time of making of this Marine Order, a Commonwealth penalty unit was \$330.

150. It is considered any limitation on human rights as a result of the imposition of strict liability and the creation of civil penalties is reasonable, necessary and proportionate to ensure the protection of seafarers.

Statement in relation to privacy

151. The subject matter of this Marine Order also interacts with privacy principles in terms of privacy law and policy operating in Australia — namely the collection, use and disclosure of personal information. In particular, Schedule 3 and sections 21

(Work agreements) and 25 (Availability of information) set out the minimum content for seafarers' work agreements including identity, contact details and wage information for a seafarer. The other provisions of this Marine Order that interact with privacy principles are sections 71 (Control of certain drugs), 76 (Financial security), 98 (Record keeping — official logbook) and Schedule 12 (Official logbook — matters that must be entered).

152. Australia's obligation to adopt laws specifying the content of all seafarers' employment agreements is derived from Standard A2.1 of the MLC. Schedule 3 of Marine Order 11 includes the MLC mandatory requirements in terms of seafarer agreement content. AMSA's power to inspect a seafarer's agreement is derived from Standard A5.1.4.7 of the MLC. Having inspected the content of a seafarer's agreement based on flag State control obligations (for a regulated Australian vessel), any deficiency identified by AMSA may result in a detention to prevent the vessel from leaving port until remedied. A vessel owner must also be able to produce a record of the seafarer's work agreement if requested in a foreign port for verification that MLC requirements are being complied with in relation to it.

153. An owner of a regulated Australian vessel is likely to be subject to the *Privacy Act 1988* (Privacy Act), and the Australian Privacy Principles (APPs), where the owner of that vessel is a private sector organisation with an annual turnover of \$3 million or more. While the handling of information constituting an employee record is exempt under the Privacy Act, in particular circumstances common law principles of confidentiality apply to employment information. In addition, the *Fair Work Act 2009* (Fair Work Act) imposes protections about the sharing of certain employment information held by employers.

154. AMSA as the regulator can inspect seafarer work agreements but is subject to the Privacy Act. AMSA handles personal information in accordance with the Privacy Act, which is reflected in AMSA's Privacy Policy, and has in place arrangements to protect the personal information it holds.

155. In the event that an overseas State authority decides to inspect a seafarer's agreement on a regulated Australian vessel, the officer of that authority must be authorised, trained, carry identification/identity card and is limited in their power to the extent of verifying conformity with the MLC and that the seafarer's rights are not violated — see *Guidelines for Port State Control Officers carrying out inspections under MLC 2006* published by the IMO.

156. While certain provisions of the Marine Order directly interact with the concepts of collection, use or disclosure, these provisions are designed to give effect to Australia's obligations under the MLC by avoiding unfair terms of employment for seafarers and ensuring decent working and living conditions on board the vessel. They are beneficial terms which are not materially different from those under the Fair Work Act. To the extent that there is limited practical intrusion on an individual's privacy, it is considered necessary and appropriate.

Making the instrument

157. 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*.