

Explanatory Statement

Marine Order 28 (Operations standards and procedures) 2025 (Order 2025/2)

Authority

1. Section 58 of the *Navigation Act 2012* (Navigation Act) provides that the regulations may provide for hours of work, and hours of rest, of seafarers on regulated Australian vessels.
2. Paragraph 339(2)(m) of the Navigation Act provides that the regulations may provide for records relating to compliance with this Act.
3. Paragraph 340(1)(a) of the Navigation Act provides that the regulations may give effect to SOLAS.
4. Paragraph 340(1)(h) of the Navigation Act provides that the regulations may give effect to the STCW Convention.
5. 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.
6. 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.
7. Subsection 341(1) of the Navigation Act provides that the regulations may provide for the imposition of penalties for a contravention of a provision of the regulations.
8. 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 regulation.
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 was made under subsection 342(1) and is a legislative instrument for the *Legislation Act 2003*.

Purpose

11. This Marine Order repeals and replaces *Marine Order 28 (Operations standards and procedures) 2015*.
12. This Marine Order provides for the safe navigation and operation of vessels by giving effect to the STCW Convention and the STCW Code.
13. 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

14. This Marine Order sets out requirements for seafarers and vessel owners in relation to watchkeeping standards; minimum hours of rest; drills and emergency operations.
15. The replacement Marine Order introduces a new requirement to reflect amendments to the STCW Convention and STCW Code that ensures that the owner of a vessel imposes alcohol limits on seafarers.

Consultation

16. A copy of the draft of this Marine Order was placed on AMSA's website on 21 October 2024 for public consultation with comments to be provided by 2 December 2024. Around 110 stakeholders were contacted by email and invited to comment. These included vessel operators, seafarer representative organisations, relevant government agencies and a group known as the Shipping Consultative Forum. The review was also advised on social media and as an AMSA news article.

17. Three submissions were received concerning alcohol limits, hours of rest and the manner used when referencing sections of the STCW Convention. The submissions were considered during the preparation of the final Marine Order.

18. The Office of Impact Analysis 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 numbers are 23-06166, 24-07934 and 24-07935.

Documents incorporated by reference

19. The following documents or parts of them are incorporated by reference in the Marine Order:

- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW Convention)
- Standards of Training Certification and Watchkeeping Code (STCW Code)
- International Convention for the Safety of Life at Sea (SOLAS)
- *Marine Order 1 (Administration) 2013*
- *Marine Order 21 (Safety and emergency arrangements) 2016*
- *Marine Order 70 (Seafarer qualifications) 2014.*

20. The STCW Convention, the STCW Code and SOLAS are incorporated as amended and in force from time to time. The Conventions and Code 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 purchase of the STCW Convention and its code and availability at libraries.

21. 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, 21 and 70 are adopted as in force from time to time because they are adopted by reference to title in this Marine Order. Marine Orders can be accessed through the marine orders link on the AMSA website at www.amsa.gov.au and are available for free download from the Federal Register of Legislation through that link.

Commencement

22. This Marine Order commenced on 1 September 2025.

Contents of this instrument

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

24. Section 2 states the purpose of the Marine Order.

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

26. Section 4 sets out definitions of terms used in the Marine Order.
27. Section 5 sets out the application of the Marine Order.
28. Section 6 sets out an exemption power that maybe exercised by AMSA.
29. Section 7 sets out the measures that an owner of a vessel must implement in relation to familiarisation of a seafarer's duties and the provision of appropriate instruction and information to that seafarer.
30. Section 8 contains 3 strict liability offences that are imposed on the owner of the vessel. Subsection (1) imposes an offence on the owner of a vessel for failure to ensure that each seafarer assigned to the vessel holds a certificate; the vessel has a safe manning document; information is available about a seafarer's experience, training, medical fitness and competency; each seafarer has received familiarisation in relation to the vessel and their duties, and the working language on the vessel has been determined. Subsection (2) imposes an offence on the owner for failure to provide written instructions to the master. Subsection (3) imposes an offence on the owner of a regulated Australian vessel for failure to provide an introductory program and training in relation to newly employed seafarers. Civil penalties are also imposed. At the time of making this instrument, a penalty unit was \$330. It is reasonable and appropriate to impose strict liability as the requirements are giving effect to mandatory international standards for the safe operation of vessels and persons on board.
31. Section 9 sets out that the master of a regulated Australian vessel must ensure familiarisation of newly employed seafarers in relation to the vessel and its equipment.
32. Section 10 imposes responsibility on a newly assigned seafarer to become familiar with shipboard equipment, operating procedures and other arrangements needed for proper performance of their duties.
33. Section 11 imposes a strict liability offence on the owner of a vessel for failure to ensure watchkeeping schedules are displayed. A civil penalty is also imposed. At the time of making this instrument, a penalty unit was \$330. It is reasonable and appropriate to impose strict liability as the requirement is giving effect to mandatory international standards for the safe operation of vessels and persons on board.
34. Section 12 imposes a strict liability offence on the owner of a vessel for failure to ensure minimum hours of rest. A civil penalty is also imposed. At the time of making this instrument, a penalty unit was \$330. It is reasonable and appropriate to impose strict liability as the requirement is giving effect to mandatory international standards for the safe operation of vessels and persons on board.
35. Section 13 sets out matters in relation to compensatory rest periods and fatigue resulting from interruption of hours of rest.
36. Section 14 sets out requirements for the recording of hours of rest in relation to regulated Australian vessels.
37. Section 15 sets out requirements for the recording of hours of rest in relation to foreign vessels.
38. Section 16 sets out responsibilities in relation to watchkeeping duties.
39. Section 17 imposes a strict liability offence on the owner of a regulated Australian vessel if a seafarer of that vessel has an alcohol limit that exceeds the amount specified in the provision. A civil penalty is also imposed. At the time of making this instrument, a penalty unit was \$330. Alcohol testing for seafarers is known to be a commonplace procedure implemented by ship owners or operators

due to the consequences of a person performing duties when impaired. This provision imposes a requirement set out in the STCW Code which is an international standard for alcohol use in the maritime environment. To the extent that the consumption of alcohol by the crew is permitted on board a vessel, the requirement is imposed on the owner to ensure responsible alcohol consumption is managed. The requirement is justifiable due to the impact of an incident on the operation of the vessel, crew, cargo or passengers, and the environment.

Statement of compatibility with human rights

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

Overview of the legislative instrument

This Marine Order sets out requirements for seafarers and vessel owners in relation to watchkeeping standards; minimum hours of rest; drills and emergency operations. The replacement Marine Order introduces a new requirement to reflect amendments to the STCW Convention and STCW Code that ensures that the owner of a vessel imposes alcohol limits on seafarers.

Human rights implications

41. Sections 8, 11, 12 and 17 of the Marine Order create offences to which strict liability applies. They also create civil penalties. 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.

42. Strict liability is imposed to ensure safety for the employees working on board vessels. Vessels are operated at sea in remote and isolated locations. The offences ensure compliance with requirements in the STCW Convention and STCW Code to ensure evidence of the assignment of competent and adequate crew is available; proper communication of watchkeeping arrangements are in place to ensure that crew understand their watchkeeping assignment; minimum hours of rest are provided to avoid fatigue, and seafarers are not impaired by alcohol to ensure that they can safely operate machinery and systems and make decisions competently without jeopardising the operation of the vessel and safety of those on board. The strict liability offences give effect to the STCW Convention and STCW Code which are international standards aimed at setting out basic requirements for shipowners and seafarers in terms of skills, training and the measures needed to avoid fatigue and ensure adequate competencies are applied to the challenges arising from a complex operating environment.

43. The penalties are relatively low (50 penalty units) and are within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. The civil penalty provisions are directed at owners of vessels rather than the community at large. 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 imposition of strict liability and the creation of civil penalties is reasonable, necessary and proportionate.

Conclusion

45. 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 reasonable, necessary and proportionate for ensuring maritime safety.

Statement in relation to privacy

46. The subject matter of this Marine Order also interacts with privacy principles in terms of privacy law and policy operating in Australia — namely the storage of personal information. In particular, section 8 (Owner responsibilities for seafarer assignment) sets out requirements for an owner to maintain and have readily accessible documentation or data in relation to each seafarer employed on the vessel.

47. Australia has an obligation to adopt laws to give effect to the STCW Convention and STCW Code that mandate that seafarers hold appropriate qualifications and competencies, vessels are manned in compliance with minimum safe manning requirements, seafarers are provided with sufficient rest, and specified training is undertaken. Documentation requirements ensure appropriate crew assignment and are a means of demonstrating that companies have met their responsibilities.

48. 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.

49. AMSA as the regulator can inspect documentation, including records of hours of rest that must be made available under the Marine Order, but it 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.

50. In the event that an overseas State authority decides to inspect documentation or data in relation to a seafarer 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 STCW Convention and STCW Code.

51. While certain provisions of the Marine Order directly interact with the concept of storing personal information, the provisions are designed to give effect to Australia's obligations under the STCW Convention and STCW Code. There is limited practical intrusion on an individual's privacy, and it is considered necessary and appropriate.

Making the instrument

52. 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*.