



**Australian Government**  
**Australian Maritime Safety Authority**

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AMSA MO 2013/17

**Marine Order 1 (Administration) 2013**

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I, Mick Kinley, Acting Chief Executive Officer of the Australian Maritime Safety Authority, make this Order under subsection 342(1) of the *Navigation Act 2012*, section 24 of the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006* and subsection 34(1) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

9 December 2013

**Mick Kinley**  
Acting Chief Executive Officer

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## Division 1 Preliminary

### 1 Name of Order

This Order is *Marine Order 1 (Administration) 2013*.

### 2 Commencement

This Order commences on the day after it is registered.

### 3 Purpose

This Order:

- (a) facilitates the consistency and shortening of Marine Orders by setting out:
  - (i) rules of interpretation that generally apply to all Marine Orders; and
  - (ii) generic provisions that a Marine Order may adopt; and
- (b) prescribes recognised organisations; and
- (c) provides for the form of the official log book that regulated Australian vessels are required to keep; and
- (d) prescribes matters for the publication of information about vessels; and
- (e) prescribes matters for the Navigation Act arrangements for vessels to opt-in to coverage under the Navigation Act; and
- (f) provides for the enforcement of civil penalty provisions in Marine Orders.

### 4 Power

- (1) Paragraph 25(2)(d) of the Navigation Act provides for regulations to prescribe matters of which AMSA must be satisfied before, by written instrument, making an opt-in declaration for a vessel.
- (2) Subsection 26(2) of the Navigation Act provides that if AMSA is satisfied of matters prescribed by the regulations AMSA is to revoke an opt-in declaration for a vessel if requested by the owner, or any of the owners.
- (3) Subsection 305(1) of the Navigation Act provides for regulations to provide for a person who is alleged to have contravened a civil penalty provision to pay a penalty as an alternative to civil proceedings.
- (4) Section 309 of the Navigation Act provides for regulations to be made for the keeping of an official log book.
- (5) Section 336 of the Navigation Act provides for regulations to be made for the publication by AMSA of information obtained about a vessel.
- (6) 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.
- (7) Paragraph 341(3)(b) of the Navigation Act provides for regulations to be made providing for review of decisions under the regulations.
- (8) Subsection 342(1) of the Navigation Act provides that AMSA may, by legislative instrument, make a Marine Order with respect to any matter for which provision must or may be made by the regulations.
- (9) Section 24 of the AFS Act provides that AMSA may, by legislative instrument, make orders on any matter on which regulations may be made.

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- (10) Section 25 of the AFS 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.
- (11) Subsection 33(1) of the Pollution Prevention 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.
- (12) Subsection 34(1) of the Pollution Prevention Act provides that AMSA may, by legislative instrument, make orders on matters for which regulations may be made.

## 5 Definitions for this Order

In this Order:

**IACS** means the International Association of Classification Societies Ltd.

**Marine Order** means an order made under subsection 342(1) of the Navigation Act, section 24 of the AFS Act or subsection 34(1) of the Pollution Prevention Act, including an order:

- (a) continued in effect and modified by *Marine Order 4 (Transitional modifications) 2013*; or
- (b) modified by *Marine Order 2 (Australian International Shipping Register) 2013*.

**Safety Management Certificate** means a certificate issued in accordance with Regulation 4.3 of Chapter IX of SOLAS.

## Division 2 Interpretation of Marine Orders

### 6 Definitions

In a Marine Order, unless otherwise provided:

**AFS Act** means the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006*.

**Area Manager** means the person occupying the AMSA position of:

- (a) Manager, Ship Safety Division — North; or
- (b) Manager, Ship Safety Division — South; or
- (c) Manager, Ship Safety Division — East; or
- (d) Manager, Ship Safety Division — West.

**Australian fishing vessel** means a fishing vessel that is registered or entitled to be registered in Australia.

**Australian General Shipping Register** has the same meaning as in subsection 3(1) of the *Shipping Registration Act 1981*.

**Australian International Shipping Register** has the same meaning as in subsection 3(1) of the *Shipping Registration Act 1981*.

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**cargo vessel** has the meaning given to **cargo ship** in Regulation 2 of Chapter 1 of SOLAS.

**decision maker**, for a decision, means:

- (a) the person holding or performing the duties of a position in AMSA to whom AMSA has delegated the power to make the decision; or
- (b) the person holding or performing the duties of an AMSA position mentioned in a Marine Order as the decision maker for an application under the Order made in accordance with the application process set out in this Order.

**equivalent**, for a Marine Order in which **equivalent** is not defined, means:

- (a) a fitting, material, appliance or apparatus that may be fitted or carried in a vessel as an alternative to a fitting, material, appliance or apparatus that is required to be fitted or carried in a vessel by a Marine Order, a convention or a code adopted or amended by an IMO resolution; or
- (b) an arrangement that could be made or a procedure that could be followed, in or for a vessel, as an alternative to a requirement of a Marine Order, a convention or a code adopted or amended by an IMO resolution.

**fishing operations** means:

- (a) the taking, catching or capturing of fish for trading or manufacturing purposes; and
- (b) the processing or carrying of the fish that are taken, caught or captured.

**fishing vessel** means a vessel that:

- (a) is used wholly or principally for fishing operations; and
- (b) is not:
  - (i) a customs vessel; or
  - (ii) a government vessel; or
  - (iii) a recreational vessel; or
  - (iv) a domestic commercial vessel.

*Note* The vessels mentioned in paragraph (b) are defined in the Navigation Act — see section 14(1) of the Act.

**General Manager, Emergency Response Division** means the person occupying the position of General Manager, Emergency Response Division, AMSA.

**General Manager, Marine Environment Division** means the person occupying the position of General Manager, Marine Environment Division, AMSA.

**General Manager, Ship Safety Division** means the person occupying the position of General Manager, Ship Safety Division, AMSA.

**IMO** means the International Maritime Organization.

**length**, for a vessel, has the same meaning as in the *International Convention on Load Lines, 1966*, as amended by the *Protocol of 1988 relating to the International Convention on Load Lines, 1966*.

**Manager, Marine Environment Standards** means the person occupying the position of Manager, Marine Environment Standards, AMSA.

**Manager, Ship Inspection and Registration** means the person occupying the position of Manager, Ship Inspection and Registration, AMSA.

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**Manager, Ship Operations and Qualifications** means the person occupying the position of Manager, Ship Operations and Qualifications, AMSA.

**MARPOL** — see subsection 3(1) of the Pollution Prevention Act, meaning of *the Convention*.

**national law** — see section 14 of the Navigation Act, meaning of *Marine Safety (Domestic Commercial Vessel) National Law*.

**National Standard for Commercial Vessels** (or *NSCV*) — see section 6 of the national law, meaning of *National Standard for Commercial Vessels*.

**natural resources** means the mineral and other non-living resources of the seabed and its subsoil.

**Navigation Act** means the *Navigation Act 2012*.

**offshore industry mobile unit** means:

- (a) a vessel or structure that is used or intended to be used wholly or primarily in, or in any operations or activities associated with, or incidental to, exploring or exploiting natural resources by drilling the seabed or its subsoil or by obtaining substantial quantities of material from the seabed or its subsoil, with equipment that is on or forms part of the vessel or structure; or
- (b) a barge or similar vessel that is used or intended to be used wholly or primarily in connection with the construction, maintenance or repair of offshore industry fixed structures.

**offshore support vessel** means a vessel, other than an offshore industry mobile unit, that is used or intended to be used in any operations or activities associated with, or incidental to, exploring or exploiting natural resources.

**passenger vessel** has the same meaning as *passenger ship* in Regulation 2 of Chapter I of SOLAS.

**Pollution Prevention Act** means the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

**SOLAS** has the same meaning as *Safety Convention* in section 14 of the Navigation Act.

**STCW Code** means the Seafarers' Training, Certification and Watchkeeping (STCW) Code as adopted by resolution of the 2010 Conference of Parties to the STCW Convention.

*Note* The resolution mentioned in the definition of **STCW Code** forms part of a package of amendments (the Manila amendments) made by the 2010 Conference of the Parties to the STCW Convention (STCW/CONF.2/34).

**structure**, for paragraph (a) of the definition of **offshore industry mobile unit**, means a structure that is:

- (a) not a vessel; and
- (b) able to float or be floated; and
- (c) able to move or be moved as an entity from place to place.

**use**, of an equivalent, for a Marine Order in which **use**, of an equivalent, is not defined, includes:

- (a) fitting or carrying the equivalent in or on a vessel; and

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(b) making an alternative arrangement or following an alternative procedure.

**USL Code** means the Uniform Shipping Laws Code adopted by the Australian Transport Council established by the Council of Australian Governments and as in force from time to time.

*Note 1* Other terms used in Marine Orders have the same meaning they have in the Act or Acts under which they are made — see section 14(1) of the Navigation Act, section 3 of the AFS Act and section 3 of the Pollution Prevention Act.

*Note 2* The term **owner** is defined in section 14(1) of the Navigation Act. It includes the person with overall general control and management of the operation of a vessel. This is equivalent to a *Company* defined in paragraph .25 of regulation I/1 of the STCW Convention, regulation IX-1 of SOLAS and paragraph 1.1.2 of Part A of the International Safety Management Code (ISM Code) of the IMO.

*Note 3* For details of AMSA officers exercising delegated powers — see the AMSA website at <http://www.amsa.gov.au>.

## **7 Required certificates, licences or qualifications**

- (1) A requirement to have a certificate or licence is a requirement to have a certificate or licence that is in force.
- (2) If a certificate or licence is revoked or suspended it ceases to be in force.
- (3) A requirement to have any other qualification is a requirement to have a qualification that has not been revoked, however described.

## **8 Recognised organisations**

For the definition of **recognised organisation** in section 14 of the Navigation Act, each corporation or association mentioned in Schedule 1 is prescribed.

*Note* For information on the application process to become a recognised organisation — see the AMSA website at <http://www.amsa.gov.au>.

## **9 Penal provisions**

A provision followed by the phrase ‘This is a penal provision’ is a penal provision under the legislation under which the provision is made.

*Note 1* Subregulation 4(1) of the *Protection of the Sea (Prevention of Pollution from Ships) (Orders) Regulations 1994* provides that a person who fails to comply with a provision of an Order made under subsection 34(1) of the Pollution Prevention Act that is expressed to be a penal provision is guilty of an offence punishable by a fine not exceeding 50 penalty units. Subregulation 4(2) provides that an offence against subregulation 4(1) is an offence of strict liability. Section 24 of the AFS Act provides that Orders made under that Act cannot impose penalties for contravention of the Orders.

*Note 2* Orders made under the Navigation Act may directly impose penalties for contravention of an Order or of a notice, direction etc given under an Order — see Navigation Act, paragraph 341(1)(a) and subsection 342(1). Penalties cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate — see Navigation Act, paragraph 341(1)(a) and *Crimes Act 1914*, section 4B. Orders may also impose civil penalties — see Navigation Act, paragraph 341(1)(b).

*Note 3* For the value of a penalty unit — see *Crimes Act 1914*, section 4AA.

*Note 4* For an act or omission constituting an offence under 2 or more laws — see *Crimes Act 1914*, section 4C.

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**Division 3 Application and review process**

**10 Applications to which this Division applies**

- (1) This Division applies if a Marine Order provides that a person may apply, in accordance with the application process set out in this Order, to AMSA for any of the following:
  - (a) an approval for an equivalent to be fitted, used or carried in or on a vessel;
  - (b) an approval for an equivalent guideline;
  - (c) an exemption of a vessel or a person from a requirement of the Order;
  - (d) an approval for a modification of a requirement of the Order to apply to a vessel or a person.
- (2) This Division also applies to any other matter that a Marine Order provides is a matter for which an application must be made in accordance with this Order.
- (3) A Marine Order that provides that an application must be made in accordance with this Order may vary the process set out in this Order as it applies to the application.

*Example*

The period for consideration of the application may be varied.

**11 Form and content of application**

- (1) An application mentioned in section 10:
  - (a) must:
    - (i) be in writing; and
    - (ii) be in the approved form, if any; and
    - (iii) be accompanied by the application fee, if any; and
    - (iv) include a supporting statement setting out the grounds for the application; and
    - (v) include any other information or document that an Order requires be included; and
  - (b) may include any other information or document the applicant considers relevant to the application.

*Example for subparagraph (a)(v)*

A Marine Order may require information in accordance with an international agreement that Australia has implemented.

*Note 1* AMSA may also determine fees for processing applications under Marine Orders — see section 47 of the AMSA Act.

*Note 2* Giving false or misleading information in an application is an offence — see subsections 136.1 and 137.1 of the *Criminal Code*.

- (2) An application for an approval of an equivalent guideline must also mention the guideline for which approval is sought and why the applicant considers it meets the requirements of the Order that would otherwise apply.



**Section 15****12 Request for further information etc**

- (1) AMSA may, in writing, ask the applicant to provide any information or document that AMSA reasonably considers necessary for consideration of the application.

*Note* More than 1 request may be made under this section.

- (2) AMSA may, in writing, ask any of the following to provide any information, document or agreement that AMSA reasonably considers necessary for consideration of the application:
- (a) the government of another country;
  - (b) an international organisation;
  - (c) a Commonwealth agency or other Commonwealth body;
  - (d) a State or Territory agency or other State or Territory body responsible for maritime safety or environmental protection;
  - (e) a person performing maritime safety or environmental protection functions.

*Examples for paragraph (e)*

- 1 Companies that provide cargo testing services.
- 2 Recognised organisations and inspectors.

*Note* More than 1 request may be made under this section.

**13 Notification of applicant of progress of application**

If AMSA asks for information, a document or an agreement under section 12, AMSA must tell the applicant in writing:

- (a) if the information, document or agreement has been requested under subsection 12(2) — that the information, document or agreement has been requested and from whom; and
- (b) about the effect of the request on the period for consideration of the application.

**14 Period for consideration of application**

An application must be considered:

- (a) if no request for further information or documents is made under section 12 — within 90 days after AMSA receives the application; or
- (b) within 90 days after AMSA receives all the information, documents or final responses requested under section 12; or
- (c) if AMSA does not receive all the information, documents or final responses requested under section 12 within a reasonable period for the kind of request — within 90 days after that period.

**15 Decision on application and notification of decision**

- (1) AMSA must, within the period mentioned in section 14:
- (a) decide the application; and
  - (b) tell the applicant, in writing:
    - (i) the decision on the application and any conditions imposed; and
    - (ii) the reasons for the decision if:
      - (A) the decision is not to approve the application; or

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- (B) it is an application for an exemption and the decision is not to grant the exemption.

*Note* A Marine Order that provides that an application may be made to AMSA in accordance with this Order may set out criteria to be considered when the application is decided.

- (2) If AMSA does not decide the application within the period mentioned in section 14, AMSA is taken to have decided:
- (a) not to approve the application; or
  - (b) if it is an application for an exemption — not to grant the exemption.

## 16 Reviewable decisions

- (1) A decision mentioned in section 15, other than a decision made under the Navigation Act, is a reviewable decision.

*Note* Some decisions are reviewable under section 313 of the Navigation Act eg decisions for certificates issued under the Navigation Act.

- (2) A Marine Order that provides that a decision is a reviewable decision for section 18 of this Order is taken to refer to section 17 of this Order.

## 17 Internal review of decisions

- (1) A person who is affected by a reviewable decision may apply, in writing, to AMSA for internal review of the decision before the later of the following:
- (a) 90 days after:
    - (i) notification of the decision; or
    - (ii) if the decision is not notified within the period mentioned in section 14 — the end of that period;
  - (b) a longer period determined by AMSA.
- (2) On receipt of the application, AMSA must review the reviewable decision.
- (3) AMSA must:
- (a) affirm the reviewable decision; or
  - (b) make any other decision that AMSA considers appropriate.
- (4) AMSA must tell the applicant, in writing, of the outcome of the internal review within 28 days after the application for internal review was received.
- (5) A notice under subsection (4) must include:
- (a) a statement to the effect that, if the applicant is dissatisfied with the decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision; and
  - (b) a statement to the effect that the applicant may request a statement of reasons under section 28 of that Act.
- (6) Failure to comply with subsection (5) for a decision does not affect the validity of the decision.

*Note* For delegation of AMSA's powers under this Division — see the AMSA website at <http://www.amsa.gov.au>.

## 18 Review by AAT

A person affected by a decision under subsection 17(3) may apply to the Administrative Appeals Tribunal for review of the decision.

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## Division 4 Approved forms and official log books

### 19 Approved forms

If AMSA approves a form for a particular purpose in an Order, the approved form must be used for that purpose.

*Note 1* AMSA may, in writing, approve a form for a provision of an Order made under the Navigation Act or the Pollution Prevention Act — see Navigation Act, section 338 and definition of *this Act* in subsection 14(1), and Pollution Prevention Act, section 3A and definition of *this Act* in subsection 3(1).

*Note 2* Approved forms are available on the AMSA website <http://www.amsa.gov.au>.

### 20 Official log books

For subsection 309(2) of the Navigation Act, the official log book for a regulated Australian vessel must be in the approved form.

*Note* The approved form of the official log book is available on the AMSA website at <http://www.amsa.gov.au>.

## Division 5 Publication of information about vessels

### 21 AMSA may publish information

For section 336 of the Navigation Act, the following information obtained about a vessel is prescribed:

- (a) vessel name;
- (b) IMO number;
- (c) call sign;
- (d) vessel type;
- (e) name of recognised organisation or other organisation responsible for survey certificates for the vessel;
- (f) name of the company recorded on the Safety Management Certificate for the vessel;
- (g) name of authority responsible for the Safety Management Certificate for the vessel;
- (h) country of registration;
- (i) tonnage — gross, net and deadweight;
- (j) year of build;
- (k) cargo type;
- (l) owner/charterer (according to information provided by the vessel);
- (m) charter type, if applicable;
- (n) port and date of inspection;
- (o) port and date of previous port state control inspection;
- (p) date of last special survey;
- (q) details of deficiencies, including matters about seafarers' welfare and matters within the responsibility of an organisation mentioned in paragraph (e) or an authority mentioned in paragraph (g);
- (r) action taken in relation to serious deficiencies;

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- (s) detention of the vessel, the total period of the detention and, if applicable, the period of detention beyond scheduled sailing time.

*Note* For the circumstances when this information may be obtained — see subsection 336(1) of the Navigation Act.

## Division 6 Opting-in to coverage

### 22 Opt-in declaration — prescribed matters

- (1) An application under subsection 25(1) of the Navigation Act for an opt-in declaration must be in the approved form.

*Note 1* See section 19 for information about approved forms.

*Note 2* AMSA may determine fees for processing applications — see section 47 of the AMSA Act.

- (2) For paragraph 25(2)(d) of the Navigation Act, other matters of which AMSA must be satisfied are the following:
- (a) the vessel is in class with a recognised organisation and is maintained in accordance with the requirements of the recognised organisation for the class;
  - (b) the vessel is not any of the following:
    - (i) a recreational vessel;
    - (ii) a Class 1E vessel;
    - (iii) a Class 2D or 2E vessel;
    - (iv) a Class 3B, 3C, 3D or 3E vessel;
    - (v) a Class 4C, 4D or 4E vessel;
  - (c) if AMSA considers that the vessel must be inspected before making a decision about the application — the vessel has been inspected by an inspector;
  - (d) if the vessel is a Class 1B or 2B vessel — it complies after 19 August 2013 with each requirement of the Maritime Labour Convention that applies to a vessel of its size;
  - (e) the vessel complies with the safety management requirements mentioned in section 7 of *Marine Order 58 (International Safety Management Code) 2002* or the operation requirements that apply to the vessel under *NSCV Part E — Operations*.

*Note 1* For paragraph (b), vessels are assigned a service category according to the nature of the vessel's use and operational areas — see clause 3.5.1 of Part B of the NSCV.

*Note 2* Opt-in declarations are made by AMSA under subsection 25(2) of the Navigation Act. AMSA must be satisfied of the matters mentioned in subsection 22(2) of this Order, together with other things mentioned in subsection 25(2) of the Navigation Act, before making a declaration. AMSA may revoke a declaration under subsection 26(4) of the Navigation Act if no longer satisfied of these matters.

*Note 3* For review by the Administrative Appeals Tribunal of decisions made under the Navigation Act — see section 313 of the Navigation Act.

**Section 25****23 Revocation of opt-in declaration — prescribed matters**

For subsection 26(2) of the Navigation Act, other matters of which AMSA must be satisfied are the following:

- (a) the vessel has not been maintained in accordance with the requirements of the recognised organisation with which it is in class;
- (b) the vessel does not, after 30 days after commencement of the opt-in declaration for the vessel, comply with the requirements of the Navigation Act, including certification requirements, that apply to a vessel of its size and class;
- (c) the vessel does not comply with any other condition that AMSA has applied to the declaration.

*Note* AMSA must revoke an opt-in declaration for a vessel if the owner, or any of the owners, of the vessel requests, and AMSA is satisfied of the matters mentioned in this section — see subsection 26(2) of the Navigation Act.

**Division 7 Infringement notices****24 When infringement notice can be given**

If there are reasonable grounds for believing that a person has contravened a civil penalty provision, AMSA or an inspector may give to the person an infringement notice for the infringement notice penalty of one-fifth of the maximum penalty that a court could impose on the person for contravention of the provision.

**25 Contents of infringement notice**

- (1) The notice must include the following information:
  - (a) the name and address of the person given the notice;
  - (b) if the person is an individual — the person's date of birth;
  - (c) the provision of the Navigation Act, Marine Orders or the regulations that is alleged to have been contravened;
  - (d) details of the alleged contravention, including:
    - (i) the day and, if known, the time when it is alleged to have occurred; and
    - (ii) the place where it is alleged to have occurred;
  - (e) the maximum penalty that may be imposed by a court for the alleged contravention;
  - (f) the amount payable as the infringement notice penalty;
  - (g) a statement that the person can apply to AMSA for an extension of time to pay under section 28;
  - (h) a statement that the person may pay a penalty as an alternative to civil proceedings:
    - (i) before the end of 28 days after the day the notice is given; or
    - (ii) if a further period is allowed by AMSA under section 28 — before the end of the further period; or
    - (iii) if payment by instalments is permitted by the AMSA under section 29 — in accordance with the permission;
  - (i) how and where the infringement notice penalty may be paid;

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- (j) a statement that if, before the end of 28 days after service of the notice, the person tells AMSA, in the way set out in the notice, about any facts or matters that the person thinks should be taken into account for the contravention and asks that AMSA withdraw the notice in accordance with section 30;
    - (i) time for payment of the penalty will be extended to the extent necessary for a decision to be made about those facts or matters; and
    - (ii) AMSA must consider the matters mentioned in section 30;
  - (k) a statement that, if the infringement notice penalty is paid in time:
    - (i) the person's liability for the contravention is discharged; and
    - (ii) further proceedings cannot be taken against the person for the contravention.
  - (l) a statement to the effect that, if none of the things mentioned in paragraph (h) or (j) is done within the time specified, the person may be proceeded against for the alleged contravention and may be found liable for an amount up to the maximum penalty for the contravention;
  - (m) the name or identifying number of the person who gave the notice.
- (2) An infringement notice may contain any other information that AMSA or the inspector considers necessary.

### 26 Giving the notice

- (1) The notice must be given to the person within 12 months after the alleged contravention occurred.
- (2) The notice must be given by:
  - (a) handing the notice to the person; or
  - (b) mailing it to the person's last known address; or
  - (c) leaving it at the person's last known address with a person apparently over 16 years old; or
  - (d) if the person is a body corporate:
    - (i) mailing it to the registered office of the person; or
    - (ii) leaving it at the registered office of the person with a person apparently over 16 years old.

### 27 Time for payment of penalty

The penalty stated in an infringement notice must be paid within:

- (a) 28 days after the day when the notice is given to the recipient; or
- (b) another period mentioned in this Order.

### 28 Extension of time to pay

- (1) On written application by a person to whom an infringement notice has been given, AMSA may grant, if satisfied that in all the circumstances it is reasonable to do so, a further period for payment of the infringement notice penalty, whether or not it is more than 28 days after the notice was given.
- (2) If application is made after 28 days after the notice was given, the application must include an explanation why the person issued the notice could not deal with the notice within that period.

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- (3) AMSA must:
  - (a) grant or refuse a further period; and
  - (b) give the applicant written notice of the decision; and
  - (c) if the decision is a refusal — mention in the notice the reasons for refusal.
- (4) The person must pay the penalty:
  - (a) if a further period is granted — before the end of that period; or
  - (b) if the decision is a refusal — before the end of the later of:
    - (i) 7 days after receiving notice of the refusal; or
    - (ii) the 28 day period.

**29 Payment by instalments**

- (1) On written application by a person to whom an infringement notice has been given, AMSA may make an arrangement with a person to whom an infringement notice has been given (whether or not the period of 28 days after the date of giving the notice has ended) for payment of the amount of the infringement notice penalty by instalments.
- (2) AMSA must:
  - (a) grant or refuse to make an arrangement; and
  - (b) give the applicant written notice of the decision; and
  - (c) if the decision is a refusal — mention in the notice the reasons for refusal.
- (3) The person must pay the penalty:
  - (a) if an arrangement is made — in accordance with the arrangement; or
  - (b) if the decision is a refusal — before the end of the later of:
    - (i) the 28 day period; or
    - (ii) 7 days after receiving the notice of the refusal.

**30 Withdrawal of infringement notice**

- (1) Whether or not an application is received under subsection (2) AMSA, if satisfied that in all the circumstances it is proper to do so, may withdraw an infringement notice.
- (2) Before the end of 28 days after receiving the infringement notice, the recipient may apply, in writing, to AMSA for it to be withdrawn.
- (3) Within 28 days after receiving the application, AMSA must:
  - (a) withdraw, or refuse to withdraw, the notice; and
  - (b) give the applicant written notice of the decision; and
  - (c) if the decision is a refusal — mention in the notice the reasons for the refusal.
- (4) In making a decision, AMSA must consider:
  - (a) the facts or matters mentioned in the application; and
  - (b) the circumstances in which the contravention of the Navigation Act mentioned in the notice is alleged to have occurred; and
  - (c) whether the person has been found previously to have contravened a civil penalty provision in the Navigation Act; and

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- (d) whether an infringement notice has previously been given to the person for a contravention of the same kind as that mentioned in the notice; and
  - (e) any other matter AMSA considers relevant to the decision.
- (5) If an infringement notice is withdrawn, any amount of infringement notice penalty paid under the notice must be repaid to the person who paid it.

### 31 Notice of refusal

If AMSA decides to refuse to withdraw an infringement notice, notice of the decision must state:

- (a) that if the amount of the infringement notice penalty is paid within 28 days after notice of the decision is given to the person, the person will not be prosecuted for the alleged contravention; and
- (b) that if the amount is not paid, the person may be prosecuted for the alleged contravention.

### 32 Payment of penalty if infringement notice not withdrawn

If AMSA refuses to withdraw an infringement notice, the applicant for withdrawal must pay the infringement notice penalty before the end of the 28 days after receiving notice of the refusal.

### 33 Effect of payment of infringement notice penalty

- (1) If a person who is given an infringement notice pays the infringement notice penalty in accordance with this Division:
  - (a) the person's liability for the contravention is discharged; and
  - (b) further civil proceedings cannot be taken against the person for the contravention; and
  - (c) the person is not taken to have done the contravention.
- (2) Subsection (1) applies to a person who makes an arrangement to pay the infringement notice penalty by instalments, only if the person makes payments in accordance with the arrangement.

### 34 Admissions under subsection 30(2)

Evidence of an admission made by a person in an application under subsection 30(2) is inadmissible in proceedings against the person for the alleged contravention.

### 35 Matter not to be taken into account in determining penalty

- (1) This section applies if a person who is given an infringement notice:
  - (a) elects not to pay the infringement notice penalty; and
  - (b) is found by an eligible court to have contravened the civil penalty provision mentioned in the notice.
- (2) In determining the penalty to be imposed, the court must not take into account the fact that the person chose not to pay the infringement notice penalty.



**Section 38****36 Evidence for hearing**

- (1) At the hearing of proceedings for an alleged contravention mentioned in an infringement notice, the following certificates are evidence of the facts stated in the certificate:
  - (a) a certificate signed by AMSA or an inspector stating that:
    - (i) the notice was given to the person alleged to have done the contravention; and
    - (ii) the infringement notice penalty has not been paid in accordance with this Division;
  - (b) a certificate signed by AMSA or an inspector and stating that the notice was withdrawn on a day mentioned in the certificate;
  - (c) a certificate signed by AMSA and stating that:
    - (i) a further period was refused, under section 28, for payment of the infringement notice penalty; and
    - (ii) the infringement notice penalty has not been paid in accordance with this Division;
  - (d) a certificate signed by AMSA and stating that a notice, a copy of which is attached to the certificate, was given on the day mentioned in the certificate;
  - (e) a certificate signed by AMSA and stating that:
    - (i) for section 28, the further time mentioned in the certificate for payment of the infringement notice penalty was granted; and
    - (ii) the infringement notice penalty was not paid in accordance with the notice or within the further time.
- (2) A certificate that purports to have been signed by AMSA or an inspector is taken to have been signed by that person unless the contrary has been proved.

**37 Infringement notice not compulsory etc**

Nothing in this Division is taken:

- (a) to require that a person suspected of having contravened a civil penalty provision in the Navigation Act be given an infringement notice; or
- (b) to affect the liability of a person to be prosecuted for an alleged contravention, if:
  - (i) an infringement notice is not given to the person for the contravention; or
  - (ii) an infringement notice is given, and withdrawn; or
- (c) to limit the penalty that may be imposed by a court on a person for the contravention.

**Division 8 Transitional matters****38 Repeal of *Marine Order 1 (Administration) 2011* and *Marine Order 55 (Publication of information about vessels) 2004***

*Marine Order 1 (Administration) 2011* and *Marine Order 55 (Publication of information about vessels) 2004* are repealed.

**Section 39****39 Reference in a Marine Order to *Marine Order 1 (Administration) 2011***

- (1) A reference in a Marine Order to a provision of *Marine Order 1 (Administration) 2011* is taken to be a reference to the equivalent provision in this Order.
- (2) A reference in a Marine Order to *Marine Order 1 (Administration) 2011* is taken to be a reference to this Order.

**40 Certificates**

- (1) For paragraph 339(2)(o) of the Navigation Act, a certificate of a kind mentioned in the table that was in force under the provision of the *Navigation Act 1912* mentioned in the table immediately before the repeal of the *Navigation Act 1912* has effect as if it was a certificate issued under the corresponding provision of the Navigation Act until the earlier of:
  - (a) the date that the certificate would have expired under the *Navigation Act 1912*; or
  - (b) if the certificate is revoked — the date of revocation.

<b>Navigation Act 1912 provision</b>	<b>Kind of certificate</b>	<b>Corresponding provision of Navigation Act</b>
Subsection 194(4)	Certificate of survey	Section 100
Subsection 194(4)	Certificate of equipment	Section 100
Subsections 206D(1) and (3)	Passenger ship safety certificate	Section 100
Subsections 206D(2) and (4)	Passenger ship short voyage safety certificate	Section 100
Section 206E	Cargo ship safety construction certificate	Section 100
Section 206F	Cargo ship safety equipment certificate	Section 100
Section 206G	Cargo ship safety radio certificate	Section 100
Section 206GA	Cargo ship safety certificate	Section 100
Section 206H	Exemption certificate	Section 100
Section 206J	Nuclear passenger ship safety certificate	Section 100
Section 206K	Nuclear cargo ship safety certificate	Section 100
Section 206M	Certificate (foreign ship)	Section 319
Section 222	Load line certificate	Section 100
Section 223	International Load Line Exemption Certificate	Section 100
Section 267B	Ship construction certificate	Section 132

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<b>Navigation Act 1912 provision</b>	<b>Kind of certificate</b>	<b>Corresponding provision of Navigation Act</b>
Section 267C	International Oil Pollution Prevention Certificate	Section 132
Section 267Q	Chemical tanker construction certificate	Section 132
Section 267ZG	International Sewage Pollution Prevention Certificate	Section 132
Section 267ZW	Air pollution prevention certificate	Section 132
Section 405F	Tonnage measurement certificate	Section 155

- (2) However, a tonnage measurement certificate issued under section 405F of the *Navigation Act 1912* that is a perpetual certificate has continued effect as if it was a certificate issued under section 155 of the Navigation Act unless it is revoked.

#### 41 Things done

- (1) For paragraph 339(2)(o) of the Navigation Act, a thing done under a provision of the *Navigation Act 1912*, that is of a kind mentioned in the table that was in force immediately before the repeal of the *Navigation Act 1912*, has effect under the corresponding provision of the Navigation Act or a Marine Order until the earlier of:
- the date that the thing done would have expired under the *Navigation Act 1912*; or
  - if the thing done is revoked — the date of revocation.

<b>Navigation Act 1912 provision</b>	<b>Kind of thing done</b>	<b>Corresponding provision of Navigation Act or Marine Order</b>
Subsection 14(1)	Order about minimum complement required for a ship	Subsection 51(1) of the Navigation Act
Subsection 123(1)	Appointment of Medical Inspector of Seamen	Section 8A of <i>Marine Orders Part 9, issue 6</i>

- (2) For paragraph 339(3)(b) of the Navigation Act, each of the following things done under the *Navigation Act 1912* that was in force immediately before the repeal of the *Navigation Act 1912*, has effect under the Navigation Act unless it is revoked:
- an order under subsection 427(2) about the Uniform Shipping Laws Code;
  - an order under subsection 427(3) about the National Standard for Commercial Vessels.

## Schedule 1 Recognised organisations

(section 8)

Item	Corporation or association	Acronym	Website
1	American Bureau of Shipping	ABS	<a href="http://www.eagle.org">http://www.eagle.org</a>
2	Bureau Veritas	BV	<a href="http://www.veristar.com">http://www.veristar.com</a>
3	China Classification Society	CCS	<a href="http://www.ccs.org.cn">http://www.ccs.org.cn</a>
4	Det Norske Veritas	DNV	<a href="http://www.dnv.com">http://www.dnv.com</a>
5	Germanischer Lloyd	GL	<a href="http://www.gl-group.com">http://www.gl-group.com</a>
6	Korean Register of Shipping	KR	<a href="http://www.krs.co.kr">http://www.krs.co.kr</a>
7	Lloyd's Register	LR	<a href="http://www.lr.org">http://www.lr.org</a>
8	Nippon Kaiji Kyokai	Class NK	<a href="http://www.classnk.or.jp">http://www.classnk.or.jp</a>
9	RINA S.p.A	RINA	<a href="http://www.rina.org">http://www.rina.org</a>

*Note* These recognised organisations are members of IACS. AMSA has an agreement with each of these recognised organisations for the provision of survey and certification services for vessels registered in Australia. The websites, and the acronyms that are used by IACS for these bodies, were current on commencement of this Order.

### Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.