



Marine Orders

This document provides information about Marine Orders. The information is only relevant to vessels, crew and vessel operations that are currently regulated by the *Navigation Act 1912 (Cwth)*, *Protection of the Sea (Prevention of Pollution from Ships) Act 1983 (Cwth)* and the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006 (Cwth)*.

Marine Orders are a form of government regulation. Marine Orders ensure the laws are kept up to date given the high frequency of technical amendments and the fast pace of technological change and improvements in safety standards. Marine Orders are an efficient means of implementing Australia's international maritime obligations by giving effect to international conventions in Australian law. This document provides further information on:

- Marine Orders Background;
- amendments to Marine Orders;
- Marine Orders Development Process consultation;
- registration and publication of Marine Orders;
- review of Marine Orders; and
- Parliamentary Scrutiny.

Marine Orders Background

The authority for making Marine Orders is provided in the *Navigation Act 1912 (Cwth)*, the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* and the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006 (Cwth)*. Unlike Acts of Parliament, the Marine Orders are made by the Chief Executive Officer of AMSA.

The above Acts set out the broad objectives and, in some cases, the desired outcomes for particular subject matters.

They also contain the major offences and impose major penalties. The Marine Orders, in turn, apply the detailed technical requirements. Marine Orders are made up of 'Parts' that relate to a wide variety of particular subjects, including vessel construction and surveys, vessel operations and vessel equipment.

Marine Orders provide for the implementation of a number of international conventions to which Australia is a signatory. The international conventions that are referred to in Marine Orders include: International Convention for the Safety of Life at Sea (SOLAS), Convention on the International Regulations for Preventing Collisions at Sea (COLREGs), International Convention on Load Lines, International Convention for Safe Containers, International Convention on the Control of Harmful Anti-fouling Systems on Ships, International Convention on Tonnage Measurement of Ships, International Convention on Salvage and the International Convention for the Prevention of Pollution from Ships (MARPOL).

The current Marine Orders are on the AMSA website. www.amsa.gov.au/Shipping_Safety/marine_orders/index.asp

AMSA also provides Marine Notices about Marine Orders and these are also included on the AMSA website. www.amsa.gov.au/shipping_safety/marine_notices/index.asp

Marine Orders are legislative instruments for the purposes of the *Legislative Instruments Act 2003*. Marine Orders are subject to review or scrutiny by the Senate Standing Committee on Regulations and Ordinances and subject to possible disallowance by Parliament (See Parliamentary Scrutiny below).

Amendments to Marine Orders

Marine Orders are amended for a variety of reasons, these include:

- an Act amendment;
- an international convention amendment or the entry into force of a new convention;
- an amendment to International Maritime Organization (IMO) guidelines or resolutions that relate to an international convention;
- an incident or event that cannot be adequately addressed by current requirements;
- a change in domestic policy relating to maritime safety or marine environment protection; and
- for the purposes of periodic review.

When developing new or amended Marine Orders AMSA considers issues such as:

- Is it necessary to amend the Marine Orders?
- Could the desired outcome be achieved by other means, such as education or promotion?

If new or amended Marine Orders are necessary then AMSA commences a Marine Orders development process.

Marine Orders development process

Each Marine Orders development process varies and is adapted to reflect the issues, impacts, timing and stakeholders involved. Each development process aims to ensure sound analysis, informed decision making and transparency.

When developing Marine Orders, AMSA uses the Australian Government's *Best Practice Regulation Handbook*. AMSA consults the Office of Best Practice Regulation (OBPR) throughout the development process. Advice from the OBPR is

also used to determine whether a regulation impact statement (RIS) must be prepared. Preparation of a RIS is mandatory if the amendments implemented by the Marine Orders will have a significant regulatory impact on Australian businesses.

While each process can be further tailored, the following represents a general outline of the steps in developing Marine Orders.

1. Issue identified.
2. Initial consideration takes place, including identifying alternative options for addressing the issue and potential impacts of the options.
3. If Marine Orders are considered appropriate to address the issue then AMSA prepares draft Marine Orders and an appropriate regulatory impact analysis.
4. Public comment is sought on the draft Marine Orders and the regulatory impact analysis.
5. The issues, impacts and options are considered in light of public comment and any appropriate revisions made to the draft Marine Orders and regulatory impact analysis.
6. The draft Marine Orders are prepared for the AMSA Chief Executive Officer (CEO).
7. The CEO signs the Marine Orders which become law and the Marine Orders and explanatory material are published and registered on the Federal Register of Legislative Instruments.
8. The Marine Orders come into force and are implemented.
9. The Marine Orders are monitored and reviewed on an ongoing basis to ensure they remain current.

Consultation

Section 12 of the *Australian Maritime Safety Authority Act 1990* states that:

In the performance of its functions and the exercise of its powers, the Authority must, where appropriate, consult with government, commercial, industrial, consumer and other relevant bodies and organisations.

AMSA is committed to constructive relations with our stakeholders in government, industry and the community. When considering changes to Marine Orders or creating new Marine Orders, AMSA has a range of consultative committees and consultation strategies for engaging with stakeholders.

Consultation periods are generally for four weeks. For significant, complex or major issues, further public consultation may occur.

All draft Marine Orders are placed on AMSA's Marine Orders website for general public comment. These are under the heading 'Marine Orders being drafted or redrafted' at this link.

www.amsa.gov.au/shipping_safety/marine_orders/Marine_Orders_being_drafted_or_redrafted/index.asp

Comments received during consultation are considered in preparing the final draft of the Marine Orders. Consideration of issues and public comment may also involve the formation of reference or advisory groups to assist AMSA.

As part of the consultation process, the draft Marine Orders are also circulated to stakeholders including peak industry bodies, marine safety authorities, survey authorities (approved classification societies) and unions. Anyone interested in being part of the circulation list for Marine Orders is invited to provide their contact details to AMSA at:

MarineOrderDraft@amsa.gov.au

Registration and Publication of Marine Orders

After the Marine Orders amendment is signed by the CEO, it is registered on the Federal Register of Legislative Instruments maintained by the Attorney-General's Department (AGD). Registration must occur in order for the Marine Orders and any amendments to take effect.

Links to Marine Orders amendments, explanatory notes, and compilations of the Marine Orders incorporating the amendments are placed on AMSA's website:

www.amsa.gov.au/Shipping_Safety/marine_orders/index.asp

Review of Marine Orders

In accordance with the guidelines developed by AGD, a review of Marine Orders is undertaken every 10 years. The purpose of the review is to ensure the content of the Marine Orders accurately reflects Commonwealth law and international conventions and practices. The review process is similar to that described above for the amendment of Marine Orders.

Parliamentary Scrutiny

Marine Orders are subject to scrutiny by the Senate Standing Committee on Regulations and Ordinances (Standing Committee) and subject to possible disallowance by Parliament. Disallowed Marine Orders immediately repeal all or part of the Marine Orders.

This has the effect of reviving all or part of the original Marine Orders.

The Standing Committee considers whether adequate consultation has occurred and that the results of that consultation have been taken into account. The Standing Committee assesses all delegated instruments to ensure that an instrument does not infringe the following principles:

- Is the instrument made in accordance with its empowering statute?
- Does the instrument trespass on personal rights and liberties?
- Does the instrument contain appropriate provision for merits review?
- Is the subject matter of the instrument more appropriate for an Act?

Amendments and reviews of the Marine Orders take into account the Standing Committee's considerations both in terms of drafting and the related explanatory notes.

External Links

Federal Register of Legislative Instruments
www.comlaw.gov.au

Office of Best Practice Regulation
www.finance.gov.au/obpr/about/index.htm