

Trade and Transport Alert

# AMSA releases proposed changes to Marine Order 11 and Marine Order 97 for consultation

## WHAT YOU NEED TO KNOW

- AMSA have proposed changes to Marine Order 11 and Marine Order 97
- The amendments to Marine Order 11 pertain only to the application of that Marine Order to foreign vessels
- Marine Order 97 has been redrafted to be more clearly structured but also includes some changes of substance.

## WHAT YOU NEED TO DO

- Review the amendments and, if necessary, make submissions to AMSA by 31 July 2013.

The Australian Maritime Safety Authority (AMSA) has recently released consultation drafts for certain proposed amendments to *Marine Order 11 (Living and Working Conditions on Vessels) 2013* and *Marine Order 97 (Marine pollution prevention – air pollution) 2013*. The consultation periods for both of these drafts close on 31 July 2013.

### Marine Order 11

Marine Order 11 provides the framework for implementation of the Maritime Labour Convention, 2006 which is due to commence on 20 August 2013 and to which Australia is a signatory. In essence, its provisions provide comprehensive protection of seafarers' rights and employment conditions, recognising the unique working and living conditions of these workers. For further information, please see our earlier update: [Final Marine Orders released](#).

The amendments to Marine Order 11 provide that the Marine Order will apply to foreign vessels whilst in Australian territorial seas, whilst within, entering or leaving Australian ports, or whilst within the internal waters of Australia. Previously, only one section of the Marine Order effectively extended to foreign vessels.

The practical effect of this change is that all provisions (except those that only apply to regulated Australian vessels) of the Marine Order will apply to foreign vessels whilst in the relevant areas. As such, the amendments to Marine Order 11 should have no relevance to regulated Australian vessels.

### Marine Order 97

The consultation draft of Marine Order 97 is a proposed complete reissue of the existing Marine Order. The structure and clarity of the order is somewhat improved in the new drafting.

Marine Order 97 generally purports to implement Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL), which deals with emissions and air pollution from vessels. As such, the Marine Order introduces a new class of certificates, being "international energy efficiency certificates". For further information, please see our earlier update: [Maritime Legislation Amendment Bill](#).

In particular, it is worth noting that the new drafting makes it clear that Marine Order 97 is issued under both the *Navigation Act 2012 (Cth)* and the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983 (Cth) (POTSA)*. This is particularly relevant for offshore industry vessels. For these vessels, the *Navigation Act 2012 (Cth)* and Marine Orders issued under it are disapplied by s 640 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*

(Cth) (OPGGSA) for the time when those vessels are "facilities" under OPGGSA. Notwithstanding the amendments, there remains some ambiguity as to which of the following will apply:

- (a) whether the entirety of Marine Order 97 is disapplied under s 640 of OPGGSA, due to it being issued under the *Navigation Act 2012* (Cth);
- (b) whether the entirety of Marine Order 97 will continue to apply, notwithstanding s 640 of OPGGSA, due to it also being issued under POTSA; or

- (c) whether only the parts of Marine Order 97 which can be identified as being issued under the *Navigation Act 2012* (Cth) will be disapplied under s 640 of the OPGGSA and the parts of the Marine Order which can be considered to be issued under POTSA will continue to apply.

## Conclusion

Industry participants (particularly vessel owners and operators) should review the amendments and prepare submissions to AMSA on any concerns prior to the close of consultation, being 31 July 2013.

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