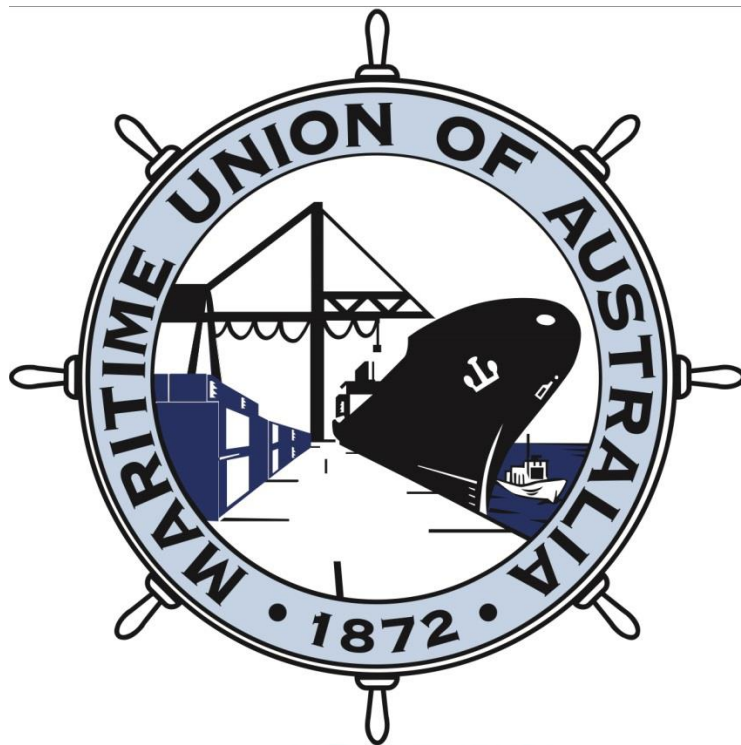


**MUA Submission:**  
**Draft Marine Order 31**  
**(SOLAS and vessel safety certification) 2019**



**7 August 2019**

*Australian Maritime Safety Authority*

Submitted by email: [Consultation@amsa.gov.au](mailto:Consultation@amsa.gov.au)

**Ian Bray**

**Assistant National Secretary,**

**Maritime Union of Australia**

**A Division of the Construction, Forestry, Maritime, Mining and Energy Union**

365 Sussex St, Level 2,

Sydney, NSW, 2000

For inquiries contact: [penny.howard@mua.org.au](mailto:penny.howard@mua.org.au)

Website: [www.mua.org.au](http://www.mua.org.au)

## Introduction

This submission has been prepared by Maritime Union of Australia (MUA). The MUA is a Division of the 120,000-member Construction, Forestry, Maritime, Mining and Energy Union and an affiliate of the 20-million-member International Transport Workers' Federation (ITF).

The MUA represents approximately 14,000 workers in the shipping, offshore oil and gas, stevedoring, port services and commercial diving sectors of the Australian maritime industry. We represent workers on a number of Australian Government vessels.

## Summary

This consultation composes 3 parts, which we will address in turn:

- the repeal of *Government Vessels Exemption 2012* (we support), and its replacement with *Government Vessels Exemption 2019* (we oppose).
- the repeal of *Marine Order 62 (Government Vessels) 2003* (we support)
- the proposed new *Marine Order 31 (SOLAS and vessel safety certification) 2019* (we oppose)

## Government Vessel Exemption 2019

The MUA strongly opposes this exemption, which removes a swathe of basic seafarers' rights from seafarers working on government vessels. These vessels perform many important functions, such as safeguarding the Great Barrier Reef, carrying out research for the CSIRO, Australian Antarctic Division, carrying passengers in the Torres Strait, and operating for Border Force.

We understand that these rights have been removed from seafarers on government vessels for many decades now,<sup>1</sup> but in reissuing this (or any) Exemption or Marine Order, AMSA should be re-examining whether it is justified or necessary. Unfortunately, no explanation has been provided with the consultation materials about why this exemption is necessary or should continue to exist. We understand that there is a view within AMSA that "government operators are meant to be more responsible than commercial operators", however, this is not a sufficient rationale.<sup>2</sup> In our view the exemption does not improve safety outcomes, is not operationally necessary, and provides no value to the Australian community.

The Navigation Act 2012 defines Government Vessels as follows (noting that naval vessels are not covered by the Navigation Act):

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<sup>1</sup> There has been an exemption in place from at least 1985 exempting 'Commonwealth ships' from certain requirements of the Navigation Act. This was updated in 2003 with the introduction of AMSA's oversight of these vessels and Marine Order 62. The ATSB outlines the background to the Marine Order and the Exemption in the investigation into the sinking of *Malu Sara*. Available at: [https://www.atsb.gov.au/media/24291/mair222\\_001.pdf](https://www.atsb.gov.au/media/24291/mair222_001.pdf), pg 64.

<sup>2</sup> Mick Kinley, AMSA, for the RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE 22/05/2006 (from Hansard)

**Government vessel** means a vessel:

- (a) that belongs to the Commonwealth or a State or Territory or an agency of the Commonwealth or a State or Territory; or
- (b) the beneficial interest in which is vested in the Commonwealth or a State or Territory or an agency of the Commonwealth or a State or Territory; or
- (c) that is for the time being demised or sub-demised to the Commonwealth or a State or Territory or an agency of the Commonwealth or a State or Territory.

The specific provisions of the Navigation Act 2012 that these vessels are exempted from provide for the basic rights of seafarers all over the world in the form of the Maritime Labour Convention, and hard won rights that have been in place since the first Navigation Act was legislated in 1912. They include the following sections:

Section 54: Work agreements

Section 68: Owner liable for medical attendance etc.

Section 69: Owner liable where certain seafarers removed from vessel etc.

Section 70: Owner liable for medical attendance etc. on board vessel

Section 90: Seafarer not to be wrongfully left behind

Section 92: Expenses of returning foreign seafarers left behind

Section 93: Owner of vessel not entitled to limit liability in respect of certain claims

Section 94: Employment of seafarers in loading and unloading

Section 119: Notice of intention to ship (dangerous goods)

Section 185: Reporting of marine incidents to AMSA—owner

Section 186: Reporting of marine incidents to AMSA—master

Section 187: Report of dangers to navigation

Section 309: Keeping official logbook

Government vessels are also exempt from complying with the provisions of *Marine Order 11 (Living and working conditions on vessels) 2013* that deal with seafarers' wages, repatriation of seafarers, seafarers' work agreements and dealing with the property of deceased seafarers on vessels.

The Exemption also changes the class of vessels exempt from certain provisions from 'vessels ≤7m in length,' to 'vessels ≤ 10m in length'. This presumably aligns with the changes to Certificate of Survey provisions proposed to be introduced into Marine Order 31. We discuss the implications of this below.

## Marine Order 62 (Government Vessels)

As with the Government Vessel Exemption 2012, the MUA does not believe having separate requirements for government vessels is in the best interest of seafarers or the Australian community. We support the repeal of this Marine Order.

## Marine Order 31 (SOLAS and vessel safety certification)

The MUA strongly opposes the draft Marine Order 31.

### **Nuclear powered vessels**

The draft Marine Order introduces substantial new provisions for AMSA to approve reactor installations, safety assessments, and issue safety certificates for civilian Australian registered nuclear powered vessels (sections 30 and 31).<sup>3</sup> It also stipulates reporting procedures for international nuclear powered vessels visiting Australia, and for Australian nuclear vessels visiting international ports. We have pasted all the new provisions for nuclear powered vessels in the appendix.

The MUA opposes the inclusion of all the new sections related to civilian Australian registered nuclear powered vessels. Significant drafting work has been done by AMSA to bring in these new measures, which would facilitate the introduction of such vessels to Australia. Measures to regulate nuclear powered vessels in Australia should only be introduced after a rigorous public discussion of the merits of doing so. The MUA believes that nuclear powered vessels are not in the public interest. But if such vessels were introduced, ASMA should not have the power to issue safety certificates for such vessels until the public can be assured that they are fully competent in this area.

In relation to international civilian nuclear powered vessels visiting Australia, section 27 requires them to report a copy of the vessel's safety assessment to the Australian government 'as soon as possible' before the vessel arrives in Australia. This is insufficient and does not provide enough time for a proper safety assessment to take place or management plan to be developed. International vessels must provide a copy of the vessel's safety assessment in enough time for AMSA and other government agencies to read, understand and potentially reject the vessel before it arrives in Australian waters.

We are aware of the current Australian Radiation Protection and Nuclear Safety Agency, Visiting Ships Panel (Nuclear) requirements for the visits of nuclear powered warships,<sup>4</sup> and it would seem that any requirements for visiting civilian nuclear powered vessels should at least meet or exceed these standards.

In general, the MUA rejects the use of nuclear power due to the unique threat that it poses to the environment, local communities and workers involved in mining, transportation and

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<sup>3</sup> The Navigation Act 2012 and associated Marine Orders only apply to vessels that are not navy vessels or warships.

<sup>4</sup> The visiting ships panel (Nuclear) is an interdepartmental committee that oversees the arrangements, develops and maintains procedures and oversees implementation of safety requirements for visits to Australian ports by nuclear powered warships (NPW). More information on the panel and procedures, including OPSMAN1, the 2000 reference accident and radiation monitoring is available at <https://www.arpsa.gov.au/research/radiation-emergency-preparedness-and-response/visits-by-nuclear-powered-warships>

handling of radioactive materials, and the operation of nuclear facilities. It is of great concern to us that AMSA is seeking to introduce measures to facilitate the use of nuclear power in Australian civilian vessels, and to facilitate the visits of civilian nuclear powered ships to Australia, with minimal public debate.

### **Duration of SOLAS certificates**

Section 20 and 21 of Marine Order 31 pertain to the duration and variation of non-SOLAS certificates (for vessels of up to 500 tonnes). In Section 20, it is clearly stated that the maximum duration for a Certificate of Survey for a passenger ship is 1 year, however Section 21 provides that, 'AMSA may extend the expiry date' for up to 5 years.

As with other Marine Order consultations, AMSA has not provided a risk assessment or any kind of justification for substantially increasing the risk for passenger vessels by increasing the period between surveys by a factor of 5. This is completely unacceptable, and substantially increases the risk to the travelling public, tourists, crew, and the marine environment.

### **Certificates of Survey for small vessels**

The proposed Marine Order 31 introduces a new kind of Certificate of Survey for a cargo vessels 10m or under in length (schedule 2, s2.3). We have significant concerns with the proposed provision. This Certificate of Survey does not require a survey of the vessel to be carried out, only an 'inspection' by an 'issuing body' (defined as AMSA or 'recognised organisation' in the Navigation Act), as well as an 'approved management plan' (s.32). This exemption appears to be modelled on the current exemption of small vessels (7m or under) from a Certificate of Survey, originally only applying to government vessels in Marine Order 62. The current Marine Order 31 does not contain this provision for vessels 10m or under in length.

The purpose of a 'survey' as opposed to an 'inspection' is a thorough analysis including physical inspection and testing of a vessel's design, structure, machinery and equipment to ensure that it is fit for service<sup>5</sup> by a qualified marine surveyor to a required standard. The importance of a vessel survey for small vessels is illustrated by the tragic loss of *Malu Sara*. *Malu Sara* was a small Commonwealth Vessel operating in the Torres Strait, operated by the Department of Immigration and Multicultural and Indigenous Affairs (DIMA) under the previous version of this exemption in Marine Order 62. All 5 people on board were lost, including a 4 year old girl.<sup>6</sup> The ATSB report stated that.

There is a high probability that *Malu Sara's* deficient design, poor construction and inadequate equipment were directly causal in the loss of the vessel on 15 October 2005. Had the vessel been subjected to the same regulatory oversight as a

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<sup>5</sup> IMO A29 Res 1104: *Survey Guidelines under the Harmonised System of Survey and Certification*

<sup>6</sup>The ATSB investigation report on the sinking of *Malu Sara* is available at:

[https://www.atsb.gov.au/publications/investigation\\_reports/2005/mair/mair222/](https://www.atsb.gov.au/publications/investigation_reports/2005/mair/mair222/)

commercial vessel, or had the regulatory requirements and standards been clearer and less confused, it is much less likely that *Malu Sara* would have been lost.<sup>7</sup>

The current exemption in Marine Order 62 is limited to vessels 7m or under in length. The proposed Marine Order 31 increases this to 10m. However, no rationale or risk assessment been provided with the consultation for this increase.

The numbers of affected vessels should also be included and assessed. How many of these vessels exist? How many 7m and under, how many 10m and under? What is their area of operation?

If it is necessary to exempt vessels from a survey, it would be much clearer to call these 'non survey' vessels or something similar. It is misleading and sets a bad precedent to issue a Certificate of Survey which does not involve a survey.

The proposed 'approved management plan' should not be approved without an initial survey and minimum survey periods, and these should not be less than that required by Domestic Commercial Vessels.

Part (a) service categories is unclear.

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<sup>7</sup> ATSB investigation report on the sinking of *Malu Sara*, p. 68

## Appendix 1: Nuclear powered vessels

### *Provisions in current Marine Order 31 (Vessel surveys and certification) 2015*

*nuclear vessel* means a vessel that has a nuclear power plant.

#### **6 Application**

- (1) This Order applies to a regulated Australian vessel.
- (2) This Order applies to a foreign vessel as set out in Division 2.
- (3) This Order does not apply to a nuclear vessel to the extent that this Order is inconsistent with Chapter VIII of SOLAS.

### *Provisions in the proposed Marine Order 31 (SOLAS and vessel safety certification) 2019*

- (2) A SOLAS certificate remains in force for the period mentioned in the following table for the kind of certificate mentioned unless:
  - (a) a shorter period is specified in the certificate; or
  - (b) the certificate ceases to be in force in accordance with Regulation 14 of Chapter I, or Regulation 10 of Chapter VIII, of SOLAS.

Kind of certificate (SOLAS)	Maximum duration
Passenger Ship Safety Certificate	1 year
Cargo Ship Safety Construction Certificate	5 years
Cargo Ship Safety Equipment Certificate	5 years
Cargo Ship Safety Radio Certificate	5 years
Cargo Ship Safety Certificate	5 years
Nuclear Passenger Ship Safety Certificate	1 year
Nuclear Cargo Ship Safety Certificate	1 year



## **27 Reporting by vessel that is nuclear vessel**

*(SOLAS, Chapter VIII, Regulation 7(b))*

- (1) The owner or master of a regulated Australian vessel to which Chapter VIII of SOLAS applies must provide to the government of a country that it is to visit a copy of the vessel's safety assessment as soon as possible before the arrival of the vessel.

Penalty: 50 penalty units.

- (2) The owner or master of a foreign vessel to which Chapter VIII of SOLAS applies must provide to AMSA as soon as possible a copy of the vessel's safety assessment before the arrival of the vessel in its first port in Australia.

Penalty: 50 penalty units.

- (3) An offence against subsection (1) or (2) is a strict liability offence.

- (4) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 50 penalty units.

## **30 Approval of reactor installations for nuclear vessels**

- (1) An owner of a regulated Australian vessel may apply for approval of a reactor installation in accordance with *Marine Order 1 (Administration) 2013*.
- (2) AMSA may approve a reactor installation for a nuclear vessel if satisfied of the matters mentioned in Regulation 4 of Chapter VIII of SOLAS.

## **31 Approval of safety assessments for nuclear vessels**

- (1) An owner of a regulated Australian vessel may apply for an approval of a safety assessment in accordance with *Marine Order 1 (Administration) 2013*.
- (2) AMSA may approve a safety assessment for a nuclear vessel if satisfied of the matters mentioned in paragraph 7(a) of Chapter VIII of SOLAS.

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## **1.6 Nuclear Passenger Ship Safety Certificate**

Criteria	Conditions
The vessel:	(1) The vessel and its equipment and appliances are maintained to comply with the Marine Orders mentioned in column 1.
(a) has an approved reactor installation; and	(2) Each survey of the vessel that is required in accordance with Regulation 7 or 10 of Chapter I of SOLAS is completed in accordance with that regulation and <i>Survey Guidelines under the Harmonised System of Survey and Certification</i> , as amended;
(b) has an approved safety assessment; and	
(c) has been surveyed in accordance with Regulation 10(b) of Chapter VIII of SOLAS and <i>Survey Guidelines under the Harmonised System of Survey and Certification</i> , as amended; and	

(d) complies with the following Marine Orders:	(3) After the survey mentioned in Regulation 10(b) of Chapter VIII of SOLAS has been completed, any change to the structure, equipment, systems, fittings, arrangements or material covered by the survey, other than the direct replacement of equipment or fittings, is approved by AMSA.
(i) <i>Marine Order 12 (Construction — subdivision and stability, machinery and electrical installations) 2016;</i>	
(ii) <i>Marine Order 15 (Construction — fire protection, fire detection and fire extinction) 2014;</i>	
(iii) <i>Marine Order 21 (Safety and emergency arrangements) 2016;</i>	
(iv) <i>Marine Order 25 (Equipment — lifesaving) 2014;</i>	
(v) <i>Marine Order 27 (Safety of navigation and radio equipment) 2016;</i>	
(vi) <i>Marine Order 30 (Prevention of collisions) 2016.</i>	

## 1.7 Nuclear Cargo Ship Safety Certificate

Criteria	Conditions
The vessel:	(1) The vessel and its equipment and appliances are maintained to comply with the Marine Orders mentioned in column 1.
(a) has an approved reactor installation; and	
(b) has an approved safety assessment; and	
(c) has been surveyed in accordance with Regulation 10(c) of Chapter VIII of SOLAS and <i>Survey Guidelines under the Harmonised System of Survey and Certification</i> , as amended; and	(2) Each survey of the vessel that is required in accordance with Regulation 8, 9 or 10 of Chapter I of SOLAS is completed in accordance with that regulation and <i>Survey Guidelines under the Harmonised System of Survey and Certification</i> , as amended.
(d) complies with the following Marine Orders:	(3) After the survey mentioned in Regulation 10(c) of Chapter VIII of SOLAS has been completed, any change to the structure, equipment, systems, fittings, arrangements or material covered by the survey, other than the direct replacement of
(i) <i>Marine Order 12 (Construction — subdivision and stability, machinery and electrical installations) 2016;</i>	
(ii) <i>Marine Order 15 (Construction — fire protection, fire detection and fire extinction) 2014;</i>	
(iii) <i>Marine Order 21 (Safety and emergency arrangements) 2016;</i>	
(iv) <i>Marine Order 25 (Equipment — lifesaving) 2014;</i>	equipment or fittings, is approved by AMSA.
(v) <i>Marine Order 27 (Safety of navigation and radio equipment) 2016;</i>	
(vi) <i>Marine Order 30 (Prevention of collisions) 2016.</i>	