



Consultation Feedback Report

Marine Order 31 (SOLAS and non-SOLAS certification) 2019

Marine Order 31 (SOLAS and non-SOLAS certification) 2019 (MO31) replaces *Marine Order 31 (Vessel surveys and certification) 2015* and *Marine Order 62 (Government vessels) 2003*. The commencement date of the reissued MO31 is 1 November 2019.

The changes made by the new order include:

- Combining Marine order 31 and Marine order 62 into one new instrument and to repeals Marine order 62.
- Aligning requirements for government vessels and non-government regulated Australian vessels
- Providing the option for an approved management plan instead of a full survey and certification for vessels under ten-metre length.
- Providing various options for dry-dock and in-water inspections including interval between consecutive dry-docking.
- Uniformly applying HSSC Guidelines to survey and inspection for both SOLAS and non-SOLAS certification.
- Allowing five-year duration of non-SOLAS certificate for vessels with dual certification as passenger and cargo vessel.
- Detailing survey and certification requirements for nuclear powered vessels with greater clarity

Consultation feedback

Public consultation was carried out for a four-week period from 8 July 2019 closing on 4 August 2019. During this period, a copy of the draft order was placed on the AMSA website and social media including Facebook and Instagram for public comment.

The draft order was also emailed to over 135 stakeholders directly including ship operating companies, seafarer representative organisations, classification societies, shipping industry peak bodies and interested government departments and agencies. Comments were received from two industry stakeholders including one peak body whose request for an extension of the deadline to 7 August was agreed.

Summary of the all comments received during the public consultation and AMSA responses are provided in the table below:

Marine order 31 - Division 5 Approval matters	
Comments	Division 5 contains information for the approval of in-water inspection. While the revised Marine Order does draw onto compliance with IACS No. 133, key criteria specified in Sub Division 4.3 – Section 42 of the current Order have been omitted from the revised Marine Order.
AMSA Response	All requirements of section 42 of the current MO31 are comprehensively covered by section 33 of the new MO31. In addition, it also covers all aspects of in-water inspection that are not covered by the current MO31. AMSA has decided to apply IMO resolution A.1120(30) the <i>Survey guidelines under the harmonized system of survey and certification (HSSC)</i> , 2017 uniformly and consistently to all survey and certification including all dry-docking and in-water inspections for all vessels. Section 33 covers situations if the vessel is participating in <i>Extended Dry-docking (EDD) Scheme</i> and also if it is not participating in the EDD Scheme. Application of HSSC and IACS Rec. No 133 along with subsection 33(3) and 33(4) make section 42 of the current MO31 redundant.
Marine order 62 – sections 5, 7 and 8	
Comments	Sections 5, 7 and 8 of the Marine Order 62 are not reflected in the new revision of Marine Order 31 on the explanation that these sections are redundant. Will the contents of these sections be reflected in a different Marine Order?
AMSA Response	Other than in the current Marine Order 62 and the exemption instrument, government vessels are not singled out or accommodated in a special way in the Navigation Act or any other Marine Order -- so are, therefore, treated as Regulated Australian Vessels (RAV) if they meet the definition of RAV under section 15 of the Navigation Act. As far as government vessels (which are also RAV) are concerned, their survey and certification requirements are no different from any RAV and that is the only reason for merging MO62 and MO31, which better reflects this situation. In doing so, there is no differentiating between government and non-government vessels and all are treated as just RAVs. Logbook requirements for RAVs under section 309 of the Navigation Act are prescribed in different Marine Orders including Marine Order 1 and Marine Order 11. Therefore, logbook requirements of relevant Marine Orders will apply to government vessels as well and there is no need to mention this in this Order. Similarly, sections 7 and 8 of the current MO62 do not require any mention in the draft new MO31 as relevant requirements are covered by Marine Order 41 and Marine Order 42 respectively for government vessels as RAVs.

Marine order 62 – general comment	
Comments	Oppose Government Vessel Exemption Instrument. Concerns about removing the rights of seafarers working on government vessels under MLC and Marine Order 11 related to working conditions, medical attendance, protection against safety related issues etc. The exemption instrument will deprive seafarers working on government vessels from essential rights.
AMSA Response	<p>The exemption instrument reflects the current policy and application provision in the articles of the Maritime Labour Convention in respect of government non-commercial vessels. This exemption essentially applies Article II, section 4 of the MLC that specifies that the convention applies to ships, whether publicly or privately owned, ordinarily engaged in commercial activities. Therefore, government vessels engaged in non-commercial activities should be excluded from the application of the MLC.</p> <p>There has been no agreement to extend the MLC to such vessels and this exemption makes that clear. The exemption does not remove the responsibility of the operator to comply with the Fair Work Act or relevant WHS legislation. Therefore, seafarers working on these vessels are covered by alternative legislations. Also some of these vessels have opted in for Declaration of Maritime Labour Compliance. The exemption instrument is currently in force and the review of MO62 has not introduced anything new.</p>
Marine order 62 – section 6 and Marine Order 31 – subdivision 2.3	
Comments	Currently, for government vessels <7m in length, if AMSA is satisfied that the owner of a vessel has established and maintained a planned maintenance and inspection system for the vessel, it does not require a full survey and certification. The draft new Order extended the 7m threshold to ≤10m and included non-government vessels to have AMSA approved management plan in lieu of survey and certification. No justification and risk assessment provided for this policy change.
AMSA Response	The limitation of 7m length in current MO62 means that many Class 2 open boat vessels designed for inshore operations outside Australian waters cannot rely on the approved inspection and maintenance option as vessel size has grown. Mostly these vessels are now in 8.5m – 10m (in length) range. The operation of these vessels is monitored and shore communication is maintained in the same manner as vessel that fall under the 7m limit and there is no increase in the risk associated with these vessel noting they do not carry cargo and are not passenger vessels. It is relevant to note here that the 'non-survey' status is applied to Domestic Commercial Vessels (DCV) of all types for up to 12m in length. However, the policy change in this case reflects the overseas operations and simply recognises the increase in size of the newer generation vessels noting this increases the safety of such vessel for the operations under consideration.

Comments	Issuing a Certificate of Survey to vessels ($\leq 10\text{m}$ in length) without survey is misleading and sets a bad precedence. If necessary to exempt some vessels from survey, better call them “non survey vessels”
AMSA Response	The final draft has been modified to clarify that vessel $\leq 10\text{m}$ in length subject to AMSA approved inspection and maintenance plan will not be issued with Certificate of Survey. See subdivision 2.3 and schedule 3
Comments	“Survey” is more thorough than “inspection” and may result in inadequate verification standards for smaller vessels.
AMSA response	There is no difference between meanings of “survey” and “inspection” as both mean critical examination and viewing. In the final draft of MO31, “management plan” has been replaced with “inspection and maintenance plan” to align with chapter 10 of Part 1 of the International Safety Management (ISM) Code as the “inspection and maintenance plan” for smaller vessels needs to be in accordance with the ISM Code. This ensures SOLAS-standard safety.
Comments	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
AMSA response	For clarity, a new subdivision 2.3 is provided to deal with approved inspection and maintenance plans for vessels $\leq 10\text{m}$ in length. Though initial survey requirements were inexplicitly covered by the relevant section of the consultation draft, now it is has greater clarity in section 26.
Marine order 31 – schedule 3	
Comments	Service categories mentioned in paragraph (a) of Schedule 2, item 2.3 are unclear
AMSA response	Schedule 2 in the consultation draft is now covered by schedule 3. Further clarified by including definitions of “smooth waters” and “partially smooth waters” in section 4

Marine order 31 – section 22	
Comments	The maximum duration for a Certificate of Survey for a passenger ship is 1 year, however the new draft Order provides that, ‘AMSA may extend the expiry date’ for up to 5 years. 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
AMSA Response	The section provides that AMSA may vary the validity of non-SOLAS passenger ship safety certificate extending up to a period of 5 years. However, this does not mean period between surveys is increased by a factor of 5. The condition laid down for this variation is “Surveys and inspections are completed in accordance with this Marine Order as if the vessel were a cargo vessel”. Therefore, all surveys including annual, intermediate, dry-docking etc. applicable to a cargo vessel is still applicable to a passenger vessel falling under this variation. This variation is introduced to cater for cargo ships with dual certification as passenger ships, which should not be put through unnecessary requirement of annual certification. This does not result in any reduction of safety standards.
Marine order 31 – sections 31, 34 and 35	
Comments	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. Oppose operation of any nuclear vessels in Australian waters and the measures to facilitate the introduction of nuclear vessels to Australia.
AMSA Response	Voluntary IMO Audit of AMSA recommended that more clarity be provided regarding nuclear powered vessels in accordance with the International Convention for Safety of Life at Sea (SOLAS). Australia, under international treaty obligation has to give effect to SOLAS convention. The Navigation Act 2012 empowers AMSA to give effect to SOLAS and issue certificates in accordance with it. Section 6 of current Marine Order 31 gives effect to chapter VIII of SOLAS, however, it does not give any details of requirements for survey and certification of nuclear powered vessels. This review captured recommendations from the IMO Audit and provided appropriate details of the requirements. The new Marine Order 31 expanded on the current requirements in the Order for nuclear vessels to give clarity and does not introduce anything new. Currently there is no nuclear vessel holding certificates under the Navigation Act as regulated Australian vessels and none is anticipated in the foreseeable future due to prohibitions in section 140A of <i>Environment Protection and Biodiversity Conservation Act 1999</i> and section 10 of <i>Australian Radiation Protection and Nuclear Safety Act 1998</i> . AMSA has no authority to introduce or approve nuclear vessel construction and MO31 merely details survey and certification requirements of nuclear vessels as laid down in SOLAS. This is relevant only after the government allows such construction.

Comments	The new draft Order requires foreign nuclear powered vessels 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.
AMSA Response	"As soon as possible" is changed to "sufficiently in advance" that also makes it consistent with words used in SOLAS. A Note has been provided for the guidance on the meaning of the expression "sufficiently in advance". The timeframe quoted in the Note as guidance, indicates the extensive lead time that would be necessary to assess the safety of a nuclear vessel.

Marine Orders Amendment (*Marine Order 31 – consequential changes*) Order 2019

Because of reissuing MO31 with a different title, some other marine orders needed to be amended where MO31 has been referenced. Therefore, a consequential amendment Order has been made. This order was not publicly consulted because the amendments are all minor editorial, administrative or consequential amendments that do not alter any existing arrangements in the marine orders affected.