



Marine Notice 08/2013

## Foreign flagged vessels operating in Australian near-coastal waters

The purpose of this Marine Notice is to draw the attention of ship owners, ship operators, masters, officers and crew to the changing regulatory environment for all foreign flagged vessels operating in Australian waters.

With the commencement of the *Navigation Act 2012* and the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (National Law) on 1 July 2013, jurisdiction over foreign flagged commercial vessels in Australian waters will be via the *Navigation Act 2012*. This includes foreign flagged vessels solely engaged in intra-state operations (i.e. voyages within the waters of an Australian State or Territory). Given the complimentary nature of the application of the new acts, foreign flagged vessels will not be able to operate under Australian State or Territory jurisdiction nor to “declare out” of the *Navigation Act 2012*. More details about these Acts can be found in the information sheets at: [www.nationalsystem.amsa.gov.au/factsheets.php](http://www.nationalsystem.amsa.gov.au/factsheets.php) and

[www.nationalsystem.amsa.gov.au/](http://www.nationalsystem.amsa.gov.au/)

### Port State Control

The operator of a foreign flag vessel operating domestically in Australia must ensure the vessel complies with the requirements of the flag State with regard to certification and manning appropriate to the vessel size, power and operations. This reflects the fact that the flag State is ultimately responsible for the vessel.

From 1 July 2013 AMSA will have the ability to conduct port State inspections on all foreign flag vessels in Australian waters, irrespective of the nature of the voyage they are undertaking. Relevant documentation must be available for inspection by port State inspectors.

### Options for foreign flagged vessels operating under Australian State/Territory arrangements

AMSA is aware of cases in which flag States have issued manning documents to vessels accepting Australian coastal qualifications and manning. This is appropriate and is in line with international practice.

AMSA is also aware that a number of foreign flagged vessels operating domestically employ Australian crews under documentation issued by Australian State or Territory maritime regulators. After 1 July 2013 this practice is no longer acceptable and, as for any other foreign flagged vessel, the minimum manning, including the qualifications of crew, must be determined and documented by the flag State.

Accordingly, AMSA, along with Australian State and Territory Maritime Regulators confirm that:

1. The flag State has sole responsibility for certification and safe operations of vessels under their flag, regardless of voyage or operating area.
2. The flag State is responsible for determining minimum manning levels and qualifications on their vessels and for issuing associated documentation.

Recognising these principles and in order to deliver continuity of operations AMSA and the Australian State and Territory Maritime Regulators confirm that compliance with the *Navigation Act 2012* can be achieved by the following means:

1. A flag State issuing evidence that it accepts Australian seafarers and Australian near-coastal qualifications on a particular vessel under its control, or

2. A flag State requesting AMSA issue a minimum safe manning document in accordance with their instructions, on their behalf, as permitted in SOLAS Regulation I/13.

AMSA will accept an assessment under either option 1 or 2 for port State control purposes so long as:

- the manning and qualifications are no less than that required for an Australian vessel of similar size with similar operations; and
- the vessel has an appropriate safety management system in place (see next section).

To assist flag States in assessing these requirements AMSA or its National Law Delegates (i.e. officials representing Australian State and Territory Maritime Authorities) can provide advice on what would be acceptable had the vessel been Australian flagged and operating under either the *Navigation Act 2012* or National Law.

In no circumstance will AMSA override, or object to, any ruling by a flag State that they will not accept Australian manning or near-coastal qualifications.

As an alternative to options 1 and 2 above, a foreign flagged vessel can reflag to Australia under the Australian *Shipping Registration Act 1981* and operate with domestic qualifications under either the National Law or the *Navigation Act 2012*. Australian flagged vessels operating on purely domestic operations will generally come under the National Law, however if the vessel is certified for operations beyond the exclusive economic zone (approximately 200 nautical miles to seaward), or wishes to opt in, the vessel can be regulated under the *Navigation Act 2012*.

## Safety Management

Determination of manning and qualification requirements for Australian flagged vessels operating domestically are made having regard to the total operating environment of the vessel, including the National Law requirement to have appropriate safety management systems in place.

Accordingly, for Australian manning and qualification requirements to be accepted for foreign flagged vessels, evidence of safety management systems will be required as follows:

- for foreign flagged vessels of 500 gross tonnage and upwards a fully certified ISM Code system in accordance with Chapter IX of SOLAS must be in place.
- for foreign flagged vessels of less than 500 gross tonnage the minimum requirement will be a safety management system equivalent to the relevant operational standards of National Standard for Commercial Vessels Part E, verified by the flag State, AMSA or a National Regulator Delegate.

## Compliance timeframes

AMSA recognises that time is required to achieve the above outcomes.

Accordingly AMSA will accept operations without a formal manning and qualifications document recognising Australian near-coastal manning and qualifications from the flag State until **31 August 2013**, provided there is evidence on the vessel that:

- the arrangement was in place for the vessel prior to 1 July 2013; and
- formal approval of the flag State has been sought.

Requests for letters advising what acceptable manning would be on equivalent Australian flagged vessels or any other information can be obtained as follows:

### ISM, Manning and Qualifications matters

Manager  
Ship Operations and Qualifications  
Ship Safety Division  
Australian Maritime Safety Authority  
GPO Box 2181  
CANBERRA ACT 2601  
[manning@amsa.gov.au](mailto:manning@amsa.gov.au)

### Ship Inspection, Port State Control and Registration matters

Manager  
Ship Inspections and Registration  
Ship Safety Division  
Australian Maritime Safety Authority  
GPO Box 2181  
CANBERRA ACT 2601  
[fsc@amsa.gov.au](mailto:fsc@amsa.gov.au)