

Marine Order 4 (Transitional modifications) 2013

FRLI ID: F2013L00871

Portfolio: Infrastructure and Regional Development

Tabled: House of Representatives, 3 June 2013 and Senate, 17 June 2013

PJCHR comments: Tenth Report of 2013, tabled on 27 June 2013

Response dated: 15 July 2013

Information sought by the committee

3.85 The committee sought further information:

- whether the civil penalty provisions should be considered 'criminal' for the purposes of human rights law; and
- if so, whether they were consistent with articles 14 and 15 of the ICCPR.

3.86 The former Minister's response is attached.

Committee's response

3.87 The committee thanks the former Minister for his response.

3.88 In light of the information provided the committee makes no further comment on this instrument. The committee agrees with the former Minister's view that the civil penalty provisions in the bill are unlikely to be considered 'criminal' for the purposes of human rights law, given that the penalties are relatively small and the sanctions are directed to a specific subset of people within a regulatory context.

3.89 The committee notes it would have been useful for the information provided in this response to have been included in the statement of compatibility.



The Hon Anthony Albanese MP

Deputy Prime Minister
Minister for Infrastructure and Transport
Minister for Broadband, Communications and the Digital Economy
Leader of the House

Reference: 02497-2013

15 JUL 2013

Mr Harry Jenkins MP
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

Dear Mr Jenkins

Thank you for your letter of 26 June 2013 on behalf of the Parliamentary Joint Committee on Human Rights seeking further information about the civil penalties provided for in Marine Order 4 (Transitional Modifications) 2013 (Marine Order 4).

Marine Order 4 modifies 42 Marine Orders dealing with a range of subjects, including the qualifications and medical fitness requirements for seafarers, the construction and maintenance of vessels, cargo handling and marine pollution prevention. The majority of the Marine Orders modified by Marine Order 4 contained penal provisions, breaches of which were offences under the regulations made under the *Navigation Act 1912*. The *Navigation Act 2012* commenced on 1 July 2013 and allows for the direct creation of offences in Marine Orders; Marine Order 4 recasts these existing penal provisions as offences. As the *Navigation Act 2012* allows for the imposition of civil penalties for contraventions of Marine Orders, the opportunity was taken to insert civil penalty provisions into the modified orders.

The modified Marine Orders provide for penalties of 50 penalty units for failure to comply with an offence provision. The new civil penalty provisions also provide for civil penalties of 50 penalty units.

Analysing these provisions in light of the interim *Practice Note 2* (published after Marine Order 4 was tabled in the House of Representatives), I do not consider the civil penalties provided for under Marine Order 4 should be considered as criminal in the terms provided for by Articles 14 and 15 of the International Covenant on Civil and Political Rights. The objectives of these civil penalty provisions are protective, preventative, disciplinary or regulatory in nature. The persons to whom the provisions are directed are seafarers and owners of vessels rather than the general public, and the level of penalty is relatively low.

PROCESSED
21 JUL 2013

As requested in your letter, a copy of this response has been emailed to
<human.rights@aph.gov.au>.

Thank you for raising this matter with me. I trust that this information is of assistance.

Yours sincerely



ANTHONY ALBANESE