



**Australian Government**  
**Australian Maritime Safety Authority**

# ***MARINE ORDERS***

## ***Part 94***

### ***Marine Pollution Prevention— Packaged Harmful Substances***

## ***Issue 4***

Order No. 5 of 2005

Pursuant to subsection 425(1AA) of the *Navigation Act 1912* and subsection 34(1) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*, I hereby make this Order repealing Marine Orders Part 94, Issue 3, and issuing the attached Marine Orders Part 94, Issue 4, to come into operation on 16 August 2005.

Clive Davidson  
Chief Executive Officer  
25 July 2005

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### *Previous issues*

Issue 1, Order No.12 of 1994

Issue 2, Order No.7 of 1998

Issue 3, Order No.9 of 2001

## 1 Purpose & power

### 1.1 Purpose

**1.1.1** Annex III of MARPOL provides regulations aimed at preventing the pollution of the sea by harmful substances carried by sea in packaged form. This Part of Marine Orders gives effect to all or part of the following regulations of Annex III:

- (a) Regulations 1 to 4, which deal with packing, marking, labelling and documentation of harmful substances;
- (b) Regulations 5 and 6, which deal with the stowage of packages containing harmful substances and the limitation of quantities of such substances; and
- (c) Regulation 8, which deals with port State control on operational requirements.

**1.1.2** The Part also prescribes various matters, such as the manner of notifying an incident, for the purposes of Division 12B of Part IV of the Navigation Act and Part IIIA of the Pollution Prevention Act.

### 1.2 Power

**1.2.1** Subsection 425(1) of the Navigation Act provides for regulations to be made prescribing matters required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act. Section 267ZC of the Navigation Act provides that the regulations may make provision for and in relation to giving effect to Regulations 1 to 6 (inclusive) of Annex III of MARPOL.

**1.2.2** Subsection 33(1) of the Pollution Prevention Act provides for regulations to be made prescribing matters:

- (a) required or permitted by the Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to the Act; and, in particular:
- (c) for and in relation to giving effect to MARPOL, other than provisions of MARPOL to which effect is given by a provision of the Act.

**1.2.3** Subsection 425(1AA) of the Navigation Act and subsection 34(1) of the Pollution Prevention Act provide that AMSA may make orders with respect to any matter for or in relation to which provision may be made by regulation.

## 2 Definitions of words and phrases used in this Part

**AMSA** means the Australian Maritime Safety Authority established by the *Australian Maritime Safety Authority Act 1990*;

**Annex III** means Annex III to MARPOL;

**harmful substance** means a substance which is identified as a marine pollutant in the IMDG Code;<sup>1</sup>

**IMDG Code** means the International Maritime Dangerous Goods Code as defined in Marine Orders, Part 41;

**IMO** means the International Maritime Organization;

**MARPOL** has the same meaning as 'the Convention' in the Pollution Prevention Act;<sup>2</sup>

**packaged form** means a form of containment specified for harmful substances in the IMDG Code;

**penal provision** means a penal provision for the purposes of Regulation 4 of the *Navigation (Orders) Regulations 1980*<sup>3</sup> or Regulation 4 of the *Protection of the Sea (Prevention of Pollution from Ships)(Orders) Regulations 1994*;<sup>4</sup>

**surveyor** means a person appointed as a surveyor under section 190 of the Navigation Act;

**the Navigation Act** means the *Navigation Act 1912*;

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<sup>1</sup> Guidelines for the identification of harmful substances are set out in the Appendix to Annex III.

<sup>2</sup> MARPOL is to be found in a Consolidated Edition, 2002, published by IMO, and at time of publication of this Order had been revised by IMO Resolutions MEPC.95(46), MEPC.111(50), MEPC.115(51) and MEPC.116(51). Details concerning any further revisions are available from AMSA.

<sup>3</sup> Subregulation 4(1) of the Navigation (Orders) Regulations provides that a person who fails to comply with a provision of an order made under subsection 425(1AA) of the Navigation Act that is expressed to be a penal provision is guilty of an offence and is punishable by:

(a) if the offender is an individual—a fine not exceeding 20 penalty units; or

(b) if the offender is a body corporate—a fine not exceeding 50 penalty units.

A penalty unit is currently \$110.

<sup>4</sup> Regulation 4 of the Protection of the Sea (Prevention of Pollution from Ships) (Orders) Regulations provides that a person must not fail to comply with a provision of an order made under subsection 34 (1) of the Pollution Prevention Act that is expressed to be a penal provision. The penalty is 20 penalty units or, in the case of a body corporate, 50 penalty units. A penalty unit is currently \$110.

**the Pollution Prevention Act** means the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

### 3 Interpretation

In this Part:

- (a) headings and sub-headings are part of the Part;
- (b) the Appendix is part of the Part; and
- (c) a footnote is not part of the Part, but may provide additional information or guidance in applying the Part.

### 4 Application

Subject to subsection 33(2A) of the Pollution Prevention Act and subsection 267ZB(2) of the Navigation Act, this Part applies to and in relation to a ship:

- (a) to which the Convention is expressed to apply; or
- (b) owned or operated by the Commonwealth and used, for the time being, on government non-commercial service.

### 5 Review of decisions

#### 5.1 Interpretation

In 5.2 and 5.3, **General Manager** means the person occupying the position of General Manager, Maritime Operations, in AMSA.

#### 5.2 Internal review

**5.2.1** If a surveyor makes a decision under this Part, a person affected by the decision may apply to the General Manager for review of that decision.

**5.2.2** An application for internal review under 5.2.1 must be made in writing to the General Manager and must be accompanied by such information as the General Manager requires to enable the decision to be properly reviewed.

**5.2.3** The General Manager may:

- (a) affirm the original decision by the surveyor; or
- (b) make any decision that could be made by the surveyor in accordance with this Part.

## 5.3 Review by the AAT

**5.3.1** Application may be made to the Administrative Appeals Tribunal for review of a decision by the General Manager under 5.2.3.

**5.3.2** The General Manager must give his or her decision in writing within 28 days of receiving the application for internal review. The notice must include a statement to the effect that, if the person is dissatisfied with the decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision. The notice must also include a statement to the effect that the person may request a statement under section 28 of that Act.

**5.3.3** Failure to comply with 5.3.2 in relation to a decision does not affect the validity of that decision.

## 6 Convention requirements

**6.1** By virtue of subsection 267ZC of the Navigation Act, regulations 1 to 6 (inclusive) of Annex III have the force of law as part of the law of the Commonwealth.

**6.2** For the purposes of paragraph 3 of regulation 4 of Annex III, AMSA is the designated organisation.<sup>5</sup>

## 7 Prescribed matters

### 7.1 Washing substances overboard

For the purposes of subsections 26AB(6) and 26B(11) of the Pollution Prevention Act, a substance is to be taken to have been washed overboard in accordance with the orders if the person who authorises the washing overboard, after considering the physical, chemical and biological properties of the substance, reasonably believes that washing overboard is the most appropriate manner of disposal.

### 7.2 Prescribed officer

For the purposes of section 26B of the Pollution Prevention Act, the following persons are prescribed officers:

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<sup>5</sup> A copy of the stowage plan required by paragraph 3 of Regulation 4 of Annex III should be given to the surveyor in charge of marine surveys for AMSA at the port of loading. If no such surveyor is located at the port of loading, the plan should be given to AMSA's surveyor at the nearest survey office to the port of loading.

- (a) the General Manager, Emergency Response, in AMSA; and
- (b) the General Manager, Maritime Operations, in AMSA.

### **7.3 Prescribed manner of notifying an incident**

For the purposes of subsections 26B(3) and 26B(5) of the Pollution Prevention Act, an incident is notified in the prescribed manner if it is notified by:

- (a) a telephone message; or
- (b) a facsimile message; or
- (c) a telex message; or
- (d) a radio message; or
- (e) an E-mail message,

conveyed either direct to the prescribed officer or through the Rescue Coordination Centre (RCC) Australia, being a message that commences with the code letters POLREP and the name, IMO number and radio call-sign of the ship.<sup>6</sup>

### **7.4 Prescribed form—marine pollutants report<sup>7</sup>**

**7.4.1** For the purposes of subsections 26B(8) and 26B(9) of the Pollution Prevention Act, the prescribed form for a marine pollutants report is the form set out in the Appendix.

**7.4.2** Where a time is required to be specified in a marine pollutants report, it must be expressed in Coordinated Universal Time (UTC).

### **7.5 Prescribed time for furnishing a report**

For the purposes of subsections 26B(8) and 26B(9) of the Pollution Prevention Act, the period of 24 hours immediately following receipt of a request for a report is the prescribed time.

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<sup>6</sup> The following are contact details for the Rescue Coordination Centre (RCC) Australia:  
Telex: 7162349; Telephone: +61 (0)2 6230 6811; Freecall: 1800 641 792 (within Australia);  
Facsimile: +61 (0)2 6230 6868; AFTN: YSARYCYX; E-mail: rccaus@amsa.gov.au

<sup>7</sup> Provision 11 of Marine Orders Part 41 prescribes requirements to report incidents at sea involving dangerous goods that are not marine pollutants.

## **8 Port State control on operational requirements**

### **8.1 Inspection of ships**

If a surveyor has clear grounds for believing that the master or crew of a ship in a port in Australia are not familiar with essential shipboard procedures relating to the prevention of pollution by harmful substances, the surveyor may inspect the ship.

### **8.2 Detention of ships**

**8.2.1** A surveyor intending to inspect a ship under 8.1 may, by order in writing addressed to the master, detain it.

**8.2.2** When the surveyor is satisfied that the ship is able to proceed to sea without presenting an unreasonable threat of harm to the marine environment, he or she is to revoke the detention order.

**8.2.3** The master of a ship must comply with an order under 8.2.1.

This is a penal provision.

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## Appendix

### Marine Pollutants Report Form

When reporting discharge or potential discharge of a marine pollutant in a packaged form, the following information is to be provided.

*(Note: If any of the following items of the ship reporting format are inappropriate they should be omitted from the report. These items of the standard reporting format are referred to in IMO Resolution A.851(20).)*

**A Ship**

name

call sign/ship station identity

flag

**B Date & time of event**

*Note: Time must be expressed as Coordinated Universal Time (UTC)*

**Position**

**C latitude and longitude**

*or*

**D true bearing and distance**

**M Radio communications**

full names of stations

**P Probable discharge**

1. Correct technical name or names of goods
2. UN number or numbers
3. IMO hazard class or classes
4. Names of manufacturers of goods, *or* consignee, *or* consignor
5. Types of packages, including identification marks

*specify whether portable tank, freight container or other cargo transport container, including official registration marks and numbers assigned to the unit.*

6. An estimate of the quantity and likely condition of the goods

**Q Condition of ship**

1. Condition of ship
2. Ability to transfer cargo/ballast/fuel

**R Discharge**

1. Correct technical name or names of goods
2. UN number or numbers
3. IMO hazard class or classes
4. Names of manufacturers of goods, *or* consignee, *or* consignor
5. Types of packages, including identification marks

*specify whether portable tank, freight container or other cargo transport container, including official registration marks and numbers assigned to the unit.*

6. An estimate of the quantity and condition of the goods
7. Whether lost goods floated or sank
8. Whether loss is continuing
9. Cause of loss

**S Weather conditions**

*Give brief details of weather and sea conditions prevailing*

**T Contact details**

Name, address, telephone number and facsimile or telex number of the ship's owner and representative

**U Ship size and type**

**X Action**

1. Action being taken with regard to the discharge and to the movement of the ship.
2. Assistance or salvage efforts which have been requested or which have been provided by others.
3. The master of an assisting or salvaging ship should report the particulars of the action undertaken or planned.

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