

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2006 No. 360**

Issued under the authority of the Parliamentary Secretary to the Minister for  
Transport and Regional Services

*Protection of the Sea (Powers of Intervention) Act 1981*

*Protection of the Sea (Powers of Intervention) Amendment Regulations 2006 (No. 1)*

Section 23 of the *Protection of the Sea (Powers of Intervention) Act 1981* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Regulations have updated the Protection of the Sea (Powers of Intervention) Regulations (the Intervention Regulations) made previously under the Act, aligning these with current practices and with amendments made to the Act in 2006.

The Act allows the Australian Maritime Safety Authority (AMSA) to issue directions to a vessel, its owner or the master; the Act also allows AMSA to direct an owner of a tangible asset to act to prevent, mitigate or minimise a risk of pollution.

Section 18 of the Act deals with notification procedures to be followed when a change occurs in a vessel's ownership or when its master is changed while the vessel is under AMSA's directions. This section also deals with issues related to change of ownership of a tangible asset.

Paragraph 18(1)(b) of the Act provides that the person who was the owner of the vessel at the time the notice was served, shall forthwith notify AMSA, in accordance with the regulations, of the change of ownership.

Paragraph 18(2)(b) of the Act provides that the person who was the master of a vessel at the time the notice was served shall, in accordance with the regulations, notify AMSA of the details of the new master should one be appointed.

Paragraph 18(3)(b) of the Act provides that when a direction has been issued to the owner of a tangible asset (other than a ship) and subsequently the ownership of that asset changes while the direction is in force, AMSA must be notified of the change in accordance with the regulations.

Regulations 3 and 4 of the Intervention Regulations respectively provide the practical means by which a change of ownership of a ship or of its master will be notified. The Intervention Regulations did not consider the issue of tangible assets or change of ownership of such assets. Moreover, the means of communication prescribed in the Intervention Regulations were outdated and out of alignment with current practices. The Regulations have updated the means of communication, and included the means to notify a change of ownership of a tangible asset as defined in the Act.

The Intervention Regulations required that information be conveyed to AMSA through the Federal Sea Safety Centre. The Federal Sea Safety Centre has changed its name to the Rescue Coordination Centre. This change has been incorporated.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be met before the power to make the regulations may be exercised.

The Intervention Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

No formal consultation was undertaken in relation to these amendments as they are of a minor or machinery nature and do not substantially alter existing arrangements.

The Regulations commenced on the day after registration on the Federal Register of Legislative Instruments.

**DETAILS OF THE *PROTECTION OF THE SEA (POWERS OF INTERVENTION)*  
**AMENDMENT REGULATIONS 2006 (No. 1)****

**Regulation 1 – Name of Regulations**

Regulation 1 is a formal provision specifying the name of the Regulations.

**Regulation 2 – Commencement**

Regulation 2 provides that the Regulations commence on the day after registration on the Federal Register of Legislative Instruments.

**Regulation 3 – Amendment of the *Protection of the Sea (Powers of Intervention)*  
**Regulations****

Regulation 3 provides that Schedule 1 amends the Protection of the Sea (Powers of Intervention) Regulations.

## **SCHEDULE 1 – AMENDMENT**

### **Item 1 – Title**

This item has replaced the old title of the Intervention Regulations, the Protection of the Sea (Powers of Intervention) Regulations, with the *Protection of the Sea (Powers of Intervention) Regulations 1983*.

This amendment has made the title conform to other Australian Government regulations.

### **Item 2 – Subregulation 3(1)**

This item has replaced subregulation 3(1) of the Intervention Regulations.

Subsection 18(1) of the Act deals with the issue of notification by a vessel's owner which is under a direction of the Authority according to the Act following a change of ownership of the vessel. Paragraph 18(1)(b) of the Act provides that the owner shall forthwith notify the Authority, in accordance with the regulations, of the change of ownership of the ship and furnish the Authority with such particulars of the change as are prescribed. Subregulation 3(1) provides the means by which the particulars of the change are to be provided to AMSA.

The amendment has updated the Intervention Regulations by removing redundant modes of communication, such as telegram and hand delivered messages, and inserting new modes to reflect current practices such as fax, email and high frequency radio digital selective calling. The amendment has also specifically provided that the message will need to be transmitted to the Rescue Coordination Centre of AMSA.

### **Item 3 – Subregulation 3(2)**

This item has replaced subregulation 3(2) of the Intervention Regulations.

Subregulation 3(2) deals with the way a message is to be transmitted or constituted when using the modes specified in subregulation 3(1) (Item 2) in relation to change of ownership of a vessel, to which a notice has been served under the Act.

This amendment has brought in a new subregulation 3(2) as a consequence of changes to subregulation 3(1) by Item 2.

### **Item 4 – Paragraphs 3(3)(d) and (e)**

This item has replaced paragraphs 3(3) (d) and (e) of the Intervention Regulations.

Subregulation 3(3) deals with the particulars of the change of ownership of a ship to which a notice has been served under paragraph 18(1)(b) of the Act.

Paragraph 3(3)(d) prescribes the particulars that are to be provided to AMSA to facilitate communication with the new owner of the ship. The changes resulting from this item have removed the redundant requirement of furnishing a radio call sign of the new owner while requiring information more relevant in the current operational and technological context, such as fax number and email address.

Similarly, the new paragraph 3(3)(e) requires that particulars be also provided of any change to the flag of the ship in addition to change to its name. Previously the requirement was only to provide particulars of change to name. This additional information will assist AMSA to better assess risks and to contact the relevant flag state authority if necessary.

#### **Item 5 – Subregulation 4(1)**

This item has replaced subregulation 4(1) of the Intervention Regulations.

Paragraph 18(2)(b) of the Act provides that the person who was the master of a vessel at the time the notice was served shall, in accordance with the regulations, notify AMSA of the details of the new master should one be appointed.

Subregulation 4(1) prescribes the various communication modes through which AMSA would be provided the information by the outgoing master.

Item 5 has updated the Intervention Regulations by removing the redundant modes of communication, such as telegram and hand delivered messages, and by inserting new modes to reflect current practices such as fax, email and high frequency digital selective calling. The amendment also specifically provides that the message will need to be transmitted to the Rescue Coordination Centre of AMSA.

#### **Item 6 – Subregulation 4(2)**

This item has replaces subregulation 4(2) of the Intervention Regulations.

Subregulation 4(2) deals with the way a message is to be transmitted or constituted when notifying AMSA of such changes using the modes specified in subregulation 4(1) in relation to change of a master of a vessel.

This amendment has brought in a new subregulation 4(2) to reflect changes to subregulation 4(2) i.e. Item 5.

#### **Item 7 – Subregulation 4(3)**

This item has replaced subregulation 4(3) of the Intervention Regulations.

Regulation 4 is linked to paragraph 18(2)(b) of the Act and deals with notification of change of a master of a ship which is under direction of AMSA under the Act. Subregulation 4(3) prescribes the particulars in relation to the new master which must be provided by the outgoing master.

Item 7 has removed redundant provisions unrelated to change of a master of a ship, such as the radio call sign of the ship or particulars of change to the name of a ship, and requires that more relevant information, name of the new master and the date of engagement, be provided to AMSA.

#### **Item 8 – Regulation 5**

Item 8 has inserted a new regulation.

The need for this additional regulation arose as a consequence of the 2006 amendments to the Act which authorises AMSA to issue a direction, in addition to a shipowner and a ship

master, to an owner of a tangible asset, in accordance with the provisions of the Act when necessary.

Item 8 provides the modes of communication to be used, the way the message is to be transmitted using the various modes and the particulars that have to be provided in relation to the change of ownership of a tangible asset.