

Explanatory Statement

Marine Order 97 (Marine pollution prevention — air pollution) 2013

Authority

1. Subsection 425(1AA) of the *Navigation Act 2012* (the Navigation Act) allows the Australian Maritime Safety Authority (AMSA) to make orders for any matter in the Act for or in relation to which provision may be made by regulations.
2. This Order was made under both subsection 342(1) of the Navigation Act and subsection 34(1) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (the Pollution Prevention Act) and is a legislative instrument for the *Legislative Instruments Act 2003*.
3. Subsection 339(1) of the Navigation Act provides for regulations to be made prescribing matters requiring or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.
4. Subsection 342(1) of the Navigation Act provides for AMSA to make a Marine Order, by legislative instrument, for any matter for which provision must or may be made by the regulations.
5. Subsection 130(1) of the Navigation Act provides that the regulations may make provision about pollution certificates and subsection 314(3) of the Navigation Act provides that the regulations may prescribe various matters about certificates.
6. Paragraph 33(1)(c) of the Pollution Prevention Act and paragraph 340(1)(c) of the Navigation Act provide that the regulations may provide for giving effect to International Convention for the Prevention of Pollution from Ships (MARPOL).
7. Subsection 33(1) of the Pollution Prevention Act provides for regulations to be made prescribing matters required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Purpose

8. This Order gives effect to Annex VI of MARPOL, which deals with prevention of air pollution from vessels. It also provides for matters for Chapter 4 of the Navigation Act and prescribes matters for Part IID of the Pollution Prevention Act.

Overview

9. This Order implements Australia's obligations under Annex VI of MARPOL, which deals with survey and certification, emission limits for nitrogen oxides and sulphur oxides, shipboard incineration, fuel oil sampling, energy efficiency for ships and record keeping matters. It also provides for matters for Chapter 4 of the Navigation Act and prescribes matters for the Pollution Prevention Act. The Order replaces *Marine Order 97 (Marine pollution prevention — air pollution) 2007*.
10. The *Maritime Legislation Amendment Act 2012* amended the Pollution Prevention Act to implement the new Annex VI Ship Energy Efficiency Management Plan requirements that commenced on 1 January 2013. This Order also gives effect to those MARPOL requirements.
11. The structure of the Order has also been improved and current legislative drafting style applied. When this Order commences, Schedule 43 of *Marine Order 4 (Transitional modifications) 2013* will cease to have effect because that Schedule modifies the previous issue of the Order.

Consultation

12. A copy of the draft of this Order was circulated to over 300 stakeholders including industry organisations and interested government agencies. A list of these stakeholders may be obtained on request from AMSA. A copy of the draft was also placed on the AMSA website for public comment. Comments were received from 4 industry stakeholders, 4 industry representative bodies and 3 government entities. The issues raised by these bodies were taken into account in the drafting of this Order.

13. The Office of Best Practice Regulation (OBPR) was also consulted, and considered that the changes were minor and machinery in nature and no regulatory impact statement was required. The OBPR reference number is ID 14757.

Documents incorporated by reference

14. The following Marine Orders and other Commonwealth Acts to which this Order refers are available from <http://comlaw.gov.au>:

- *Navigation Act 2012*
- *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*
- *Transport Safety Investigation Act 2003*
- *Marine Order 31 (Ship surveys and certification) 2006*
- *Marine Order 1 (Administration) 2011.*

15. A copy of documents issued by the International Maritime Organization (IMO) and mentioned in the Order are available on the IMO website <http://www.imo.org> or may also be purchased from:

International Maritime Organization (IMO)
4 Albert Embankment, London SE1 7SR
Telephone +44(0)20 7735 7611
Facsimile +44(0)20 7587 3210
IMO website: <http://www.imo.org>

16. These documents are:

- Annex VI of MARPOL
- NOx Technical Code adopted by IMO Resolution MEPC.177(58)
- Guidelines for on-board NOx verification procedure — direct measurement and monitoring method, adopted by IMO resolution MEPC.103(49)
- Standard specification for shipboard incinerators, adopted by IMO Resolution MEPC.76(40)
- 2012 Guidelines on the method of calculation of the Attained Energy Efficiency Design Index (EEDI) for new ships, adopted by IMO Resolution MEPC.212(63)
- 2013 Guidelines for calculation of reference lines for use with Energy Efficiency Design Index (EEDI), adopted by IMO Resolution MEPC.231(65)
- 2012 Guidelines for the development of a ship energy efficiency management plan, adopted by IMO resolution MEPC.213(63)
- 2009 Guidelines for exhaust gas-SOx cleaning systems, adopted by IMO Resolution MEPC.184 (59).

Commencement

17. This Order commences on the day after it is registered.

Contents of this instrument

18. Section 1 sets out the name of the Order.

19. Section 2 provides for the commencement of the Order.

20. Section 3 repeals the previous issue of this Order (which, to the extent it was made under the *Navigation Act 1912*, was continued in effect by *Marine Order 4 (Transitional modifications) 2013*).
21. Section 4 sets out the purpose of the Order, which is to give effect to Annex VI of MARPOL.
22. Section 5 sets out the powers in the Navigation Act and the Pollution Prevention Act that enable the Order to be made.
23. Section 6 sets out the definitions of terms used in the Order.
24. Section 7 sets out the meaning of *the Administration* mentioned in the NOx Technical Code and Annex VI of MARPOL.
25. Section 8 describes the application of this Order to various kinds of vessels.
26. Section 9 sets out the process for applying for the use of equivalents.
27. Division 2 contains sections 10 to 20. This Division provides requirement about Engine International Air Pollution Certificate (EIAPP certificate), International Air Pollution Prevention Certificate (IAPP certificate) and International Energy Efficiency Certificate (IEE certificate).
28. Section 10 specifies the certificates mentioned as pollution certificates for Navigation Act.
29. Section 11 provides the application process for the kinds of pollution certificates mentioned in section 10 of this Order.
30. Section 12 clarifies that an EIAPP certificate is issued for a marine diesel engine installed on a vessel.
31. Section 13 sets out the criteria for the issue of an IAPP or an IEE certificate.
32. Section 14 sets out the criteria for the variation of an IAPP or an IEE certificate.
33. Section 15 sets out the criteria for the issue of an EIAPP certificate.
34. Section 16 provides the form of the pollution certificates mentioned in section 10 of this Order.
35. Section 17 provides that the commencement and duration of pollution certificates are in accordance with Regulation 9 of Annex VI of MARPOL.
36. Sections 18, 19 and 20 set out the criteria for revocation of an IAPP certificate, IEE certificate and EIAPP certificate.
37. Division 3 contains only section 21 and it prescribes restrictions on the operation of marine diesel engines, covering limits on the emission of nitrogen oxides from an engine under Regulation 13 of Annex VI of MARPOL and penalties for breach of those restrictions.
38. Division 4 contains sections 22 to 24. This Division provides for requirements about operating incinerators installed on board vessels.
39. Section 22 prescribes restrictions on incineration on board vessels, in accordance with Regulation 16 of Annex VI of MARPOL, and creates offences and civil penalties for breach of those restrictions. Strict liability applies. Section 22 also provides that a person may apply for exclusion from subparagraph 6.1 of regulation 16 of Annex VI of MARPOL in accordance with the application process set out in *Marine Order 1 (Administration) 2011*.

40. Sections 23 and 24 set out the responsibilities of vessels owners and masters for incinerators installed on board the vessels and offences and civil penalties for those requirements. Strict liability applies.
41. The need for strict liability and civil penalties is explained in the statement of compatibility with human rights. In framing the offences, regard was had to the *Guide on Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* published by the Attorney-General's Department and the provisions dealing with the offences are consistent with the principles outlined in the Guide.
42. Division 5 provides for reporting requirements and it contains sections 25 and 26.
43. Section 25 prescribes the period within which AMSA and an issuing body must be informed of an alteration to a vessel after the alteration is made.
44. Section 26 prescribes marine incidents for subsection 14(1) of the Navigation Act.
45. Division 6 provides about energy efficiency and this division contains sections 27, 28 and 29.
46. Section 27 provides that the attained Energy Efficiency Design Index (EEDI) must be worked out in accordance with Regulation 20 of Annex VI of MARPOL.
47. Section 28 provides that the required EEDI must be worked out in accordance with Regulation 21 of Annex VI of MARPOL.
48. Section 29 prescribes the information that a Ship Energy Efficiency Management Plan must contain by reference to the *2012 Guidelines for the development of a ship energy efficiency management plan*, for subparagraph 26FEW(3) of the Pollution Prevention Act.
49. Division 7 prescribes various matters for the Pollution Prevention Act and this Division contains sections 30 to 37.
50. Section 30 prescribes limits for the sulphur content of fuel oil for paragraphs 26FEG(1)(b) and (2)(a) of the Pollution Prevention Act.
51. Section 31 prescribes limits for the sulphur content of fuel oil for paragraph 26FEH(4)(a) of the Pollution Prevention Act. Section 31 also provides requirements for the control of sulphur oxide emissions, for subparagraphs 26FEH(4)(b)(i) and (ii) of the Pollution Prevention Act. One of these requirements is that it be in accordance with the *2009 Guidelines for exhaust gas-SOx cleaning systems*.
52. Section 32 prescribes limits for the sulphur content of fuel oil for paragraph 26FEI(1)(d) and (2)(d) of the Pollution Prevention Act.
53. Section 33 prescribes record books and requirements for paragraphs 26FEJ(1)(a) and 26FEJ(3)(a) of the Pollution Prevention Act for entries in such books for fuel changeover operations.
54. Section 34 requires that AMSA must maintain a Register of Local Suppliers of Fuel Oil and specifies information it is to be based on for section 26FEM of the Pollution Prevention Act. The section also sets out the requirements for registration as a local supplier of fuel oil.
55. Section 35 sets out requirements for bunker delivery notes and samples of bunker operations for section 26FEO of the Pollution Prevention Act.
56. Section 36 requires the retention of fuel oil samples on board vessels or at shore based locations for section 26FER of the Pollution Prevention Act.
57. Section 37 sets out requirements for record books and operations for ozone depleting substances for section 26FET of the Pollution Prevention Act.

Statement of compatibility with human rights

58. This statement is made for subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Purpose and effect

59. This Order is made under both the Navigation Act and Pollution Prevention Act and gives effect to revised Annex VI of MARPOL.

60. This Order also provides matters for Chapter 4 of the Navigation Act and prescribes matters for Part IID of the Pollution Prevention Act.

Possible effect on human rights

61. Sections 22, 23 and 24 of the Order create offences to which strict liability applies. They also create civil penalties. Strict liability offences may engage and limit the presumption of innocence mentioned in Article 14 of the International Covenant on Civil and Political Rights (ICCPR). Civil penalty provisions may engage the criminal process provisions under Articles 14 and 15 of the ICCPR.

60. Strict liability is imposed in pursuit of the objective of reducing pollution and protecting the safety of seafarers. The penalties are relatively low (50 penalty units) and are within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. The civil penalty provisions are directed at seafarers and owners of vessels rather than the community at large and are regulatory in nature. The civil penalty provisions are authorised by paragraph 341(1)(b) of the Navigation Act. Having regard to the objectives of the civil penalty provisions (which are protective, preventative, disciplinary or regulatory in nature), and the relatively low level of penalty, the civil penalties should not be considered to be criminal matters for human rights law. It is considered any limitation on human rights as a result of the imposition of strict liability and the creation of civil penalties is reasonable, necessary and proportionate.

61. No other human right or freedom recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is engaged by this Order.

Assessment

62. AMSA considers that this instrument is compatible with human rights. It does not affect any rights or freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies.

Making the instrument

63. This instrument was made by the Acting Chief Executive Officer of the Australian Maritime Safety Authority, in accordance with subsection 49(4) of the *Australian Maritime Authority Act 1990*.