

Explanatory Statement

Marine Order 94 (Marine pollution prevention — packaged harmful substances) 2014 (Order 2014/1)

Authority

1. This Order is made under both the *Navigation Act 2012* (the Navigation Act) and 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*.
2. Subsection 342(1) of the Navigation Act allows the Australian Maritime Safety Authority (AMSA) to make orders about matters that can be provided for by regulations. Subsection 34(1) of the Pollution Prevention Act allows AMSA to make orders for any matter (other than the imposition of penalties) for which provision may be made by regulation.
3. Subsection 339(1) of the Navigation Act authorises the Governor-General to make regulations necessary or convenient for carrying out or giving effect to the Navigation Act. Paragraphs 33(1)(a) and (b) of the Pollution Prevention Act authorise the Governor-General to make regulations necessary or convenient for carrying out or giving effect to the Pollution Prevention Act.
4. Paragraph 340(1)(c) of the Navigation Act and paragraph 33(1)(c) of the Pollution Prevention Act provide that the regulations may provide for giving effect to the International Convention for the Prevention of Pollution from Ships (MARPOL).

Purpose

5. This Order gives effect to Annex III of MARPOL and prescribes matters for Part IIIA of the Pollution Prevention Act. Annex III of MARPOL and Part IIIA of the Pollution Prevention Act both deal with the prevention of marine pollution by packaged harmful substances.

Overview

6. This Order implements Australia's obligations under Annex III of MARPOL which deals with prevention of marine pollution by harmful substances carried by sea in packaged form. The Order also prescribes matters for Part IIIA of the Pollution Prevention Act which deals with the prevention of pollution by packaged harmful substances. This Order replaces *Marine Order 94 (Marine pollution prevention — packaged harmful substances) 2009*.
7. The Order requires compliance with the requirements of regulations 2 to 5 of Annex III which deal with packing, marking, labelling and stowage of packaged harmful substances and the provision of transport information, including the need to comply with parts of the International Maritime Dangerous Goods Code (the **IMDG Code**).
8. The Order also prescribes matters for the Pollution Prevention Act including the circumstances in which it is permitted to wash substances overboard, the prescribed manner of notifying incidents under the Act, the prescribed form for reporting on an incident and the prescribed time for giving a report if requested to do so under the Act.
9. The structure of the Order has been changed and current legislative drafting style applied. When this Order commences, schedule 40 of *Marine Order 4 (Transitional Modifications) 2013* will cease to have effect because that schedule modifies the previous issue of this Order.

Consultation

10. A copy of the draft of this Order was placed on the AMSA website for public comment. Over 100 stakeholders, including industry organisations and interested government agencies, were invited to participate in the consultation process. Three responses were received and the issues raised were taken into account in finalising the Order.

11. The Office of Best Practice Regulation (OBPR) was also consulted. OBPR considered that the regulatory impact of the Order is of a minor or machinery nature and that no further analysis in the form of a Regulatory Impact Statement was required. The OBPR reference number is 15295.

Documents incorporated by reference

12. This Order incorporates the following documents by reference:

- Annex III of MARPOL
- the IMDG Code.

13. These documents may be purchased from the International Maritime Organization (IMO) — see the IMO website at <http://www.imo.org>. Information on obtaining copies of IMO documents is also on AMSA's website: <http://www.amsa.gov.au>. The IMO resolution that adopts or amends the IMDG Code is listed on AMSA's website.

Commencement

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

Contents of this instrument

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

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

17. Section 3 repeals the previous issue of the Order (which, to the extent it was made under the *Navigation Act 1912*, was continued in effect by *Marine Order 4 (Transitional Modifications) 2013*).

18. Section 4 states the purpose of the Order, which is to give effect to Annex III of MARPOL and to prescribe matters for Part IIIA of the Pollution Prevention Act.

19. Section 5 sets out the powers in the Navigation Act and the Pollution Prevention Act that enable the Order to be made.

20. Section 6 sets out definitions of terms used in the Order.

21. Section 7 describes the vessels to which the Order applies.

22. Section 8 provides that the owner of a vessel that carries packaged harmful substances must comply with regulations 2 to 5 of Annex III. These regulations deal with packing, marking, labelling and stowage of packaged harmful substances and the provision of transport information including the need to comply with parts of the IMDG Code. The section also provides matters necessary for compliance with regulation 4 of Annex III which deals with the provision of transport information for packaged harmful substances.

23. Section 9 prescribes for the Pollution Prevention Act the circumstances in which it is authorised to wash overboard a leaked harmful substance that is carried as cargo in packaged form.

24. Section 10 prescribes for the Pollution Prevention Act the manner of notifying prescribed incidents set out in the Act. These incidents include the discharge or likely

discharge of packaged harmful substances, and collisions, floods, fires, equipment failure or damage that affect the safety or navigation of the vessel.

25. Section 11 prescribes a form for the Pollution Prevention Act. It may be requested that a report be made in this prescribed form following the notification of a prescribed incident.

26. Section 12 sets out the time period within which a report in the prescribed form must be given if there has been a request for a report.

27. Schedule 1 contains the form prescribed by section 11.

Compatibility with human rights

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

Overview of the legislative instrument

29. This Order is made under both the *Navigation Act 2012* (the Navigation Act) and the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (the Pollution Prevention Act). It gives effect to Annex III of the International Convention for the Prevention of Pollution from Ships (MARPOL) and provides matters for Part IIIA of the Pollution Prevention Act.

30. The Order requires that vessels carrying packaged harmful substances must comply with regulations 2 to 5 of Annex III. These provisions deal with the packing, marking, labelling and stowage of packaged harmful substances and the provision of transport information including the need to comply with parts of the International Maritime Dangerous Goods Code (the *IMDG Code*).

31. The Order also prescribes matters for the Pollution Prevention Act. These matters concern the circumstances in which it is permitted to wash substances overboard, the prescribed manner of notifying incidents under the Act, the prescribed form for reporting on an incident and the prescribed time for giving a report if requested to do so under the Act.

Human Rights implications

32. This instrument does not engage any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

33. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Making the instrument

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