

Explanatory Statement

Marine Order 91 (Marine pollution prevention — oil) 2014 (Order 2014/9)

Authority

1. This order was made under the *Navigation Act 2012* (the Navigation Act) and the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (the Pollution Prevention Act).
2. Section 130 of the Navigation Act provides that the regulations may provide for pollution certificates.
3. Section 314 of the Navigation Act provides that the regulations may provide for various matters about certificates.
4. 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.
5. Section 340(1)(c) of the Navigation Act provides that the regulations may provide for giving effect to the International Convention for the Prevention of Pollution from Ships (MARPOL).
6. Subsection 342(1) of 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.
7. Section 33(1)(a) and (b) of the Pollution Prevention Act provide for regulations to be made that are necessary or convenient for carrying out or giving effect to the Pollution Prevention Act.
8. Section 33(1)(c) of the Pollution Prevention Act provides for regulations to be made to give effect to MARPOL.
9. Subsection 34(1) of the Pollution Prevention Act provides that AMSA may make orders for any matter (other than the imposition of penalties) for which provision may be made by regulation.
10. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power in an Act to make a legislative instrument includes the power to repeal or amend the instrument, subject to any conditions that apply to the initial power.
11. This Order is a legislative instrument for the *Legislative Instruments Act 2003*.

Purpose

12. This Order gives effect to Annex I of MARPOL which deals with prevention of marine pollution by oil from ships. It prescribes matters for Part II (Prevention of pollution by oil) of the Pollution Prevention Act. It also provides for matters for Chapter 4 (Prevention of pollution) of the Navigation Act.

Overview

13. The Pollution Prevention Act and the Navigation Act implement Australia's obligations under Annex I of MARPOL. This Order deals with matters including vessel certification, vessel reporting requirements, on-board documentation requirements, vessel construction and also vessel equipment, system and arrangement standards.
14. The Order replaces *Marine Order 91 (Marine pollution prevention — oil) 2006* following a review of the Order as part of AMSA's ongoing review of instruments. The structure of the Order has been changed and current legislative

drafting style applied. When the Order commences, schedule 38 of *Marine Order 4 (Transitional Modifications) 2013* will cease to have effect because that schedule modifies the previous issue of this Order.

Consultation

15. A copy of the draft of this Order was placed on the AMSA website for public comment. Over 300 stakeholders, including industry organisations and interested government agencies, were invited to participate in the consultation process. Three responses were received and the issues raised by these bodies were taken into account in finalising the Order.

16. The Office of Best Practice Regulation (OBPR) was also consulted and considered that the Order dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OBPR reference number is 15350.

Documents incorporated by reference

17. This Order incorporates the following 13 documents by reference:

- Annex I of MARPOL
- the *Unified Interpretations of Annex I*, published by IMO
- IMO Resolution MEPC.54(32) *Guidelines for the Development of Shipboard Oil Pollution Emergency Plans*
- IMO Resolution MEPC.3(XII)
- IMO Resolution MEPC.60(33)
- IMO Resolution MEPC.94(46)
- IMO Resolution MEPC.107(49)
- IMO Resolution MEPC.108(49)
- IMO Resolution MEPC.205(62)
- IMO Resolution A.393(X)
- IMO Resolution A.446(XI)
- IMO Resolution A.496(XII)
- IMO Resolution A.586(14)

18. Copies of IMO resolutions mentioned in the Order are available on AMSA's website at <http://www.amsa.gov.au>. IMO documents may also be purchased from the IMO — see the IMO website at <http://www.imo.org/publications>.

Commencement

19. This Order commenced on 1 July 2014.

Contents of this instrument

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

21. Section 1A sets out the commencement of the Order.

22. Section 1B 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*).

23. Section 2 states the purpose of the Order, which is to give effect to parts of Annex I of MARPOL, and also prescribe matters for Chapter 4 of the Navigation Act and Part II of the Pollution Prevention Act.
24. Section 3 sets out the powers in both the Navigation Act and the Pollution Prevention Act that enable the Order to be made.
25. Section 4 sets out the definitions of terms used in the Order.
26. Section 5 sets out the interpretation of terms used in the Order.
27. Section 6 describes the vessels to which the Order applies.
28. Section 7 provides for AMSA to allow an exemption from a requirement of the Order if the construction and equipment of a vessel provides equivalent protection against pollution by oil. It also allows the granting of a waiver in specified circumstances.
29. Section 8 provides for AMSA to allow an approval to use an equivalent in specified circumstances.
30. Division 2 contains section 9 only. It provides that a vessel must comply with the requirements of Annex I that apply to the vessel.
31. Division 3 contains sections 10 to 18. It provides for matters relating to International Oil Pollution Prevention (IOPP) certificates.
32. Section 10 sets out the requirement for a vessel to have an IPP certificate.
33. Section 11 describes matters that are relevant to making an application for a certificate.
34. Section 12 sets out the criteria for issue of an IOPP certificate.
35. Section 13 sets out the conditions attaching to IOPP certificates.
36. Section 14 provides that an endorsement on an IOPP certificate must be made by an issuing body.
37. Section 15 provides that an IOPP certificate comes into force, and ceases to be in force, in accordance with regulation 10 of Annex I of MARPOL.
38. Section 16 sets out the criteria for variation of an IOPP certificate.
39. Section 17 sets out the criteria for revocation of an IOPP certificate.
40. Section 18 provides that AMSA and the issuing body must be informed of an alteration to a vessel within 7 days after the alteration is made.
41. Division 4 contains section 19 only. It sets out the requirement for foreign vessels to which regulation 7.1 of Annex I applies to have an IOPP certificate.
42. Division 5 contains sections 20 to 22. It provides for reporting requirements.
43. Section 20 prescribes the marine incidents that must be reported.
44. Section 21 sets out the prescribed manner for notifying an incident involving discharge of oil or oily mixture or damage, failure or breakdown. It also prescribes the form for making a report mentioned in subsections 11(6) and (7) of the Pollution Prevention Act and the timeframe for making that report.
45. Section 22 provides notification requirements for oil tankers not meeting construction requirements.
46. Division 6 contains sections 23 to 31. It provides various matters for the Pollution Prevention Act.

47. Section 23 provides that the form for a shipboard oil pollution emergency plan must be in the format mentioned in the *Guidelines for the Development of Shipboard Oil Pollution Emergency Plan*. The plan must be approved by an issuing body.
48. Section 24 describes the minimum content of the form for a ship-to-ship operations plan concerning the transfer of oil cargo between oil tankers. The plan must be approved by an issuing body.
49. Section 25 prescribes the qualifications that must be held by the person with overall advisory control of a transfer of oil cargo between tankers.
50. Section 26 prescribes the information to be included in a ship-to-ship record when recording the transfer of oil cargo between oil tankers in specified circumstances.
51. Section 27 prescribes the information to be included in ship-to-ship transfer information when notified in specified circumstances.
52. Section 28 sets out the manner of giving ship-to-ship transfer information when oil cargo is transferred between oil tankers in Australian waters.
53. Section 29 sets out the manner of giving ship-to-ship transfer information when oil cargo is transferred between oil tankers in waters of foreign countries.
54. Section 30 details the form of an oil record book that must be carried by specified vessels. It also provides that the time recorded in an oil record book must be expressed in Coordinated Universal Time.
55. Section 31 prescribes the operations or occurrences that must be recorded in a ship's oil record book.
56. Division 7 contains section 32 only. It provides that specified oil tankers are not permitted to enter port in Australia after the specified date.
57. Division 8 contains sections section 33 to 37. It specifies standards in accordance with Annex I for ship systems, equipment and manuals that are designed to safeguard against oil pollution.
58. Section 33 specifies the standard for crude oil washing systems.
59. Section 34 specifies the form and information for crude oil washing system operation and equipment manuals.
60. Section 35 provides the design and installation standard for approval of oil discharge monitoring and control systems for specified oil tankers.
61. Section 36 provides the design standard for approval of oil content meters for specified oil tankers.
62. Section 37 provides the design standard for approval of oil filtering equipment for specified vessels.

Statement of compatibility with human rights

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

Overview of legislative instrument

64. This Order is made under both the Navigation Act and the Pollution Prevention Act. It gives effect to Annex I of MARPOL and provides matters for Chapter 4 of the Navigation Act and Part II of the Pollution Prevention Act.
65. This Order safeguards the marine environment against oil pollution from ships. It prescribes matters concerning International Oil Pollution Certificates issued

to vessels; makes provision for reporting matters both under the Navigation Act and Pollution Prevention Act; prescribes matters concerning operational documentation required to be carried by certain vessels; and specifies the standards for relevant systems, equipment and associated manuals. It also prevents oil tankers not constructed in accordance with Annex I of MARPOL from entering a port in Australia.

Human rights implications

66. This Order deals with the regulation of vessels in accordance with Australia's international obligations to mitigate the threat of oil pollution to the marine environment. 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*.

Conclusions

67. 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

68. 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*.