

Explanatory Statement

Marine Order 97 (Marine pollution prevention — air pollution) Amendment 2016 (No. 1) (Order 2016/14)

Authority

1. This Order was made under both subsection 342(1) of the *Navigation Act 2012* (Navigation Act) and subsection 34(1) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Pollution Prevention Act). The Order amends *Marine Order 97 (Marine pollution prevention — air pollution) Amendment 2016 (No. 1)* (Marine Order 97) that was also made under those provisions.
2. 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 Act.
3. 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 must or may be made by the regulations.
4. Subsection 33(1) of the Pollution Prevention Act authorises the Governor-General to make regulations necessary or convenient for carrying out or giving effect to the Pollution Prevention Act, particularly for giving effect to MARPOL.
5. Subsection 34(1) of the Pollution Prevention Act allows AMSA to make orders for any matter in the Act for or in relation to which provision must or may be made by the regulations.
6. 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.
7. This Order is a legislative instrument for the *Legislation Act 2003*.

Purpose

8. This Order amends *Marine Order 97 (Marine pollution prevention – air pollution) 2013* (Marine Order 97). Marine Order 97 gives effect to Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL) and also provides matters for Chapter 4 of the Navigation Act and Part IID of the Pollution Prevention Act.
9. The Order updates references to some guidelines and standards adopted by the International Maritime Organization (IMO) to refer to the latest adopted versions. The Order also implements the waiver provision set out in MARPOL Annex VI, Regulation 19.4.
10. The Order also updates some notes in Marine Order 97 so they refer to where referenced material may be located on the AMSA website and to explain requirements of Annex VI of MARPOL.

Overview

11. This Order gives effect to Annex VI of MARPOL by amending Marine Order 97. Annex VI deals with the control, inspection and certification of air pollution prevention measures on ships.
12. The Order amends Marine Order 97 to incorporate by reference the latest Guidelines for exhaust gas cleaning systems adopted by the International Maritime Organization ((IMO). The Guidelines supersede the previously incorporated 2009 Guidelines and are necessary to maintain agreed control of emissions of sulphur

oxides (SOx). The Order also updates notes to refer to the latest IMO adopted shipboard incinerator standards and guidelines for calculating attained Energy Efficiency Design Index (EEDI) for new ships. Notes will now point readers to the main AMSA website at relevant points. Another note has been updated to refer to the provision in *Marine Order 31 (Ship surveys and certification) 2014* that sets out prescribed periods of reporting of marine incidents instead of to the provision of the previous Order.

13. As *Marine Order 1 (Administration) 2011* has been repealed and replaced by *Marine Order 1 (Administration) 2013*, the opportunity has been taken to update all references in Marine Order 97 to *Marine Order 1 (Administration) 2011* to refer to *Marine Order 1 (Administration) 2013*. These amendments are of a minor technical nature only as under subsection 39(2) of *Marine Order 1 (Administration) 2013* all references in Marine Orders to *Marine Order 1 (Administration) 2011* are to be taken to be references to *Marine Order 1 (Administration) 2013*.

Consultation

14. A copy of the draft of this Order was placed on the AMSA website for public comment on 16 August 2016 for a 4 week consultation period. A copy of the draft Order was also emailed to 160 stakeholders, including ship operators, recognised organisations, shipping and cargo industry bodies, port authorities, training organisations, seafarer representative organisations and various government agencies. One submission was received but did not relate to the current amendment.

15. The Office of Best Practice Regulation (OBPR) considers that the changes made by the Order have regulatory impacts of a minor nature and no regulation impact statement is required. The OBPR reference number is 20965.

Documents incorporated by reference

16. This Order incorporates by reference into Marine Order 97 the *2015 Guidelines for exhaust gas cleaning systems* as adopted by IMO Resolution MEPC.259(68).

17. These guidelines are freely available from the IMO website at <http://www.imo.org>. Detailed information on how to navigate the IMO website to obtain access to these guidelines is available from the Marine Order link at <http://www.amsa.gov.au>. Information on obtaining copies of IMO documents mentioned in the Order is also available from AMSA by emailing international.relations@amsa.gov.au.

Commencement

18. This Order commenced on 1 December 2016.

Contents of this instrument

19. Section 1 sets out the name of this Order.

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

21. Section 3 provides that Schedule 1 amends Marine Order 97.

22. Item 1 of Schedule 1 replaces note 1 to section 6 so that it refers to *Marine Order 1 (Administration) 2013* instead of to *Marine Order 1 (Administration) 2011* and removes a reference to an expression no longer used in the Order.

23. Item 2 of Schedule 1 adds a note to section 6 to inform readers that information on how to obtain documents mentioned in Marine Order 97 is available from the Marine Orders link on the AMSA website.

24. Item 3 of Schedule 1 replaces section 9 with a section that deals with both equivalents and waivers. This implements the waiver provision set out in MARPOL Annex VI, Regulation 19.4.
25. Item 4 of Schedule 1 updates a reference to a standard in the note to section 22, to refer to the *2014 Standard specification for shipboard incinerators* adopted by IMO Resolution MEPC.244(66).
26. Item 5 of Schedule 1 replaces, in the note to section 26, the reference to section 13A of old *Marine Order 31 (Ship surveys and certification) 2006* with a reference to the equivalent provision in new *Marine Order 31 (Ship surveys and certification) 2015*.
27. Item 6 of Schedule 1 updates a reference to guidelines, in the note to section 27, to refer to the *2014 Guidelines on the method of calculation of the Attained Energy Efficiency Design Index (EEDI) for new ships* adopted by IMO Resolution MEPC.245(66).
28. Item 7 of Schedule 1 changes the Guidelines incorporated by reference for the purpose of controlling SO_x emissions under Annex VI of MARPOL. The Guidelines now incorporated are those adopted by IMO Resolution MEPC.259(68) (the 2015 Guidelines). The Guidelines previously incorporated were those adopted by IMO Resolution MEPC.184(59) (the 2009 Guidelines).
29. Item 8 of Schedule 1 also changes the Guidelines incorporated by reference from the 2009 Guidelines to the 2015 Guidelines in order to maintain the appropriate SO_x emissions controls.
30. Item 9 of Schedule 1 replaces the definition of the 2009 Guidelines for section 31 with a definition of the 2015 Guidelines so that the updated guidelines are incorporated by reference in that section.
31. Item 10 of Schedule 1 amends the note to subsection 34(2) to refer those seeking an approved form for a Local Fuel Oil Suppliers Initial Declaration to the AMSA website.
32. Item 11 of Schedule 1 also amends the note to subsection 34(3) to refer those seeking an approved form for a Local Fuel Oil Suppliers Initial Declaration to the AMSA website.
33. Item 12 of Schedule 1 replaces, in multiple notes and subsections, each mention of *Marine Order 1 (Administration) 2011* with *Marine Order 1 (Administration) 2013*, following repeal of the 2011 Order and its replacement with the 2013 Order.

Statement of compatibility with human rights

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

Overview of the legislative instrument

35. This Order amends *Marine Order 97 (Marine pollution prevention — air pollution) 2013*. Marine Order 97 gives effect to Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL) and also provides matters for Chapter 4 of the *Navigation Act 2012* and Part IID of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.
36. The Order updates references to standards and guidelines adopted by the International Maritime Organisation (the IMO), including guidelines incorporated by reference, to new versions of those standards and guidelines that have been

adopted by the IMO. In addition, the waiver provisions under MARPOL Annex VI, Regulation 19.4 have been implemented.

37. The opportunity has been taken to update references to the superseded *Marine Order 1 (Administration) 2011* and *Marine Order 31 (Ship surveys and certification) 2006*. These Orders have been replaced with *Marine Order 1 (Administration) 2013* and *Marine Order 31 (Vessel surveys and certification) 2015*, respectively.

Human rights implications

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

Conclusion

39. 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

40. 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*.