

Explanatory Statement

Marine Order 97 (Marine pollution prevention — air pollution) Amendment Order 2017 (Order 2017/4)

Authority

1. This Order was made under both subsection 342(1) of the *Navigation Act 2012* (the Navigation Act) and subsection 34(1) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (the Pollution Prevention Act). The Order amends *Marine Order 97 (Marine pollution prevention — air pollution) 2013* 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 Navigation 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 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 the International Convention for the Prevention of Pollution from Ships (MARPOL).
5. Subsection 34(1) of the Pollution Prevention Act allows AMSA to make orders for any matter in the Act for 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).
9. The amendment ensures that a regulated Australian vessel, making a voyage in an emission control area, complies with the requirements of paragraph 5.3 of regulation 13 of Annex VI of MARPOL for record keeping.

Overview

10. Marine Order 97 gives effect to Annex VI of MARPOL which deals with prevention of air pollution from vessels. It also provides matters for Chapter 4 of the Navigation Act and Part IIID of the Pollution Prevention Act.
11. The amendment implements record keeping requirements for regulated Australian vessels that operate with diesel engines certified to Tier II or III standards in areas specified as emission control areas.
12. The amendment puts in place measures for the monitoring of compliance with the limitations for nitrogen oxide emissions in emission control areas.

Consultation

13. A draft of this Order was placed on AMSA's website on 19 May 2017 for public consultation with comments to be provided by 30 June 2017. Around 140 stakeholders including ship operators, recognised organisations, shipping and cargo industry bodies, training organisations, seafarer representative organisations and relevant government agencies were contacted by email and invited to comment. No responses were received.

14. The Office of Best Practice Regulation (OBPR) considers that the changes made by the Order have regulatory impacts of a minor or machinery nature and no regulation impact statement is required. The OBPR reference number is 16724.

Documents incorporated by reference

15. This Order incorporates by reference into Marine Order 97 a provision of Annex VI of MARPOL. MARPOL is incorporated by reference into Marine Order 97 as in force from time to time.

16. MARPOL, including any amendments in force internationally, is freely available on the Australian Treaties Database at <http://www.info.dfat.gov.au/treaties>.

17. Information about obtaining hard copies of MARPOL is available at the Marine Orders link on the AMSA website <http://www.amsa.gov.au>. The website also provides assistance to find other relevant IMO documentation that is available online for free.

Commencement

18. This Order commences on 1 September 2017.

Contents of this instrument

19. Section 1 sets out the name of the 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 amends Marine Order 97 by inserting new section 21A. Subsection (1) requires the master of a regulated Australian vessel to comply with paragraph 5.3 of regulation 13 of Annex VI of MARPOL concerning record keeping while operating in an emission control area. The master is required to enter details in the official logbook in accordance with that paragraph.

23. The note summarises the requirements of paragraph 5.3 including the scope of application to vessels and diesel engine type and the details to be recorded.

24. Subsection (2) provides the meaning of emission control area. At the time of making of this Order, there were 2 areas located in the northern hemisphere specified by the International Maritime Organisation (IMO) as emission control areas under paragraph 6 of regulation 13 of MARPOL. Further information about these areas can be obtained by navigating to the Air Pollution and GHG Emissions link of the IMO website <http://www.imo.org>.

Statement of compatibility with human rights

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

Overview of the legislative instrument

26. This Order amends *Marine Order 97 (Marine pollution prevention — air pollution) 2013* so that Marine Order 97 gives effect to the record keeping requirements of paragraph 5.3 of regulation 13 of Annex VI of MARPOL.

27. The record keeping requirements apply to regulated Australian vessels with diesel engines certified to Tier II or III standard. The requirements only apply while a vessel is operating in an area known as an emission control area.

Human rights implications

28. 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

29. 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

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