

## **Explanatory Statement**

### **Marine Order 97 (Marine pollution prevention — air pollution) Amendment Order 2018 (Order 2018/2)**

#### **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) to provide for vessels to carry a Statement of Compliance for fuel oil consumption reporting and to apply updated guidelines for developing ship energy efficiency management plans.
9. The amendment gives effect to new regulations introduced into Annex VI of MARPOL by IMO resolution MEPC.278(70) and to new guidelines adopted by IMO Resolution MEPC. 282(70).
10. The amendment also clarifies that foreign vessels must carry the certificates that Annex VI requires them to have.

#### **Overview**

11. 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.
12. The amendment provides for Australian vessels of a certain gross tonnage to report fuel oil consumption each calendar year to an issuing body to obtain a statement of compliance.

13. The amendment also ensures that foreign vessels carry the certificates required by Annex VI and updates the guidelines that provide for the development of ship energy efficiency management plans.

### Consultation

14. A draft of this Order was placed on AMSA's website on 7 December 2017 for public consultation with comments to be provided by 19 January 2018. 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.

15. 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 22941.

### Documents incorporated by reference

16. Parts of the following documents are incorporated by reference in the Order:

- *Marine Order 60 (Floating offshore facilities) 2001* (Marine Order 60)
- *Marine Order 47 (Mobile offshore drilling units) 2012* (Marine Order 47).
- Annex VI of MARPOL
- *Marine Order 1 (Administration) 2013* (Marine Order 1)
- *2016 Guidelines for the development of a ship energy efficiency management plan*, adopted by IMO resolution MEPC.282(70) and as amended from time to time

17. MARPOL is of treaty status and is incorporated as amended and in force for Australia from time to time (see definition of **MARPOL** in Marine Order 1 and definition of **the Convention** in subsection 3(1) of the Pollution Prevention Act). MARPOL, including any amendments, can be found in the Australian Treaties Series accessible from the Australian Treaties Library on the AustLII website at <http://www.austlii.edu.au>. Information about obtaining hard copies of MARPOL is available at the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>.

18. Due to the operation of section 10 of the *Acts Interpretation Act 1901* (as applied by paragraph 13(1)(a) of the *Legislation Act 2003*), Marine Order 1, Marine Order 47 and Marine Order 60 are adopted as in force from time to time because they are adopted by reference to their title in this Order. These Marine Orders can be accessed through the Marine Orders link on the AMSA website at <http://www.amsa.gov.au> and are available for free download from the Federal Register of Legislation through links from AMSA's website.

19. The *2016 Guidelines for the development of a ship energy efficiency management plan* are available in IMO resolution MEPC.282(70). They are adopted as amended from time to time. Information on obtaining access to IMO resolutions and circulars is available at the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>, where AMSA provides information on how to navigate the IMO website to download documents. These resolutions are available to download from the IMO website for free. IMO documents may also be purchased from the IMO — see the IMO website at <http://www.imo.org/publications>.

## **Commencement**

20. This Order commenced on 1 March 2018

## **Contents of this instrument**

21. Section 1 sets out the name of the Order.
22. Section 2 provides for the commencement of the Order.
23. Section 3 provides that Schedule 1 amends Marine Order 97.
24. Item 1 of Schedule 1 inserts definitions of FPSO and FSU into section 6 of Marine Order 97.
25. Item 2 of Schedule 1 inserts a definition of MODU into section 6 of Marine Order 97.
26. Item 3 of Schedule 1 inserts a definition of ‘statement of compliance’ into section 6 of Marine Order 97.
27. Item 4 of Schedule 1 inserts ‘national law’ into note 2 to section 6 of Marine Order 97.
28. Item 5 of Schedule 1 inserts ‘foreign vessel’ into ‘note 2’ to section 6 of Marine Order 97.
29. Item 6 of Schedule 1 replaces the application provision of Marine Order 97.
30. Item 7 of Schedule 1 amends Marine Order 97 by inserting section 9A which provides for review of a decision about the issue of a fuel oil consumption statement of compliance.
31. Items 8 and 9 of Schedule 1 amend references to a section of Marine Order 1.
32. Item 10 of Schedule 1 amends Marine Order 97 by inserting new Division 2A which clarifies the requirement for foreign vessels to carry the certificates that they are required to have under Annex VI of MARPOL.
33. Item 10 of Schedule 1 also inserts new Division 2B into Marine Order 97. Section 20B sets out the application of this new Division. Section 20C requires a vessel over 5000 GT to which Division 2B applies, to carry a statement of compliance related to fuel oil consumption. Section 20D requires the owner of a vessel that is 5000 GT and over, to collect fuel oil consumption data in accordance with regulation 22A of Annex VI of MARPOL. Section 20E provides for the owner of a vessel to apply to an issuing body for a statement of compliance and section 20F provides for the issue of a statement of compliance following an application.
34. Item 11 of Schedule 1 amends a reference in a note to section 26 of Marine Order 97.
35. Item 12 of Schedule 1 amends section 29 of Marine Order 97 to substitute a new set of guidelines about developing ship energy efficiency management plans. Section 29 prescribes for the Pollution Prevention Act the information that must be contained in a ship energy efficiency management plan.
36. Item 13 of Schedule 1 amends notes in sections 15, 22, 27 and 28. This style change reflects current drafting practice.

## **Statement of compatibility with human rights**

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

## Overview of the legislative instrument

38. This Order amends *Marine Order 97 (Marine pollution prevention — air pollution) 2013* to require Australian vessels of a certain size to report fuel oil consumption each calendar year and to obtain a statement of compliance.

39. The amendment also ensures that foreign vessels carry the certificates required by Annex VI, and updates the guidelines that provide for the development of ship energy efficiency management plans.

## Human rights implications

40. 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

41. 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

42. 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*.