

## **Explanatory Statement**

### **Marine Order 95 (Marine pollution prevention — garbage) 2018 (Order 2018/1)**

#### **Authority**

1. Subsection 32(1) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (the Pollution Prevention Act) provides that the regulations may apply to foreign ships, provisions of the Act about the record books that are required to be carried by Australian ships.
2. Subsection 32(1B) of the Pollution Prevention Act provides that the regulations may apply to foreign ships, provisions of the Act about the garbage management plans that are required to be kept on board Australian ships.
3. 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 and in particular to give effect to the International Convention for the Prevention of Pollution from Ships (MARPOL), as amended. Paragraph 33(1)(f) authorises regulations prescribing penalties not exceeding 50 penalty units for the contravention of a provision.
4. Subsection 34(1) of the Pollution Prevention Act provides that the Australian Maritime Safety Authority (AMSA) may make orders about any matter for which the regulations may provide.
5. This Order was made under subsection 34(1) of the Pollution Prevention Act and is a legislative instrument for the *Legislation Act 2003*.

#### **Purpose**

6. This Order prescribes matters necessary to give effect to Annex V of MARPOL, which provides for the prevention of pollution of garbage from ships. The Order prescribes matters for Part IIIC of the Pollution Prevention Act, and provides for some provisions which apply to Australian ships to also apply to foreign ships.

#### **Overview**

7. MARPOL is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes. Annex V deals with the prevention of pollution by garbage.
8. Amendments made to Annex V of MARPOL by International Maritime Organization (IMO) Resolution MEPC.277(70) enter into force on 1 March 2018. These amendments deal with substances that are harmful to the marine environment (HME) and the form of garbage record books. This Order prescribes matters necessary to give effect to Annex V of MARPOL as amended by Resolution MEPC.277(70).
9. The Order extends the operation of certain provisions of the Pollution Prevention Act to include foreign ships as well as Australian ships. Section 32 of the Act provides that regulations may be made for this purpose.
10. The Order prescribes a number of matters for the operation of the Pollution Prevention Act. These matters relate to the discharge of certain kinds of garbage, garbage record books and garbage management plans.

## Consultation

11. A copy of the draft of this instrument was circulated to approximately 200 stakeholders including industry organisations and interested government agencies. A draft of the Order was placed on the AMSA website for public comment on 7 December 2017, with comments to be provided by 19 January 2018. Two responses were received and these comments were taken into account in preparing the final draft.

12. The Office of Best Practice Regulation (OBPR) was also consulted on the proposed Order. 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

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

- Appendix I to Annex V of MARPOL
- the *2017 Guidelines for the implementation of MARPOL Annex V* adopted by IMO Resolution MEPC.295(71) and as amended from time to time
- Appendix to Annex III of MARPOL
- Appendix II to Annex V of MARPOL
- regulations 4, 5, 6 and 7 of Annex V of MARPOL
- Chapter 5 of Part II-A of the Polar Code
- the *2012 Guidelines for the Development of Garbage Management Plans* set out in the Annex to IMO Resolution MEPC.220(63) and as amended from time to time

14. 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 (Administration) 2013* 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>.

15. The 2017 Guidelines for the implementation of MARPOL Annex V and the 2012 Guidelines for the Development of Garbage Management Plans are available in IMO Resolution MEPC.295(71) and IMO Resolution MEPC.220(63) respectively. Both sets of guidelines are adopted as amended from time to time. The Polar Code was adopted by IMO Resolution MSC. 385(94) and IMO Resolution MEPC.264(68). The Polar Code is adopted as amended and in force for Australia from time to time (see definition of Polar Code in subsection 3(1) of the Pollution Prevention Act). 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**

16. This Order commenced on 1 March 2018.

## **Contents of this instrument**

17. Division 1 (Preliminary) contains provisions that assist the operation, interpretation and administration of the Order.

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

19. Section 1A provides for the commencement of the Order on 1 March 2018.

20. Section 1B provides that *Marine Order 95 (Marine pollution prevention — garbage) 2013* is repealed.

21. Section 2 states the purpose of the Order.

22. Section 3 sets out the powers in the Pollution Prevention Act that enable the Order to be made.

23. Section 4 sets out definitions of terms used in the Order.

24. Section 5 states the application of the Order.

25. Division 2 prescribes matters for the Pollution Prevention Act about the discharge of garbage.

26. Section 6 prescribes the substances for paragraph 26F(7)(d) of the Pollution Prevention Act, which cannot be in discharged garbage that is cargo residues. These are substances considered harmful to the marine environment in accordance with Appendix I of Annex V.

27. Section 7 prescribes requirements for the discharge of garbage that is animal carcasses. One of these requirements is that the discharge must comply with section 2.12 of the *IMO 2017 Guidelines for the implementation of MARPOL Annex V*.

28. Section 8 prescribes cleaning agents and additives that cannot be in discharged garbage in certain circumstances described in the Pollution Prevention Act.

29. Division 3 deals with garbage record books and garbage management plans.

30. Section 9 extends the application of sections 26FA and 26FB of the Pollution Prevention Act to foreign ships. These provisions of the Act, which deal with garbage record books, may be extended by the regulations, under powers in section 32 of the Act, to cover foreign ships as well as Australian ships.

31. Section 10 prescribes the form to be used by a ship for its garbage record book. It also prescribes the operations or occurrences about which entries are to be made in a ship's garbage record book.

32. Section 11 extends the application of section 26FC of the Pollution Prevention Act (garbage management plans) to foreign ships. This provision of the Act may be extended by the regulations, under powers in section 32 of the Act, to cover foreign ships as well as Australian ships.

33. Section 12 prescribes matters that must be included in a ship's garbage management plan.

## **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 instrument gives effect to Annex V of MARPOL which deals with the prevention of pollution by garbage from ships. The Order prescribes matters for Part IIIC of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (the Pollution Prevention Act) which deals with the prevention of pollution by garbage from ships. These matters include cargo residue substances, animal carcasses, cleaning agents and additives, garbage record books and garbage management plans.

36. The Order also provides for some provisions of the Pollution Prevention Act that apply to Australian ships to also apply to foreign ships.

### **Human rights implications**

37. 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**

38. AMSA considers that this Order is compatible with human rights because it does not engage any of the rights or freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies.

### **Making the instrument**

39. 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*.