

Explanatory Statement

Marine Order 96 (Marine pollution prevention — sewage) 2018

(Order 2018/4)

Authority

1. This Order was made under both 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. Subsection 342(1) of the Navigation Act allows the Australian Maritime Safety Authority (AMSA) to make orders about matters that can be provided for by regulations. Subsection 34(1) of the Pollution Prevention Act allows AMSA to make orders for any matter (other than the imposition of penalties) for which provision may be made by regulation.
3. 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. Paragraphs 33(1)(a) and (b) of the Pollution Prevention Act authorise the Governor-General to make regulations necessary or convenient for carrying out or giving effect to the Pollution Prevention Act.
4. Section 130 of the Navigation Act provides that the regulations may provide for pollution certificates.
5. Section 314 of the Navigation Act provides that the regulations may prescribe various matters about certificates.
6. Paragraph 340(1)(c) of the Navigation Act and paragraph 33(1)(c) of the Pollution Prevention Act provide that the regulations may provide for giving effect to the International Convention for the Prevention of Pollution from Ships (MARPOL).
7. 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.
8. This Order was made under subsection 342(1) of the Navigation Act and subsection 34(1) of the Pollution Prevention Act and is a legislative instrument for the *Legislation Act 2003*.

Purpose

9. This Order gives effect to Annex IV of MARPOL which deals with the prevention of marine pollution by sewage from ships. It also provides for matters for Chapter 4 of the Navigation Act (which deals with prevention of pollution from vessels).
10. The Order also prescribes matters for Division 1 of Part IIIB of the Pollution Prevention Act (which gives effect to Australia's obligations regarding the discharge of untreated sewage in the Antarctic Area under Annex IV of the Antarctic Protocol) and provides for matters for Division 1A of Part IIIB of the Pollution Prevention Act (which gives effect to Australia's obligations regarding the discharge of sewage in the Antarctic Area or Arctic waters under Annex IV and the International Code for Ships Operating in Polar Waters (the Polar Code)).
11. The Order also prescribes matters for Division 2 of Part IIIB of the Pollution Prevention Act (which deals with the discharge of sewage in areas other than the Antarctic area).

Overview

12. This Order implements Australia's obligations under Annex IV of MARPOL which deals with sewage systems required on ships, discharge of sewage, reception facilities for sewage and survey and certification requirement. The Order provides for matters for Chapter IV of the Navigation Act which deals with prevention of pollution, and prescribes matters for Divisions 1 and 2 of Part IIIB of the Pollution Prevention Act.
13. The Order sets out the sewage equipment and systems required by vessels and provides matters for International Sewage Pollution Prevention Certificate (ISPP certificates). These certificates are provided for in Annex IV of MARPOL. The Order provides that foreign vessels registered in countries to which Annex IV of MARPOL applies must have the pollution prevention certificates required under Annex IV and ensures that foreign vessels registered in countries to which Annex IV of MARPOL would apply if the country were a party to Annex IV receive no favourable treatment regarding pollution prevention documentation. The Order also prescribes certain incidents that may affect a vessel's compliance with Annex IV as marine incidents that must be reported under the Navigation Act.
14. The Order also implements the sewage pollution prevention measures stipulated in the Polar Code developed and adopted by the International Maritime Organization. The Polar Code came into force on 1 January 2017 and is a mandatory code under Chapter XIV of SOLAS and Annexes I, II, IV and V of MARPOL. It sets out requirements for the design, construction, equipment, operation, training, search and rescue and environmental protection matters for vessels operating in polar waters.
15. The Order provides matters for new Division 1A of Part IIIB of the Pollution Prevention Act. Division 1A of that Act was inserted by the *Protection of the Sea (Prevention of Pollution from Ships) Amendment (Polar Code) Act 2017*. That Act amended the Pollution Prevention Act to ensure strict discharge restrictions for oil, noxious liquid substances, sewage and garbage for certain ships operating in polar waters, consistent with the Polar Code.
16. This Order gives effect to the Polar Code regarding the discharge of sewage in the Antarctic Area or Arctic waters. As provided for by the Pollution Prevention Act, the Order provides matters to be considered by AMSA when deciding whether to approve the discharge of sewage by certain vessels in the Antarctic area or Arctic waters. *Marine Order 53 (Vessels in Polar Waters) 2016* and other Marine Orders give effect to the Polar Code in relation to other matters.
17. The Order replaces *Marine Order 96 (Marine pollution prevention — sewage) 2013*.

Consultation

18. A copy of the draft of this Order was placed on AMSA's website for public consultation for four weeks starting on 17 November 2017 and ending on 15 December 2017. A copy of the draft Order was also emailed to over 200 stakeholders, including ship operators, recognised organisations, shipping and cargo industry peak bodies, unions and various government departments and agencies. One submission was received and taken into account when preparing the final Order.
19. The Office of Best Practice Regulation (OBPR) was consulted and considered 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

20. The Order incorporates parts of the following documents by reference:
- Annex IV of MARPOL;
 - *Marine Order 1 (Administration) 2013*;
 - the *2012 Guidelines on implementation of effluent standards and performance tests for sewage treatment plants* adopted by IMO Resolution MEPC.227(64), as in force from time to time;
 - the *Revised guidelines on implementation of effluent standards and performance tests for sewage treatment plants*, as adopted by IMO Resolution MEPC.159(55) on 13 October 2006;
 - the *International effluent standards for sewage treatment plants* and the *Guidelines for performance tests for sewage treatment plants with respect to effluent standards*, each as adopted by IMO Resolution MEPC.2(VI) on 3 December 1976;
 - WMO Sea Ice Nomenclature (WMO No. 259 Suppl. No.5) as published on 7 October 2009.
21. 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, is available for free on the Australian Treaties Database at <http://www.info.dfat.gov.au/treaties>.
22. *Marine Order 1 (Administration) 2013* is adopted as in force from time to time due to the operation of section 10 of the *Acts Interpretation Act* (as applied by paragraph 13(1)(a) of the *Legislation Act 2003*) and is available for free from the Federal Register of Legislation.
23. WMO Sea Ice Nomenclature (WMO No. 259 Suppl. No.5) is available for free from the publications page on the Joint Technical Commission for Oceanography and Marine Meteorology (JCOMM) website at <http://www.jcomm/info>. See WMO-IOC JCOMM Sea-Ice Regulatory Documents.
24. Information on obtaining access to IMO resolutions 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>.
25. IMO published material may also be purchased from:
- International Maritime Organization
4 Albert Embankment, London SE1 7SR
Telephone +44(0)20 7735 7611
Fax +44(0)20 7587 3210
IMO website: <http://www.imo.org>

Commencement

26. This Order commenced on 1 April 2018.

Contents of this instrument

27. Section 1 sets out the name of the Order.
28. Section 1A provides for the commencement of the Order.

29. Section 1B provides that *Marine Order 96 (Marine pollution prevention — sewage) 2013* is repealed.
30. Section 2 states the purpose of the Order.
31. Section 3 states sets out the powers in the Navigation Act and Pollution Prevention Act that enable the Order to be made.
32. Section 4 sets out definitions of terms used in the Order and matters that assist with the interpretation of the Order.
33. Section 5 sets out how the Order applies to different kinds of vessels. Subsection (4) makes clear that, in addition to the kinds of vessels to which Annex IV of MARPOL already applies, it is taken to apply to vessels owned and operated by the Commonwealth and used for the time being, on government non-commercial service.
34. Section 6 provides for the review of decisions made under the Order.
35. Division 2 provides for the sewage systems and equipment that are required by Annex IV of MARPOL.
36. Section 7 sets out the options for sewage treatment for vessels other than passenger ships operating in special areas.
37. Section 8 sets out the options for sewage treatment for passenger ships operating in special areas.
38. Section 9 provides for the discharge connections specified in Annex IV of MARPOL.
39. Division 3 sets out the requirements for an International Sewage Pollution Prevention Certificate (ISPP certificate). These certificates are provided for in Annex IV of MARPOL.
40. Section 10 provides that a vessel to which Annex IV of MARPOL applies must have an ISPP certificate.
41. Section 11 describes matters that are relevant to making an application for an ISPP certificate.
42. Section 12 sets out the criteria for issue of an ISPP certificate.
43. Section 13 sets out the conditions attached to an ISPP certificate.
44. Section 14 provides for the commencement and duration of ISPP certificates.
45. Section 15 sets out the criteria for variation of ISPP certificates.
46. Section 16 sets out the criteria for revocation of ISPP certificates.
47. Section 17 sets out the period for reporting alterations to vessels that might affect the pollution certificate they are required to have. This reporting is required by the Navigation Act.
48. Division 4 sets out requirements for foreign vessels.
49. Section 18 provides that foreign vessels to which Annex IV of MARPOL applies must have the certificates they are required to have under Annex IV. It also ensures that foreign vessels to which Annex IV of MARPOL does not apply but to which Annex IV would apply if the country in which the vessel was registered was a party to Annex IV must still carry and comply with any certificate or other document issued by that country's Administration. This ensures that these kinds of foreign vessels receive no favourable treatment regarding pollution prevention documentation.

50. Section 19 prescribes certain matters as marine incidents for the Navigation Act. Under the Navigation Act a marine incident must be reported to AMSA.
51. Division 6 prescribes matters for the Pollution Prevention Act.
52. Section 20 prescribes the rate of discharge of untreated sewage into the sea in accordance with the requirements of the Pollution Prevention Act.
53. Section 21 sets out matters to be considered by AMSA when deciding whether to approve an application for discharge of sewage in the Antarctic Area or Arctic waters from a category A or category B ship that is operating in areas of ice concentration exceeding 1/10 for extended periods of time and has a certified sewage treatment plant on board. The Polar Code provides for approval by Administrations of these kinds of discharges and any approvals are to be given under paragraph 26BCC(8)(d) of the Pollution Prevention Act.
54. Section 22 provides dates by which new and existing passenger ships must comply with the higher standards of sewage treatment applicable in special areas. Section 22 also prescribes a day for the commencement of operation of special areas.

Statement of compatibility with human rights

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

Overview of the legislative instrument

56. This Order is made under both the *Navigation Act 2012* (the Navigation Act) and the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (the Pollution Prevention Act). The Order gives effect to Annex IV of MARPOL (which is the Annex to MARPOL that deals with the prevention of marine pollution by sewage from ships) and provides for matters for Chapter 4 of the Navigation Act (which deals with prevention of pollution from vessels).
57. The Order also prescribes matters for Division 1 of Part IIIB of the Pollution Prevention Act (which gives effect to Australia's obligations regarding the discharge of untreated sewage in the Antarctic Area under Annex IV of the Antarctic Protocol), provides for matters for Division 1A of Part IIIB of the Pollution Prevention Act (which gives effect to Australia's obligations regarding the discharge of sewage in the Antarctic Area or Arctic waters under Annex IV and the International Code for Ships Operating in Polar Waters (the Polar Code), and prescribes matters for Division 2 of Part IIIB of the Pollution Prevention Act (which deals with the discharge of sewage in areas other than the Antarctic area).
58. The Order sets out the sewage equipment and systems required by vessels and provides matters for International Sewage Pollution Prevention Certificate (ISPP certificates). These certificates are provided for in Annex IV of MARPOL. It provides that foreign vessels registered in countries to which Annex IV of MARPOL applies must have the pollution prevention certificates required under Annex IV and ensures that foreign vessels registered in countries to which Annex IV of MARPOL would apply if the country were a party to Annex IV receive no favourable treatment regarding required pollution prevention documentation.
59. The Order prescribes certain incidents as marine incidents that must be reported under the Navigation Act. As provided for by the Pollution Prevention Act, it also provides matters to be considered by AMSA when deciding whether to approve the discharge of sewage by certain vessels in the Antarctic area or Arctic waters if the vessel has a sewage treatment plan on board the ship.

Human rights implications

60. 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*.

Conclusion

61. 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

62. 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*.