

Explanatory Statement

Marine Order 91 (Marine pollution prevention — oil) Amendment Order 2018 (Order 2018/3)

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 91 (Marine pollution prevention — oil) 2014* that was also made under those provisions.
2. Section 130 of the Navigation Act provides that regulations may provide for pollution certificates. Section 314 of the Navigation Act provides that the regulations may prescribe various matters about certificates.
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.
4. Paragraph 340(1)(c) of the Navigation Act provides that the regulations may provide for giving effect to the International Convention for the Prevention of Pollution from Ships (MARPOL).
5. 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.
6. 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.
7. 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 regulations.
8. 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.
9. This Order is a legislative instrument for the *Legislation Act 2003*.

Purpose

10. This Order amends *Marine Order 91 (Marine pollution prevention — oil) 2014* (Marine Order 91) to clarify the application of the Order in relation to different kinds of vessels. The amendments made by the Order also ensure no favourable treatment for foreign vessels to which MARPOL does not apply by specifying oil pollution documentation requirements for all foreign vessels.
11. The Order amends Marine Order 91 to prescribe some matters for the Pollution Prevention Act to extend the operation of some provisions of that Act to foreign ships in Australian ports and waters. Section 32 of the Act provides that regulations may be made for this purpose. The Order also makes some other amendments to assist with the administration of Marine Order 91.

Overview

12. This Order amends Marine Order 91. Marine Order 91 gives effect to Annex I of MARPOL which deals with prevention of marine pollution by oil from ships.

Marine Order 91 also prescribes matters for Part II (Prevention of pollution by oil) of the Pollution Prevention Act and provides for matters for Chapter 4 (Prevention of pollution) of the Navigation Act.

13. The amendments made by the Order clarify how Marine Order 91 applies to different kinds of vessels. In particular, it sets out requirements for foreign vessels to carry and comply with certificates or other documents dealing with the prevention of pollution by oil issued by their flag State, even if that country is not a party to MARPOL. The Order also prescribes some matters so that certain provisions of the Pollution Prevention Act apply to foreign ships when in Australian ports and waters, for example, the requirement to keep oil record books. This is allowed for by section 32 of the Pollution Prevention Act.

14. The Order also amends the interpretation provision to aid administration of the Order and makes some minor amendments to how prescribed incidents (such as incidents involving the discharge of oil) are to be notified.

Consultation

15. A copy of the draft of this Order was placed on AMSA's web site for public comment on 17 November 2017 for a period of four weeks ending on 15 December 2017. The draft Order was also emailed to over 200 stakeholders, including ship operators, recognised organisations, shipping and cargo industry peak bodies and unions and various government departments and agencies, together with an invitation to comment. One submission was received and that comment considered when preparing the final Order.

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

Documents incorporated by reference

17. Parts of the following documents are incorporated by reference into Marine Order 91 by the Order:

- Annex I of MARPOL
- the STCW Convention
- the STCW Code.

18. MARPOL is incorporated as amended 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). The STCW Convention and STCW Code are also incorporated as amended and in force for Australia from time to time — see the Navigation Act definition of *STCW Convention* and the *Marine Order 1 (Administration) 2013* definition of *STCW Code*.

19. MARPOL, the STCW Convention and the STCW Code are of treaty status and can be found, including any amendments in force, in the Australian Treaties Series accessible for free from the Australian Treaties Library on the AustLII website at <http://www.austlii.edu.au>. Consolidated copies of the latest edition of MARPOL, and the STCW Code together with the STCW Convention, are also available for purchase from the International Maritime Organization (IMO).

20. Information on obtaining copies of any International Maritime Organization (IMO) Resolution, IMO document or other document that is mentioned in this Order is available from the Marine Order link at <http://www.amsa.gov.au>.

21. 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

22. This Order commenced on 1 April 2018.

Contents of this instrument

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

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

25. Section 3 provides that Marine Order 91 is amended in accordance with the schedule.

26. Item 1 of Schedule 1 omits definitions of terms that were defined in accordance with the STCW Convention and the STCW Code.

27. Item 2 inserts a reference to the term *Australian nationality* into the note that lists terms used in the Order as defined in the Navigation Act.

28. Item 3 amends section 5 to enable subsection 5(2) to be inserted.

29. Item 4 inserts new subsection 5(2) that provides interpretation assistance for some terms used but not defined for the Order.

30. Item 5 replaces the application provision for the Order with a new provision that clearly sets out the kinds of vessels to which the Order applies. Subsection (4) makes clear that, in addition to the kinds of vessels to which Annex I 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; for example, a vessel owned by the Commonwealth that is engaged in scientific research activity.

31. Item 6 updates the provisions of Annex I of MARPOL mentioned in section 7 that provide for the giving of waivers by AMSA.

32. Item 7 amends paragraph 13(d) to refer to an issuing body instead of only to AMSA. This is because an issuing body may be either AMSA or a recognised organisation.

33. Item 8 replaces the reference to ‘the issuing body’ in section 18 with a reference to each issuing body that issued the IOPP certificate for the vessel. This wording more closely aligns with the wording in paragraph 137(1)(c) of the Navigation Act.

34. Item 9 substitutes a new section 19. The new section ensures that foreign vessels to which MARPOL does not apply must still comply with any certificate or other document issued by the Administration of the country in which the vessel is registered. This is to ensure that foreign vessels registered in those countries receive no favourable treatment in relation to the need for written evidence of the prevention of oil pollution by the vessel compared to vessels registered in countries that have ratified MARPOL.

35. Items 10 and 11 make amendments to update the ways in which incidents involving oil or oil mixture or damage, failure or breakdown can be notified to reflect current practices.

36. Item 13 inserts a new subsection 22A that extends the application of section 11A of the Pollution Prevention Act (that requires ship board oil pollution emergency plans) to foreign ships that are in Australian ports, the territorial sea of Australia or the sea on the landward side of the territorial sea. Section 32(1A) of the Pollution Prevention Act provides that this provision may be extended, by the regulations, to cover foreign ships in those areas as well as Australian ships. Section 34 of the Act allows AMSA to make orders with respect to any matter in relation to which provision may be made by regulations.

37. Item 14 inserts new section 25A to prescribe the transfer of oil cargo from an oil tanker to an oil tanker of at least 150 GT as a prescribed operation and extends the application of sections 11D and 11E of the Pollution Prevention Act to apply to foreign ships. Under subsection 32(1) of the Act, this provision of the Act may be extended to foreign ships by the regulations.

38. Item 15 inserts a new subsection 29A that extends the application of section 12 of the Pollution Prevention Act (that requires oil record books) to foreign ships that are in Australian ports, the territorial sea of Australia or the sea on the landward side of the territorial sea. Section 32(1) of the Pollution Prevention Act provides that this provision may be extended by the regulations to cover foreign ships in those areas.

39. Item 16 is a minor technical amendment

Statement of compatibility with human rights

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

Overview of the legislative instrument

41. This Order makes amendments to *Marine Order 91 (Marine pollution prevention — oil) 2014* (Marine Order 91) that is made under both the *Navigation Act 2012* and the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*. This Order is also made under both those Acts.

42. Marine Order 91 gives effect to Annex I of the International Convention for the Prevention of Pollution from Ships (MARPOL) which deals with prevention of marine pollution by oil from ships. Marine Order 91 also prescribes matters for Part II (Prevention of pollution by oil) of the Pollution Prevention Act and provides for matters for Chapter 4 (Prevention of pollution) of the Navigation Act.

43. The Order amends Marine Order 91 to clarify how it applies to different kinds of vessels. The amendments also require foreign vessels that are registered in a country that is not a party to MARPOL to carry and comply with certificates or other documents dealing with the prevention of pollution by oil issued by the Administration of that country. This ensures that these vessels receive no favourable treatment in this regard compared to vessels registered in a country that is a party to MARPOL.

44. The Order also prescribes some matters so that certain provisions of the Pollution Prevention Act that apply to Australian ships (for example, the requirement to have a ship board oil pollution emergency plan) also apply to foreign ships when in Australian ports and waters. This is allowed for by section 32 of the Pollution Prevention Act.

45. The Order also makes some other amendments to aid the administration of the Order.

Human rights implications

46. 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

47. 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

48. 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*.