

Explanatory Statement

Marine Order 97 (Marine pollution prevention — air pollution) 2022 (Order 2022/4)

Authority

1. This Marine Order is 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).
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 340(1) of the Navigation Act provides that the regulations may give effect to the International Convention for the Prevention of Pollution from Ships (MARPOL).
4. 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.
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 which provision must or may be made by the regulations.
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 Marine Order was made under subsection 342(1) and is a legislative instrument for the *Legislation Act 2003*.

Purpose

9. This Marine Order repeals and replaces *Marine Order 97 (Marine pollution prevention — air pollution) 2013*.

Overview

10. The Navigation Act and the Pollution Prevention Act implement Australia's obligations under MARPOL. Marine Order 97 is made under both Acts. It gives effect to Annex VI of MARPOL, which deals with the prevention of air pollution from vessels. Marine Order 97 provides matters for Chapter 4 of the Navigation Act (which is concerned with the prevention of pollution from vessels) and Part IIID of the Pollution Prevention Act (which is concerned specifically with air pollution from vessels).
11. Marine Order 97 provides matters for the Navigation Act about the issue under that Act of air pollution certificates which are required by MARPOL for certain vessels. It creates offences for the release of ozone depleting substances and sets out the documents that are required to show compliance with controls for nitrogen oxide emissions. The Marine Order also restricts incineration on board vessels and regulates energy efficiency, including the reporting of fuel oil consumption and carbon intensity data. The Marine Order prescribes matters for the Pollution Prevention Act, particularly in relation to the sulphur content of fuel oil and the Register of Local Suppliers of Fuel Oil.

Consultation

12. A copy of the draft of an earlier version of this Marine Order was placed on AMSA's website on 24 January 2022 for public consultation with comments to be provided by 20 March 2022. A further draft of the Marine Order, incorporating additional matters the subject of new international obligations, was placed on AMSA's website on 16 August 2022 for public consultation, with comments to be provided by 9 October 2022. Around 240 and 600 stakeholders respectively for the two consultation periods were contacted by email and invited to comment on each occasion, including vessel operators, recognised organisations, shipping and cargo industry bodies, seafarer representative organisations and relevant government agencies

13. Eight responses were received following the first consultation and two following the second. Following the first consultation, comments were taken into account in the preparation of the draft for the second consultation. Following the second consultation, comments were received on certificates for engines in relation to nitrogen oxide emissions, and the application of energy efficiency and carbon intensity requirements. These submissions were considered during the preparation of the final Marine Order.

14. The Office of Best Practice Regulation (OBPR) considers that the changes made by the Marine Order have regulatory impacts of a minor or machinery nature and no regulation impact statement is required. The OBPR reference numbers are 44146 and OBPR22-01405.

Documents incorporated by reference

15. The following documents or parts of them are incorporated by reference in the Marine Order.

- Annex VI of MARPOL
- NOx Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines adopted by resolution 2 of the 1997 MARPOL Conference (NOx Technical Code)
- *Marine Order 1 (Administration) 2013* (Marine Order 1)
- *Marine Order 47 (Offshore industry units) 2019* (Marine Order 47)
- Annex I of MARPOL
- International Code for Ships Operating in Polar Waters (Polar Code)
- *2018 Guidelines on the method of calculation of the attained Energy Efficiency Design Index (EEDI) for new ships* adopted by IMO Resolution MEPC.308(73) and as amended from time to time (2018 Guidelines)
- *2022 Guidelines on the method of calculation of the attained Energy Existing Ship Index (EEXI)* adopted by IMO Resolution MEPC.350(78) and as amended from time to time (2022 EEXI Guidelines)
- *2013 Guidelines for calculation of reference lines for use with Energy Efficiency Design Index (EEDI)* adopted by IMO Resolution MEPC.231(65) and as amended from time to time (2013 Guidelines)
- *2022 Guidelines for the development of a ship energy efficiency management plan*, adopted by IMO resolution MEPC.346(78) and as amended from time to time (2022 SEEMP Guidelines)

- *2015 Guidelines for exhaust gas cleaning systems* adopted by IMO Resolution MEPC.259(68) and as amended from time to time (2015 Guidelines)

16. 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>. A link to the Australian Treaties Library is available at the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>. The Marine Orders link on the AMSA website also contains information on the purchase of MARPOL and its availability at libraries.

17. The NO_x Technical Code is incorporated in the Marine Order according to its definition in regulation 2 of Annex VI, which means it is adopted as amended from time to time in accordance with article 16 of MARPOL. The NO_x Technical Code is available in IMO Resolution MEPC.177(58). IMO Resolutions are available to download from the IMO website at no cost. A link to IMO resolutions 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 Orders 1 and 47 are adopted as in force from time to time because they are adopted in this Order by reference to their title. 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 Polar Code is incorporated in the Marine Order 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). The Polar Code can be found in the Australian Treaties Series, accessible from the Australian Treaties Library on the AustLII website at <http://www.austlii.edu.au>.

20. The 2018 Guidelines are available in IMO Resolution MEPC.308(73). The 2022 EEXI Guidelines are available in IMO Resolution MEPC. 350(78). The 2013 Guidelines are available in IMO Resolution MEPC.231(65). The 2022 SEEMP Guidelines are available in IMO Resolution MEPC. 346(78). The 2015 Guidelines are available in IMO Resolution MEPC.259(68). All five sets of guidelines are incorporated as amended from time to time. IMO Resolutions are available to download from the IMO website at no cost. A link to IMO resolutions is available at the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>.

Commencement

21. This Marine Order commenced on 1 January 2023.

Contents of this instrument

Division 1 — Preliminary

22. Division 1 contains nine provisions that assist the operation, interpretation and administration of the Marine Order.

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

24. Section 1A states that the Marine Order commences on 1 January 2023.

25. Section 1B repeals *Marine Order 97 (Marine pollution prevention — air pollution) 2013*.

26. Section 2 states the purpose of the Marine Order, which is to give effect to Annex VI of MARPOL, provide for matters for Chapter 4 of the Navigation Act and prescribe matters for Part IIID of the Pollution Prevention Act.
27. Section 3 sets out the powers in the Navigation Act and the Pollution Prevention Act that enable the Marine Order to be made.
28. Section 4 sets out definitions of terms used in the Marine Order.
29. Section 5 deals with the application of certain terms used in Annex VI.
30. Section 6 describes the vessels to which the Marine Order applies.
31. Section 7 provides for the application and approval for the use of an equivalent. This is a reviewable decision under Marine Order 1.
32. Section 8 provides for the approval of an electronic record book. This is a reviewable decision under Marine Order 1.
33. Section 9 prescribes marine incidents for paragraph 14(1)(l) of the Navigation Act.

Division 2 — Requirements of Annex VI

34. Division 2 contains one provision about the need to comply with Annex VI of MARPOL.
35. Section 10 is a general provision requiring compliance by vessels and people with Annex VI of MARPOL.

Division 3 — Navigation Act certificates and exemption certificate

36. Division 3 contains 13 provisions prescribing matters about two certificates issued as pollution certificates under the Navigation Act and an exemption certificate.
37. Subdivision 3.1 contains five provisions. It covers general matters about the two certificates issued under the Navigation Act and provides for an exemption certificate.
38. Section 11 specifies for the Navigation Act the kinds of vessels that must have an international air pollution prevention certificate (IAPP certificate) and the kinds of vessels that must have an international energy efficiency certificate (IEE certificate). These certificates are pollution certificates for the Navigation Act.
39. Section 12 provides for making applications for an IAPP or IEE certificate.
40. Section 13 prescribes the form of IAPP and IEE certificates.
41. Section 14 prescribes for the Navigation Act, the period within which AMSA and an issuing body must be informed of an alteration to a vessel, once the alteration is made.
42. Section 15 provides for the issue by AMSA of an IAPP exemption certificate for a barge that has no-one on board, is not self-propelled and is not capable of generating emissions regulated by Annex VI. This is a reviewable decision under Marine Order 1.
43. Subdivision 3.2 contains five provisions and provides for matters about IAPP certificates.
44. Section 16 sets out the criteria for the issue of an IAPP certificate under section 132 of the Navigation Act. A decision to refuse to issue a pollution certificate under section 132 of the Navigation Act is made reviewable by subsection 313(1) of the Navigation Act.

45. Section 17 sets out the criteria for the variation of an IAPP certificate for section 133 of the Navigation Act. A decision to vary or refuse to vary a pollution certificate under section 133 of the Navigation Act is a reviewable decision under subsection 313(1) of the Navigation Act.
46. Section 18 provides for the commencement and duration of an IAPP certificate.
47. Section 19 sets out the criteria for the revocation of an IAPP certificate for section 134 of the Navigation Act. A decision to revoke a pollution certificate under section 134 of the Navigation Act is made reviewable by subsection 313(1) of the Navigation Act.
48. Section 20 provides for the endorsement of an IAPP certificate in accordance with Annex VI. Annex VI provides for endorsement when annual and intermediate surveys occur. A decision not to endorse the certificate is made reviewable under Marine Order 1.
49. Subdivision 3.3 contains three provisions about IEE certificates.
50. Section 21 sets out the criteria for the issue of an IEE certificate under section 132 of the Navigation Act. A decision to refuse to issue a pollution certificate under section 132 of the Navigation Act is made reviewable by subsection 313(1) of the Navigation Act.
51. Section 22 provides for the commencement and duration of an IEE certificate.
52. Section 23 sets out the criteria for the revocation of an IEE certificate for section 134 of the Navigation Act. A decision to revoke a pollution certificate under section 134 of the Navigation Act is made reviewable by subsection 313(1) of the Navigation Act.

Division 4 — Requirements for foreign vessels and certain recreational vessels

53. Division 4 contains one provision which sets out for foreign vessels the certificate requirements in relation to the matters dealt with in Annex VI of MARPOL.
54. Section 24 provides the certificate requirements for foreign vessels.

Division 5 — Vessels not engaged on overseas voyages

55. Division 5 contains one provision which requires vessels that do not engage in overseas voyages to comply with Chapter 3 of Annex VI. Chapter 3 of Annex VI deals with the prevention of emissions of various polluting substances from vessels.
56. Section 25 applies to a vessel ≥ 400 GT that does not engage in overseas voyages and provides that such a vessel must be surveyed to ensure compliance with Chapter 3 of Annex VI.

Division 6 — Ozone depleting substances

57. Division 6 contains six provisions. The Division creates offences for certain conduct on vessels in relation to ozone depleting substances and prescribes matters about the ozone depleting substances record book.
58. Section 26 defines terms for Division 6.
59. Section 27 makes it an offence for the master of a vessel if an ozone depleting substance is emitted from the vessel. The offence is strict liability with a civil penalty also applying. Under the Navigation Act and the Pollution Prevention Act, the penalty for a strict liability offence in a Marine Order cannot be more than 50 penalty units for an individual. The maximum civil penalty amount for a

contravention of a Marine Order by an individual is also 50 penalty units. The penalty amount for this offence and the civil penalty is 50 penalty units. At the time of making of this Marine Order, the monetary amount for a penalty unit calculated under the *Crimes Act 1914* was \$222.

60. Section 28 makes it an offence for the owner of a vessel constructed after 31 December 2019 if the vessel has an ozone depleting substance in an installation on the vessel or in equipment contained in an installation on the vessel. The offence is strict liability with a civil penalty also applying. Under the Navigation Act and the Pollution Prevention Act, the penalty for a strict liability offence in a Marine Order cannot be more than 50 penalty units for an individual. The maximum civil penalty amount for a contravention of a Marine Order by an individual is also 50 penalty units. The penalty amount for this offence and the civil penalty is 50 penalty units. At the time of making of this Marine Order, the monetary amount for a penalty unit calculated under the *Crimes Act 1914* was \$222.

61. Section 29 makes it an offence for the owner of a vessel constructed between 18 May 2005 and 31 December 2019 if the vessel has an ozone depleting substance (other than a hydrochlorofluorocarbon) in an installation on a vessel or in equipment contained in an installation on a vessel. The offence is strict liability with a civil penalty also applying. Under the Navigation Act and the Pollution Prevention Act, the penalty for a strict liability offence in a Marine Order cannot be more than 50 penalty units for an individual. The maximum civil penalty amount for a contravention of a Marine Order by an individual is also 50 penalty units. The penalty amount for this offence and the civil penalty is 50 penalty units. At the time of making of this Marine Order, the monetary amount for a penalty unit calculated under the *Crimes Act 1914* was \$222.

62. Section 30 makes it an offence for the master of a vessel if an ozone depleting substance or equipment containing an ozone depleting substance is removed from the vessel and is not delivered to a reception facility for receiving ozone depleting substances. The offence is strict liability with a civil penalty also applying. Under the Navigation Act and the Pollution Prevention Act, the penalty for a strict liability offence in a Marine Order cannot be more than 50 penalty units for an individual. The maximum civil penalty amount for a contravention of a Marine Order by an individual is also 50 penalty units. The penalty amount for this offence and the civil penalty is 50 penalty units. At the time of making of this Marine Order, the monetary amount for a penalty unit calculated under the *Crimes Act 1914* was \$222.

63. Section 31 prescribes matters for the Pollution Prevention Act about ozone depleting substances record books.

Division 7 — EIAPP certificates and nitrogen oxide emissions

64. Division 7 contains 11 provisions and deals with engine international air pollution prevention certificates (EIAPP certificates) and nitrogen oxide emissions from vessels.

65. Section 32 requires regulated Australian vessels to have an EIAPP certificate and associated technical file for each marine diesel engine covered by regulation 13 of Annex VI.

66. Section 33 provides that a marine diesel engine, either installed or undergoing a major conversion on a domestic commercial vessel after 31 December 2022, must have an EIAPP certificate and associated technical file if the engine is covered by regulation 13 of Annex VI.

67. Section 34 provides that a person may apply in accordance with Marine Order 1 for an EIAPP certificate.

68. Section 35 sets out the criteria for the issue of an EIAPP certificate by an issuing body. Marine Order 1 provides for the review of decisions made in accordance with the application process in that Marine Order.

69. Section 36 provides for the commencement and duration of an EIAPP certificate.

70. Section 37 makes it an offence to take a vessel to sea if there is a marine diesel engine on board to which regulation 13 of Annex VI applies and the engine does not have the required documentation. The offence is strict liability with a civil penalty also applying. Under the Navigation Act and the Pollution Prevention Act, the penalty for a strict liability offence in a Marine Order cannot be more than 50 penalty units for an individual. The maximum civil penalty amount for a contravention of a Marine Order by an individual is also 50 penalty units. The penalty amount for this offence and the civil penalty is 50 penalty units. At the time of making of this Marine Order, the monetary amount for a penalty unit calculated under the *Crimes Act 1914* was \$222.

71. Section 38 makes it an offence for an owner of a vessel not to keep on board the vessel the documentation required for a marine diesel engine. The offence is strict liability with a civil penalty also applying. Under the Navigation Act and the Pollution Prevention Act, the penalty for a strict liability offence in a Marine Order cannot be more than 50 penalty units for an individual. The maximum civil penalty amount for a contravention of a Marine Order by an individual is also 50 penalty units. The penalty amount for this offence and the civil penalty is 50 penalty units. At the time of making of this Marine Order, the monetary amount for a penalty unit calculated under the *Crimes Act 1914* was \$222.

72. Section 39 makes it an offence if a marine diesel engine to which regulation 13 of Annex VI applies is supplied for installation on a domestic commercial vessel or certain recreational vessels without a required EIAPP certificate and associated technical file. The offence is strict liability with a civil penalty also applying. Under the Navigation Act and the Pollution Prevention Act, the penalty for a strict liability offence in a Marine Order cannot be more than 50 penalty units for an individual. The maximum civil penalty amount for a contravention of a Marine Order by an individual is also 50 penalty units. The penalty amount for this offence and the civil penalty is 50 penalty units. At the time of making of this Marine Order, the monetary amount for a penalty unit calculated under the *Crimes Act 1914* was \$222.

73. Section 40 makes it an offence to carry out a major conversion of a marine diesel engine on a domestic commercial vessel or certain recreational vessels and not provide an EIAPP certificate and technical file if required. The offence is strict liability with a civil penalty also applying. Under the Navigation Act and the Pollution Prevention Act, the penalty for a strict liability offence in a Marine Order cannot be more than 50 penalty units for an individual. The maximum civil penalty amount for a contravention of a Marine Order by an individual is also 50 penalty units. The penalty amount for this offence and the civil penalty is 50 penalty units. At the time of making of this Marine Order, the monetary amount for a penalty unit calculated under the *Crimes Act 1914* was \$222.

74. Section 41 makes it an offence to operate a marine diesel engine on a vessel to which regulation 13 of Annex VI applies if the nitrogen oxide emissions are not within the limits set out in regulation 13. Some exceptions are provided for certain vessels engaged in given activities in emission control areas. The offence is strict liability with a civil penalty also applying. Under the Navigation Act and the Pollution Prevention Act, the penalty for a strict liability offence in a Marine Order cannot be more than 50 penalty units for an individual. The maximum civil penalty

amount for a contravention of a Marine Order by an individual is also 50 penalty units. The penalty amount for this offence and the civil penalty is 50 penalty units. At the time of making of this Marine Order, the monetary amount for a penalty unit calculated under the *Crimes Act 1914* was \$222.

75. Section 42 makes it an offence if Australian vessels in NOx Tier III emission control areas do not keep the records that are required in those areas. The offence is strict liability with a civil penalty also applying. Under the Navigation Act and the Pollution Prevention Act, the penalty for a strict liability offence in a Marine Order cannot be more than 50 penalty units for an individual. The maximum civil penalty amount for a contravention of a Marine Order by an individual is also 50 penalty units. The penalty amount for this offence and the civil penalty is 50 penalty units. At the time of making of this Marine Order, the monetary amount for a penalty unit calculated under the *Crimes Act 1914* was \$222.

Division 8 — Incineration on board vessels

76. Division 8 contains four provisions. It creates offences relating to incineration on board vessels and provides for an owner of a vessel to apply for the exclusion of an incinerator installed on the vessel from the requirement to comply with appendix IV of Annex VI.

77. Section 43 creates offences if incineration on board a vessel is not within the requirements of regulation 16 of Annex VI. The offences are strict liability with civil penalties also applying. Under the Navigation Act and the Pollution Prevention Act, the penalty for a strict liability offence in a Marine Order cannot be more than 50 penalty units for an individual. The maximum civil penalty amount for a contravention of a Marine Order by an individual is also 50 penalty units. The penalty amount for these offences and the civil penalties are 50 penalty units. At the time of making of this Marine Order, the monetary amount for a penalty unit calculated under the *Crimes Act 1914* was \$222.

78. Section 44 provides that an owner of a vessel may apply to AMSA for the exclusion of an incinerator installed on the vessel from the requirement to comply with paragraph 6.1 of regulation 16 of Annex VI. Paragraph 6.1 requires that incinerators installed on a vessel constructed after 1 January 2000 or incinerators installed on a vessel after that date must meet the requirements set out in appendix IV to Annex VI. AMSA may allow exclusion of an incinerator installed on a vessel before 19 May 2005 if the vessel is solely engaged in domestic voyages. The application for exclusion of an incinerator must be in accordance with Marine Order 1. Marine Order 1 provides for review of decisions made in accordance with the application process in that Marine Order.

79. Section 45 requires the owner of a vessel to make available the incinerator operation manual, and ensure training, in accordance with Annex VI. The requirements are strict liability offences with civil penalties applying. Under the Navigation Act and the Pollution Prevention Act, the penalty for a strict liability offence in a Marine Order cannot be more than 50 penalty units for an individual. The maximum civil penalty amount for a contravention of a Marine Order by an individual is also 50 penalty units. The penalty amount for these offences and the civil penalty is 50 penalty units. At the time of making of this Marine Order, the monetary amount for a penalty unit calculated under the *Crimes Act 1914* was \$222.

80. Section 46 places responsibility on the master of a vessel to ensure that the incinerator temperature is monitored at all times and that waste is not fed into the incinerator when the outlet temperature is below 850°C. The requirements are strict liability offences with civil penalties applying. Under the Navigation Act and the Pollution Prevention Act, the penalty for a strict liability offence in a Marine Order

cannot be more than 50 penalty units for an individual. The maximum civil penalty amount for a contravention of a Marine Order by an individual is also 50 penalty units. The penalty amount for these offences and the civil penalty is 50 penalty units. At the time of making of this Marine Order, the monetary amount for a penalty unit calculated under the *Crimes Act 1914* was \$222.

Division 9 — Energy efficiency

81. Division 9 deals with energy efficiency and has 10 provisions.
82. Subdivision 9.1 contains one provision that sets out the vessels to which the Division applies.
83. Section 47 sets out the vessels that are subject to the Division and excludes some vessels from particular sections within the Division.
84. Subdivision 9.2 contains six provisions covering the Energy Efficiency Design Index (EEDI), the Energy Efficiency Existing Ship Index (EEXI) and ship energy efficiency management plans.
85. Section 48 requires that the attained EEDI for a vessel must be worked out in accordance with regulation 22 of Annex VI.
86. Section 49 requires that the attained EEXI for a vessel must be worked out in accordance with regulation 23 of Annex VI.
87. Section 50 requires that the required EEDI for a vessel must be worked out in accordance with regulation 24 of Annex VI.
88. Section 51 requires that the required EEXI for a vessel must be worked out in accordance with regulation 25 of Annex VI.
89. Section 52 prescribes for the Pollution Prevention Act that the ship energy efficiency management plan must contain the information set out in regulation 26 of Annex VI and IMO guidelines on the matter.
90. Section 53 provides that a vessel owner may apply for a waiver from requirements relating to the EEDI. AMSA may give a waiver if the relevant requirements of Annex VI are met. The application for a waiver must be in accordance with the application process in Marine Order 1. Marine Order 1 provides for the review of decisions made in accordance with the process it sets out.
91. Subdivision 9.3 contains three provisions and regulates reporting about fuel oil consumption and the attained annual operational carbon intensity indicator.
92. Section 54 requires that a vessel of $\geq 5,000$ GT must have a statement of compliance. A statement of compliance is required under Annex VI to show that the required data about the fuel oil consumption and carbon intensity of the vessel has been collected.
93. Section 55 provides for an issuing body to issue a statement of compliance if certain requirements of Annex VI are met. These requirements include the provision of fuel oil consumption data and carbon intensity information. The section provides that a decision not to issue a statement of compliance is reviewable under Marine Order 1.
94. Section 56 covers the form and duration of a statement of compliance.

Division 10 — Matters prescribed for the Pollution Prevention Act

95. Division 10 prescribes matters for the Pollution Prevention Act and has 13 provisions.

96. Subdivision 10.1 has seven provisions and deals with the sulphur content of fuel oil.
97. Section 57 prescribes the limit for the sulphur content of fuel oil for the Pollution Prevention Act which makes it an offence in certain circumstances if fuel oil with sulphur content above the prescribed limit is used as fuel on board a ship or carried on board for use as fuel. Section 57 also prescribes a fuel oil sulphur content limit for Australian ships in emission control areas.
98. Section 58 prescribes a level of total emissions of sulphur oxides relevant to offences in the Pollution Prevention Act.
99. Section 59 prescribes matters that apply to the use of an exhaust gas cleaning system. In certain circumstances the Pollution Prevention Act and Annex VI allow the use of systems known as Annex VI approved equivalents as an alternative to the use of fuel oil with the prescribed sulphur content limit. The section also prescribes measures in relation to the discharge of waste stream from an Annex VI approved equivalent.
100. Section 60 prescribes notification requirements in situations where a person took all reasonable steps to obtain compliant fuel oil and was unable to do so.
101. Section 61 prescribes the sulphur content limit of fuel oil for offences related to an Australian ship in an emission control area.
102. Section 62 prescribes what is a record book for making entries about fuel change-overs before entering and upon exiting emission control areas, the records that must be made and the time for which the records must be kept.
103. Section 63 provides for an issuing body to approve an exhaust gas cleaning system as an Annex VI approved equivalent. A decision on an application for approval is made reviewable under Marine Order 1.
104. Subdivision 10.2 has six provisions and covers the Register of Fuel Oil Suppliers, bunker delivery notes and fuel oil samples.
105. Section 64 sets out the information to be included in the Register of Fuel Oil Suppliers and provides that a person on the Register must provide an annual declaration in the approved form.
106. Section 65 describes the process for applying to be on the Register and the process for approval by AMSA. A person must apply in accordance with the application process in Marine Order 1. Marine Order 1 provides for the review of decisions made in accordance with its application process.
107. Section 66 describes the powers that AMSA has in relation to a person on the Register, including the power of removal. The section provides that a decision by AMSA to remove a person from the Register is reviewable under Marine Order 1.
108. Section 67 provides for inspections, audits and sampling by AMSA to assess whether a person should go on the Register or to monitor people already on the Register.
109. Section 68 prescribes matters for the Act about the timing for delivery of a bunker delivery note from the fuel oil supplier to the master of the vessel. The section also sets out requirements for the sample of fuel oil that must be delivered from the fuel oil supplier to the master of the vessel.
110. Section 69 provides the locations where a fuel oil sample must be retained.

Division 11

Division 11 covers transitional and savings matters.

111. Section 70 makes transitional arrangements for applications that were made under *Marine Order 97 (Marine pollution prevention — air pollution) 2013*, but not decided under that Order before it was repealed.

112. Section 71 provides that an EIAPP certificate issued before the making of this Marine Order is an EIAPP certificate for the Marine Order.

Statement of compatibility with human rights

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

Overview of the legislative instrument

114. The *Navigation Act 2012* (the Navigation Act) and the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (the Pollution Prevention Act) implement Australia's obligations under MARPOL (the International Convention for the Prevention of Pollution from Ships). This instrument, *Marine Order 97 (Marine pollution prevention — air pollution) 2022* (Marine Order 97), is made under both Acts. It gives effect to Annex VI of MARPOL, which deals with the prevention of air pollution from vessels. Marine Order 97 provides matters for Chapter 4 of the Navigation Act (which is concerned with the prevention of pollution from vessels) and Part IIID of the Pollution Prevention Act (which is concerned specifically with air pollution from vessels).

115. Marine Order 97 provides matters for the Navigation Act about the issue under the Act of air pollution certificates which are required by MARPOL for certain vessels. It creates offences for the release of ozone depleting substances and sets out the documents that are required to show compliance with controls for nitrogen oxide emissions. The Marine Order also restricts incineration on board vessels and regulates energy efficiency, including providing for fuel oil consumption and carbon intensity reporting. The Marine Order prescribes matters for the Pollution Prevention Act, particularly in relation to the sulphur content of fuel oil and the Register of Local Suppliers of Fuel Oil.

Human rights implications

116. Sections 27-30, 37-43 and 45-46 of the Marine Order create offences to which strict liability applies. They also create civil penalties. The objective of these offences is to enforce standards agreed upon at the international level for the protection of the marine environment against air pollution. The offences are aimed at preventing harmful pollutants from entering the atmosphere at unacceptable levels. The health and safety of seafarers is also protected through these offences.

117. Strict liability offences may engage and limit the presumption of innocence mentioned in Article 14 of the International Covenant on Civil and Political Rights (ICCPR). Civil penalty provisions may engage the criminal process provisions under Articles 14 and 15 of the ICCPR.

118. Strict liability is imposed in pursuit of the objectives of reducing pollution and ensuring the safety of seafarers. The penalties are relatively low (50 penalty units) and are within the limitation imposed by paragraph 341(1)(a) of the Navigation Act and paragraph 33(1)(f) of the Pollution Prevention Act. It is long standing practice to impose strict liability for breaches in Marine Orders in circumstances requiring deterrence and where breaches pose serious threats to life, safety of navigation and the marine environment.

119. The civil penalty provisions are authorised by paragraph 341(1)(b) of the Navigation Act. These provisions are directed at seafarers and owners of vessels rather than the community at large and are regulatory in nature. Having regard to the

objectives of the civil penalty provisions (which are protective, preventative, disciplinary and regulatory in nature), and the relatively low level of penalty (the same maximum amount as for an offence), the civil penalties should not be considered to be criminal matters for human rights law.

120. Sections 64 to 67 of the Marine Order prescribe matters for the Pollution Prevention Act about the Register of Local Suppliers of Fuel Oil (the Register). Section 26FEL of the Act makes it an offence to supply fuel oil to a vessel unless the supplier is registered on the Register. Sections 64 to 67 prescribe matters such as the information that must be kept on the Register and the requirements to become registered. The provisions also set out AMSA's powers to assess whether a person can be registered and to monitor fuel oil transactions of those listed on the Register. Annual declarations must be returned by those on the Register, and failure to do so may result in removal from the Register. These provisions support the requirements in the Act, which prevent a person from working as a fuel oil supplier without being registered.

121. These provisions may engage and limit the right to work mentioned in Article 6 of the International Covenant on Economic, Social and Cultural Rights. At an international level, the requirement to have a register of fuel oil suppliers is imposed by Regulation 18.9 of Annex VI of MARPOL. This requirement is binding on Australia. The purpose of maintaining a register of fuel oil suppliers is to ensure that fuel oil supplied to vessels complies with the sulphur limits imposed by MARPOL. Compliant fuel is key to controlling pollution caused by burning fuel oil on board a vessel. The Register ensures that suppliers are held accountable if non-compliant fuel is detected and means that the situation can be rectified quickly. The requirement to register applies to a very small number of people and is regulatory in nature. The registration system enables enforcement of low sulphur limits in fuel oil.

122. It is considered any limitation on human rights as a result of the imposition of strict liability, the creation of civil penalties and the registration process for fuel oil suppliers is reasonable, necessary and proportionate for achieving the objective of prevention of pollution at sea.

Conclusion

123. AMSA considers that this Marine Order is compatible with human rights. To the extent that it limits rights or freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies, the limitation is reasonable, necessary and proportionate for achieving the objective of prevention of pollution at sea.

Making the instrument

124. 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*.