

Explanatory Statement

Marine Order 93 (Marine pollution prevention — noxious liquid substances) 2014 (Order 2014/10)

Authority

1. This Order was made under 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. Section 130 of the Navigation Act provides that the regulations may provide for pollution certificates.
3. Section 314 of the Navigation Act provides that the regulations may prescribe various matters about certificates.
4. 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.
5. Section 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).
6. Subsection 342(1) of the Navigation Act allows the Australian Maritime Safety Authority (AMSA) to make orders for any matter in the Act for or in relation to which provision may be made by regulations.
7. Subsections 33(1)(a) and (b) of the Pollution Prevention Act provide for regulations to be made prescribing matters required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Pollution Prevention Act.
8. Section 33(1)(c) provides for regulations under paragraphs 33(1) (a) and (b) to be made to give effect to MARPOL.
9. Subsection 34(1) of the Pollution Prevention Act provides that AMSA may make orders for any matter (other than the imposition of penalties) for which provision may be made by regulation.
10. 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.
11. This Order is a legislative instrument for the *Legislative Instruments Act 2003*.

Purpose

12. This Order gives effect to Annex II of MARPOL which deals with prevention of marine pollution by noxious liquid substances from ships. It also provides for matters for Chapter 4 (Prevention of pollution) of the Navigation Act and prescribes matters for Part III (Prevention of pollution by noxious substances) of the Pollution Prevention Act.

Overview

13. The Pollution Prevention Act and the Navigation Act implement Australia's obligations under Annex II of MARPOL. This Order deals with matters including vessel certification, vessel reporting requirements, on-board documentation requirements, vessel measures and arrangements to minimise discharges.

14. The Order replaces *Marine Order 93 (Marine pollution prevention — noxious liquid substances) 2006* following a review of the Order as part of AMSA's ongoing review of instruments. The structure of the Order has been changed and current legislative drafting style applied. When the Order commences, schedule 39 of *Marine Order 4 (Transitional Modifications) 2013* will cease to have effect because that schedule modifies the previous issue of this Order.

Consultation

15. A copy of the draft of this Order was placed on the AMSA website for public comment. Over 300 stakeholders, including industry organisations and interested government agencies, were invited to participate in the consultation process. Two responses were received and the issues raised by these bodies were taken into account in finalising the Order.

16. The Office of Best Practice Regulation (OBPR) was also consulted and considered that the Order dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OBPR reference number is 16099.

Documents incorporated by reference

17. This Order incorporates the following documents by reference:

- Annex II of MARPOL
- BCH Code
- IBC Code
- IMO Resolution A.673(16) *Guidelines for the Transport and Handling of Limited Amounts of Hazardous and Noxious Liquid Substances in Bulk in Offshore Support Vessels*
- IMO Resolution MEPC.85(44) *Guidelines for the Development of Shipboard Marine Pollution Emergency Plans for Oil and/or Noxious Liquid Substance*
- IMO Resolution MEPC.148(54) *Revised Guidelines for the Transport of Vegetable Oils in Deep Tanks or in Independent Tanks Specially Designed for the Carriage of Such Vegetable Oils in General Dry Cargo Ships*

18. Copies of IMO resolutions and circulars mentioned in the Order are available on AMSA's website at <http://www.amsa.gov.au>. IMO documents may also be purchased from the IMO — see the IMO website at <http://www.imo.org/publications>.

Commencement

19. This Order commenced on 1 July 2014.

Contents of this instrument

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

21. Section 1A sets out the commencement of the Order.

22. Section 1B repeals the previous issue of the Order (which to the extent it was made under the *Navigation Act 1912* was continued in effect by *Marine Order 4 (Transitional Modifications) 2013*).

23. Section 2 states the purpose of the Order, which is to give effect to parts of Annex II of MARPOL, and prescribe matters for Chapter 4 of the Navigation Act and Part III of the Pollution Prevention Act.

24. Section 3 sets out the powers in the Navigation Act and the Pollution Prevention Act that enable the Order to be made.
25. Section 4 sets out the definitions of terms used in the Order.
26. Section 5 describes the vessels to which the Order applies.
27. Section 6 provides the meaning of the term *the Administration*.
28. Section 7 describes the date at which a vessel is taken to have been constructed.
29. Section 8 provides for AMSA to allow an exemption of a specified vessel if the construction and equipment of that vessel provides equivalent protection against pollution by noxious substances.
30. Section 9 provides for AMSA to allow an approval to use an equivalent in specified circumstances.
31. Division 2 contains section 10 only which provides that a vessel must comply with Annex II.
32. Division 3 contains sections 11 to 19. It provides for matters relating to International Pollution Prevention (IPP) certificates.
33. Section 11 sets out the requirement for a vessel to have an IPP certificate.
34. Section 12 describes matters that are relevant to making an application for an IPP certificate.
35. Section 13 sets out the criteria for issue of an IPP certificate.
36. Section 14 sets out the conditions attaching to IPP certificates.
37. Section 15 provides that an endorsement on an IPP certificate must be made by an issuing body.
38. Section 16 provides that an IPP certificate comes into force, and ceases to be in force, in accordance with regulation 10 of Annex II.
39. Section 17 sets out the criteria for variation of an IPP certificate.
40. Section 18 sets out the criteria for revocation of an IPP certificate.
41. Section 19 provides that AMSA must be informed of an alteration to a vessel within 7 days after the alteration is made.
42. Division 4 contains section 20 only which provides the requirement for a foreign vessel to comply with Annex II.
43. Division 5 contains section 21 only which prescribes incidents for the ***marine incident*** definition of the Navigation Act.
44. Division 6 contains section 22 to 26. It provides for various matters for the Pollution Prevention Act.
45. Section 22 prescribes the means of notification of an incident involving a discharge from a ship.
46. Section 23 prescribes the form for a shipboard marine pollution emergency plan.
47. Section 24 prescribes the form for a cargo record book.
48. Section 25 sets out the prescribed operations or occurrences for subsection 23(5) of the Pollution Prevention Act.
49. Section 26 sets out the requirements in relation to tank cleaning.

50. Division 7 contains sections 27 to 29. It sets out specifications and interpretations for Annex II.
51. Section 27 specifies measures to minimise discharges for paragraph 2 of regulation 11 of Annex II.
52. Section 28 sets out matters for an exemption for prewash mentioned in paragraph 4 of regulation 13 of Annex II.
53. Section 29 sets out the meaning of expressions used in regulation 16 of Annex II (Measures of control).

Compatibility with human rights

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

Overview of the legislative instrument

55. This Order is made under both the Navigation Act and the Pollution Prevention Act. It gives effect to Annex II of MARPOL and provides matters for both Chapter 4 of the Navigation Act and Part III of the Pollution Prevention Act.
56. This Order safeguards against pollution of the marine environment by noxious liquid substances being carried in bulk on ships. It prescribes matters concerning International Pollution Prevention Certificates issued to vessels; makes provision for reporting matters under both the Navigation Act and Pollution Prevention Act; prescribes matters including operational documentation required to be carried by certain vessels; and specifies the standards for relevant systems and measures to minimise discharges.

Human Rights implications

57. This Order deals with the regulation of vessels in accordance with Australia's international obligations to mitigate the threat of pollution to the marine environment by noxious liquid substances being carried on ships. 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

58. 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

59. 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 Authority Act 1990*.