

# Amendments to the Annexes of Protocols to the International Convention for the Prevention of Pollution from Ships

## Introduction

- 2.1 This chapter examines amendments to the Annexes of the *Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973* and the *Protocol of 1997 to Amend and the Annex of the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto* (collectively referred to as MARPOL).
- 2.2 MARPOL provides an international regulatory framework for dealing with six classifications of marine pollution: oil; noxious liquid substances in bulk; harmful substances in packages form; sewage; garbage; and air pollution. Regulations for each of these classifications are contained in annexes to MARPOL.<sup>1</sup>
- 2.3 MARPOL is administered by the International Maritime Organisation (IMO), and decisions on the amendment of MARPOL are made by the Marine Environment Protection Committee (MEPC) of that Organisation.<sup>2</sup>
- 2.4 Amendments to the Convention, its protocols and annexes take place through a deeming mechanism. That is, amendments are discussed at a meeting of the MEPC, and, if agreed to, will automatically come into force

---

1 NIA, para 1.

2 NIA, para 1.

at a specified date unless a specified number of parties to MARPOL lodge objections.<sup>3</sup>

- 2.5 The three amendments being considered here were agreed at a meeting of the MEPC in London in October 2014, and will automatically come into effect on 1 September 2015.<sup>4</sup>
- 2.6 Having been agreed in October 2014, the amendments were not tabled in Parliament until 16 June 2015. The Committee queried the delay and the Australian Maritime Safety Authority (AMSA) explained that the final versions of the resolutions were released in November 2014. The resolutions were then subject to the usual treaty processes as stakeholders were consulted, the National Interest Analysis prepared, and determination made on the need for a Regulation Impact Statement. However, the tacit acceptance procedures introduced by the IMO for amendments considered minor and technical have made it difficult to meet the timeframe for the domestic treaty making process.<sup>5</sup>
- 2.7 On 10 June 2015, the Department of Foreign Affairs and Trade (DFAT) wrote to the Committee requesting that consideration of these amendments be expedited so that the Committee's recommendation on the amendments could be made before the amendments were scheduled to come into force on 1 September 2015.
- 2.8 At the private meeting on 15 June 2015, the Committee agreed to expedite consideration of the amendments.

## Overview and national interest summary

- 2.9 The proposed amendments will amend **Annexes I** (relating to oil pollution); **III** (relating to harmful substances carried at sea in package form); and **VI** (relating to air pollution).<sup>6</sup>

### Amendment to Annex I

- 2.10 This amendment relates to **Regulation 43** of **Annex I**. This Regulation prohibits the carriage of heavy grade oil (HGO) in bulk in the Antarctic. The prohibition on heavy grade oil in practice means that ships in the
- 

3 *International Convention for the Prevention of Pollution from Ships* Amended by Resolution MEPC.111(50) Amended by Resolution MEPC.115(51) Amended by Resolution MEPC.116(51), Article 16, < [http://www.mar.ist.utl.pt/mventura/Projecto-Navios-I/IMO-Conventions%20\(copies\)/MARPOL.pdf](http://www.mar.ist.utl.pt/mventura/Projecto-Navios-I/IMO-Conventions%20(copies)/MARPOL.pdf) >, accessed 17 June 2015.

4 NIA, para 2.

5 Department of Infrastructure and Regional Development, *Submission 7*.

6 NIA, paras 7, 11 and 16.

Antarctic are restricted to the carriage and use of either marine diesel oil, marine gas oil or other lighter fuel blends. The prohibition does not apply in emergency or rescue situations.<sup>7</sup>

2.11 Adopted in 2010, **Regulation 43** reflected the relative cost and difficulty of cleaning up a heavy grade oil spill in the Antarctic.<sup>8</sup>

2.12 In 2014, a fishing vessel using heavy grade oil as ballast<sup>9</sup> sank in the Antarctic. The NIA states that the flag state refused to take remedial action as it interpreted **Regulation 43** as not applying to heavy grade oil used as ballast.<sup>10</sup>

2.13 The Department of Infrastructure and Regional Development explained that water is usually carried as ballast:

... nobody anticipated this sort of occurrence happening ... water is the ballast of choice, and for fairly obvious reasons.<sup>11</sup>

2.14 Given the original reasoning behind **Regulation 43**, the amendment to **Annex I** will close this apparent loophole.<sup>12</sup>

### Amendment to Annex III

2.15 The amendment to **Annex III** clarifies the regulations for the carriage of radioactive material in packaged form. Currently **Annex III** requires harmful substances, which includes radioactive material, to be packaged and labelled to a particular standard. The amendment will exclude radioactive materials from the scope of the 'harmful substance' criteria and instead refer uses to the *International Maritime Dangerous Goods Code (IMDG)* which deals with radioactive materials.<sup>13</sup>

2.16 In May 2014, the IMO amended the IMDG to harmonise the code with the *United Nations Recommendations on the Transport of Dangerous Goods, Model Regulations*. The amendment ensures harmonisation with decisions of other UN bodies in relation to codes for the transport of dangerous goods by rail, road and internal waterways.<sup>14</sup>

---

7 NIA, para 7.

8 NIA, para 8.

9 Ballast is any material used to provide stability to a ship by adding to its weight below the water line.

10 NIA, para 9.

11 Mr Michael Sutton, General Manager, Maritime and Shipping Branch, Surface Transport Policy Division, Department of Infrastructure and Regional Development, *Committee Hansard*, 22 June 2015, p. 3.

12 NIA, para 10.

13 NIA, para 11.

14 NIA, para 12.

- 2.17 According to the NIA, the amendment will not impact on safety or environmental outcomes and will harmonise the international legal regimes governing the transport of dangerous goods, clarify their application to Australia and simplify compliance burdens.<sup>15</sup>

## Amendments to Annex VI

- 2.18 There are two amendments to **Annex VI**:
- an amendment relating to the emissions of nitrous oxide from the burning of gas fuel; and
  - an amendment relating to the recording of compliance with IMO regulations.<sup>16</sup>

### Nitrous oxide emissions

- 2.19 Nitrous oxide emissions from gas fuel used in ships is currently covered by **Regulation 13** of **Annex VI**. This regulation applies only to ships that use a fuel mix of diesel and gas fuel.<sup>17</sup>
- 2.20 Previous amendments to **Regulation 13** have made gas-fuel only marine engines a more attractive proposition for ship builders and owners. This type of marine engine has not previously been widely used.<sup>18</sup>
- 2.21 The amendment to **Regulation 13** extends this Regulation so that it applies to ships using gas-fuel only engines as well. The regulation will apply only to ships manufactured after 1 March 2016.<sup>19</sup>
- 2.22 There are no Australian ships to which the amended **Regulation 13** applies.<sup>20</sup>

### Records of compliance

- 2.23 **Regulation 2** of **Annex VI** requires that all vessels over 400 gross tonnes keep a record of their compliance with the **Annex VI** regulations. This document is called an *International Air Pollution Prevention Certificate* (IAPP) and is issued by the flag state of the ship.<sup>21</sup>

---

15 NIA, paras 14 and 15.

16 NIA, para 17.

17 NIA, para 19.

18 NIA, para 18.

19 NIA, para 18.

20 NIA, para 18.

21 NIA, para 19.

- 2.24 The amendment to **Regulation 2** improves the transparency of the IAPP, and is expected to make the Certificate more easily understood, allowing quicker verification.<sup>22</sup>
- 2.25 There are 178 Australian flagged ships to which this amendment will apply.<sup>23</sup>

## Reasons for Australia to take the proposed treaty action

- 2.26 The amendment to **Annex I** will ensure that the text clearly reflects the intent of the State Parties to MARPOL.<sup>24</sup> The NIA states that it will provide the legislative authority to enforce a more comprehensive ban on the carriage of HGOs in the Australian Antarctic Territory.<sup>25</sup>
- 2.27 The amendment to **Annex III** removes the duplication requirement for labelling radioactive material in packaged form.<sup>26</sup>
- 2.28 The amendment to **Annex VI** is considered to be non-controversial as dual-fuel ships are already included in **Annex VI** and gas fuelled ships are already regulated by other parts of MARPOL.<sup>27</sup>
- 2.29 The changes to the IAPP Certificate improve transparency and the amendments are machinery in nature.<sup>28</sup>

## Obligations

- 2.30 The amendment to **Annex I** will ensure that the original intent of the Parties to MARPOL is given effect by explicitly banning the carriage of HGO in bulk as cargo in ballast tanks in the Antarctic Area.<sup>29</sup>
- 2.31 The amendment to **Annex III** will exclude radioactive materials from the scope of **Annex III's** regulations for the prevention of pollution by

---

22 NIA, para 21.

23 NIA, para 20.

24 NIA, para 25.

25 NIA, para 26.

26 NIA, para 29.

27 NIA, para 30.

28 NIA, para 31.

29 NIA, para 33.

harmful substances carried by sea in packaged form. Such material is already regulated by the IMDG Code.<sup>30</sup>

- 2.32 Amendments to **Annex VI** would affect **Regulations 2, 8 and 13**. **Regulation 2** would be amended to change the definition of: *fuel oil* to include gas; and *marine diesel engine* to include a gas fuelled engine constructed after 1 March 2016.<sup>31</sup>
- 2.33 **Regulation 13** would be amended to clarify the documentation of engines' compliance with NOx emission standards.<sup>32</sup>
- 2.34 The supplement to the IAPP Certificate, which is **Appendix I** under **Annex VI** would be amended to: reflect the amendment to **Regulation 13**; require clear documentation of the length of a recreational vessel to assist in identifying its NOx emissions obligations; and recognise the updated Standard Specification for Shipboard Incinerators 2014, which was adopted by MEPC in 2014 (**MEPC.244 (66)**).<sup>33</sup>

## Implementation

- 2.35 According to the NIA, in order to implement the amendments to MARPOL, a minor amendment if required to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.<sup>34</sup> The AMSA will enforce the new measure through its usual processes.<sup>35</sup>
- 2.36 The other amendments will automatically be given effect under the current legislative framework and require no legislative changes for implementation.<sup>36</sup>

## Conclusion

- 2.37 The Committee supports Australia's ratification of the amendments to the Annexes of the *Protocols to the International Convention for the Prevention of Pollution from Ships* and recommends that binding treaty action be taken.

---

30 NIA, para 34.

31 NIA, para 35.

32 NIA, para 36.

33 NIA, para 38.

34 NIA, para 39.

35 NIA, para 27.

36 NIA, para 40.

## **Recommendation 1**

- 2.38 **The Committee supports the amendments to the *Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973* and the amendments to the Annex of the *Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto* and recommends that binding treaty action be taken.**