



**Australian Government**  
**Australian Maritime Safety Authority**

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AMSA MO 2022/[number]

**Marine Order 97 (Marine pollution prevention — air pollution) 2022**

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I, Michael Kinley, Chief Executive Officer of the Australian Maritime Safety Authority, make this Order under subsection 342(1) of the *Navigation Act 2012* and subsection 34(1) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

2022

**[DRAFT ONLY — NOT FOR SIGNATURE]**  
Chief Executive Officer

**CONSULTATION DRAFT**

	Page
<b>Division 1 Preliminary</b> .....	<b>4</b>
1 Name of Marine Order .....	4
1A Commencement .....	4
1B Repeal of <i>Marine Order 97 (Marine pollution prevention — air pollution) 2013</i> .....	4
2 Purpose .....	4
3 Power .....	4
4 Definitions.....	5
5 Interpretation .....	7
6 Application.....	7
7 Equivalents.....	8
8 Approval of electronic record books .....	8
9 Marine incidents.....	8
<b>Division 2 Requirements of Annex VI</b> .....	<b>8</b>
10 Convention requirements.....	8
<b>Division 3 Navigation Act certificates and exemption certificate</b> .....	<b>9</b>
<b>Subdivision 3.1 Matters about certificates</b> .....	<b>9</b>
11 Certificates required .....	9
12 Applying for certificates.....	9
13 Form of certificates.....	9
14 Reports of alterations to vessels .....	9
15 Exemption.....	10
<b>Subdivision 3.2 IAPP certificates</b> .....	<b>10</b>
16 Criteria for issue of IAPP certificates .....	10
17 Criteria for variation of IAPP certificates .....	10
18 Commencement and duration of IAPP certificates .....	11
19 Criteria for revocation of IAPP certificates .....	11
20 Endorsement of IAPP certificate.....	11
<b>Subdivision 3.3 IEE certificates</b> .....	<b>11</b>
21 Criteria for issue of IEE certificates.....	11
22 Commencement and duration of IEE certificates.....	11
23 Criteria for revocation of IEE certificates.....	11
<b>Division 4 Requirements for foreign vessels and certain recreational vessels</b> .....	<b>12</b>
24 Requirements for foreign vessels and certain recreational vessels .....	12
<b>Division 5 Vessels not engaged on overseas voyages</b> .....	<b>12</b>
25 Vessels $\geq 400$ GT not on overseas voyages .....	12
<b>Division 6 Ozone depleting substances</b> .....	<b>12</b>
26 Ozone depleting substances — equipment and installations .....	12
27 Release of ozone depleting substances.....	12
28 Ozone depleting substances on vessels constructed after 2019 .....	13
29 Ozone depleting substances on vessels constructed between 2005 and 2019 .....	13
30 Delivery of ozone depleting substances to reception facilities .....	13
31 Ozone depleting substances record book .....	14
<b>Division 7 Nitrogen oxide emissions from marine diesel engines</b> .....	<b>14</b>
32 EIAPP certificates for engines on regulated Australian vessels and recreational vessels with Australian nationality.....	14
33 EIAPP certificates for engines on domestic commercial vessels .....	14
34 Application for EIAPP certificate.....	15
35 Issue of EIAPP certificate .....	15
36 Commencement and duration of EIAPP certificates .....	15
37 Taking vessels to sea without required documents .....	15

## CONSULTATION DRAFT

	Page
38 Documents to be kept on board vessels .....	15
39 Engine suppliers must provide documents .....	16
40 Person who carries out major conversion must provide documents .....	16
41 Operation of engines not in accordance with emission limits .....	17
42 Engine status in NOx Tier III emission control areas .....	18
<b>Division 8 Incineration on board vessels .....</b>	<b>18</b>
43 Restrictions on incineration on board vessels .....	18
44 Exclusion of incinerator from Annex VI requirements .....	19
45 Responsibilities of owner .....	19
46 Responsibilities of master .....	19
<b>Division 9 Energy efficiency .....</b>	<b>20</b>
<b>Subdivision 9.1 Application of Division .....</b>	<b>20</b>
47 Application of this Division .....	20
<b>Subdivision 9.2 EEDI and EEXI .....</b>	<b>21</b>
48 Attained EEDI .....	21
49 Attained EEXI .....	21
50 Required EEDI .....	21
51 Required EEXI .....	21
52 Ship energy efficiency management plan (SEEMP) .....	21
53 Waiver of certain requirements .....	21
<b>Subdivision 9.3 Fuel oil consumption and CII reporting .....</b>	<b>22</b>
54 Requirement for statement of compliance .....	22
56 Issue of statement of compliance .....	22
57 Form and duration of statement of compliance .....	22
<b>Division 10 Matters prescribed for the Pollution Prevention Act .....</b>	<b>22</b>
<b>Subdivision 10.1 Sulphur content of fuel oil .....</b>	<b>22</b>
58 Sulphur content of fuel oil — prescribed limits .....	22
59 Prescribed level of total emission of sulphur oxides .....	23
60 Operation of Annex VI approved equivalents .....	23
61 Notification of fuel oil non-availability .....	23
62 Flushing fuel oil service systems .....	23
63 Record of prescribed fuel-changeover operations .....	23
64 Approval of Annex VI approved equivalents .....	24
<b>Subdivision 10.2 Fuel oil — suppliers and delivery .....</b>	<b>24</b>
65 Register of Local Suppliers of Fuel Oil .....	24
66 Requirements for registration .....	24
67 Removal from Register .....	25
68 AMSA to conduct inspections, audit, sampling .....	25
69 Bunker delivery note and sample .....	25
70 Fuel oil sample retention .....	25
<b>Division 11 Transitional and savings .....</b>	<b>25</b>
71 Transitional .....	25
72 Savings .....	26

## CONSULTATION DRAFT

## Division 1 Preliminary

### 1 Name of Marine Order

This Marine Order is *Marine Order 97 (Marine pollution prevention — air pollution) 2022*.

### 1A Commencement

This Marine Order commences on 1 January 2023.

### 1B Repeal of *Marine Order 97 (Marine pollution prevention — air pollution) 2013*

*Marine Order 97 (Marine pollution prevention — air pollution) 2013* is repealed.

## 2 Purpose

- (1) This Marine Order:
  - (a) gives effect to Annex VI (which deals with prevention of air pollution from vessels); and
  - (b) provides for matters for Chapter 4 of the Navigation Act (which deals with prevention of pollution from vessels); and
  - (c) prescribes matters for Part IIID of the Pollution Prevention Act (which deals with prevention of air pollution from vessels).

## 3 Power

- (1) This Marine Order is made under both the Navigation Act and the Pollution Prevention Act.
- (2) The following provisions of the Navigation Act provide for this Marine Order to be made:
  - (a) subsection 130(1) which provides that the regulations may provide for pollution certificates;
  - (b) subsection 130(2) which provides that, without limiting subsection 130(1), the regulations may give effect to MARPOL;
  - (c) paragraph 130(3)(e) which provides that the regulations may provide that vessels in a particular class must have pollution certificates of specified kinds, either generally or in specified circumstances, including certificates relating to air pollution or ozone depleting substances;
  - (d) section 314 which provides for regulations to be made prescribing matters for the application for certificates and, among other things, the criteria for issue, variation and revocation of certificates, the conditions which certificates are subject to and the time certificates cease to be in force;
  - (e) subsection 339(1) which provides 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 Act.
  - (f) paragraph 340(1)(c) which provides that the regulations may provide for giving effect to MARPOL;
  - (g) subsection 342(1) which provides that AMSA may make a Marine Order about matters that can be provided for by regulation.

## CONSULTATION DRAFT

- (3) The following provisions of the Pollution Prevention Act provide for this Marine Order to be made:
- (a) paragraphs 33(1)(a) and (b) which 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 Act;
  - (b) paragraph 33(1)(c) which provides for regulations under paragraphs 33(1)(a) and (b) to be made to give effect to MARPOL;
  - (c) subsection 34(1) which provides that AMSA may make orders for matters for which provision may be made by regulation.

#### 4 Definitions

In this Marine Order:

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

**Annex I** means Annex I of MARPOL.

**Annex VI** means Annex VI of MARPOL.

**CII** means carbon intensity indicator.

**EEDI** means Energy Efficiency Design Index.

**EEXI** means Energy Efficiency Existing Ship Index.

**EIAPP certificate** (short for engine international air pollution prevention certificate) means an EIAPP certificate issued in accordance with the NO<sub>x</sub> Technical Code.

*Note* The form of an EIAPP certificate is set out in Appendix I to the NO<sub>x</sub> Technical Code.

**electronic record book** is a record of information in electronic form that is approved by an issuing body in accordance with section 8.

**emission control area** has the meaning given by regulation 2 of Annex VI.

**IAPP certificate** (short for international air pollution prevention certificate) means:

- (a) a pollution certificate relating to air pollution or ozone depleting substances issued under section 132 of the Navigation Act for a vessel; or
- (b) a certificate relating to air pollution or ozone depleting substances issued under section 319 of the Navigation Act for a vessel.

*Note* The form of an IAPP certificate is set out in Appendix I to Annex VI.

**IAPP exemption certificate** (short for international air pollution prevention exemption certificate for unmanned non-self-propelled (UNSP) barges) means an exemption certificate issued under paragraph 4 of regulation 3 of Annex VI.

*Note* The form of an IAPP exemption certificate is set out in Appendix XI to Annex VI.

**IEE certificate** (short for international energy efficiency certificate) means:

- (a) a pollution certificate relating to the energy efficiency of a vessel issued under section 132 of the Navigation Act; or
- (b) a certificate relating to the energy efficiency of a vessel issued under section 319 of the Navigation Act.

*Note* The form of an IEE certificate is set out in Appendix VIII to Annex VI.

## CONSULTATION DRAFT

**installed**, for a marine diesel engine, has the meaning given by regulation 2 of Annex VI.

**major conversion** has the meaning given by regulation 13 of Annex VI.

**m/m** means mass by mass.

**NO<sub>x</sub> Technical Code** has the meaning given by regulation 2 of Annex VI.

**NO<sub>x</sub> Tier III emission control area** is an emission control area mentioned in paragraph 6 of regulation 13 of Annex VI.

**ozone depleting substance** means any substance covered by the definition of *Ozone-depleting substances* in regulation 2 of Annex VI.

**Register** means Register of Local Suppliers of Fuel Oil established under section 26FEM of the Pollution Prevention Act.

**statement of compliance** means a Statement of Compliance — Fuel Oil Consumption Reporting and Operational Carbon Intensity Rating that is

- (a) for a regulated Australian vessel — issued under section 55; or
- (b) for a foreign vessel — mentioned in paragraphs 6 to 8 of regulation 6 of Annex VI.

*Note* The form of a statement of compliance is set out in Appendix X to Annex VI.

**SO<sub>x</sub> emission control area** is an emission control area mentioned in paragraph 3 of regulation 14 of Annex VI.

**Tier II** and **Tier III** have the same meaning as in regulation 13 of Annex VI.

*Note 1* Some terms used in this Marine Order are defined in *Marine Order 1 (Administration) 2013* including:

- GT
- IMO
- MARPOL
- national law
- Navigation Act
- Pollution Prevention Act.

*Note 2* Some terms used in this Marine Order are defined in the Navigation Act or Pollution Prevention Act, including:

- AMSA
- domestic commercial vessel
- foreign vessel
- inspector
- issuing body
- marine incident
- official logbook
- overseas voyage
- Polar Code
- prescribed officer
- recognised organisation (for organisations that have been prescribed for the definition — see *Marine Order 1 (Administration) 2013*)
- regulated Australian vessel.

*Note 3* For delegation of AMSA's powers under this Marine Order —see the AMSA website at <http://www.amsa.gov.au>.

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## CONSULTATION DRAFT

*Note 4* Information on obtaining copies of any IMO Resolution, IMO document or other document that is mentioned in this Marine Order is available from the AMSA website Marine Orders link at <http://www.amsa.gov.au>.

## 5 Interpretation

- (1) For this Marine Order, a reference in the NOx Technical Code or Annex VI to *the Administration* is taken to mean, for a vessel registered in Australia, AMSA or a recognised organisation.
- (2) For this Marine Order, a reference in Annex VI to *the competent authority* is taken to mean:
  - (a) for the Pollution Prevention Act — a prescribed officer; or
  - (b) for the Navigation Act — AMSA or an inspector.

*Note for paragraph (a)* See subsection 3(2) of the Pollution Prevention Act — A reference in a section of that Act to a prescribed officer is a reference to AMSA or such person, or the holder of such office in AMSA, as is prescribed for the purposes of that section.

*Note for paragraph (b)* See subsection 254(1) of the Navigation Act which provides for the appointment of an inspector. In addition to powers under the Pollution Prevention Act, Chapters 4 and 8 of the Navigation Act give powers to AMSA and inspectors to verify compliance and enforce the provisions of Annex VI which include the powers that may be exercised as the competent authority under that Annex.

## 6 Application

- (1) This Marine Order applies to a vessel that is:
  - (a) a regulated Australian vessel; or
  - (b) a foreign vessel; or
  - (c) a recreational vessel; or
  - (d) a domestic commercial vessel.
- (2) However, the following provisions do not apply to a foreign vessel or a recreational vessel that does not have Australian nationality:
  - (a) section 7;
  - (b) section 8;
  - (c) Division 3;
  - (d) section 25;
  - (e) section 31;
  - (f) Division 7, other than section 41;
  - (g) section 42;
  - (h) section 44;
  - (i) Subdivision 9.2;
  - (j) sections 55 and 56 ;
  - (k) sections 61 to 67;
  - (l) Division 11.

*Note* The application of this Marine Order is subject to subsection 33(2) of the Pollution Prevention Act and section 12 of the Navigation Act. Those provisions have the effect that parts of this Marine Order that give effect to parts of MARPOL do not apply to certain vessels in an area if a law of a State or the Northern Territory or the national law gives effect to the same parts of MARPOL for vessels in the area.

## CONSULTATION DRAFT

## 7 Equivalents

- (1) A person may apply, in accordance with the application process set out in *Marine Order 1 (Administration) 2013*, for approval to use an equivalent.
- (2) AMSA may approve the use of an equivalent if:
  - (a) it would be at least as effective as compliance with the requirement to which the equivalent is an alternative; and
  - (b) approving the use of the equivalent would not contravene regulation 4 of Annex VI.

*Note* *Marine Order 1 (Administration) 2013* deals with the following matters about equivalents:

- making an application
- seeking further information about an application
- the time allowed for consideration of an application
- imposing conditions on approval of an application
- notifying a decision on an application
- review of decisions.

*Note* Sections 17 and 18 of *Marine Order 1 (Administration) 2013* provide for review of decisions that are made in accordance with the application process in that Order.

## 8 Approval of electronic record books

- (1) A person may apply to an issuing body for approval of an electronic record book.
- (2) An issuing body may approve a record of information in electronic form as an electronic record book if it:
  - (a) provides a reliable means of maintaining the integrity of the information it stores; and
  - (b) is readily accessible for subsequent reference.
- (3) A decision not to approve an electronic record book is a reviewable decision for section 17 of *Marine Order 1 (Administration) 2013*.

## 9 Marine incidents

For paragraph (l) of the definition of *marine incident* in subsection 14(1) of the Navigation Act, the following incidents are prescribed:

- (a) an incident involving a vessel that may affect compliance by the vessel with the requirements of Annex VI;
- (b) anything that substantially affects the efficiency or completeness of the vessel's equipment covered by Annex VI.

*Note* The owner of a vessel must report marine incidents to AMSA — see s 185 of the Navigation Act. The master of a vessel must report marine incidents to AMSA — see s 186 of the Navigation Act. For the prescribed periods for reporting marine incidents — see section 23A of *Marine Order 1 (Administration) 2013*.

## Division 2 Requirements of Annex VI

### 10 Convention requirements

- (1) A vessel must comply with the requirements of Annex VI that apply to the vessel.



- (2) A person must comply with any requirement for the implementation of Annex VI.

## Division 3 Navigation Act certificates and exemption certificate

### Subdivision 3.1 Matters about certificates

#### 11 Certificates required

For subsection 130(3) of the Navigation Act (which enables the regulations to provide that specified kinds of vessels are required to have specified pollution certificates):

- (a) a vessel mentioned in paragraph 1 of regulation 6 of Annex VI must have an IAPP certificate; and
- (b) a vessel mentioned in paragraph 4 of regulation 6 of Annex VI must have an IEE certificate.

#### 12 Applying for certificates

- (1) For subsection 131(1) of the Navigation Act (which enables a person to apply to an issuing body for a pollution certificate specified in the regulations), the following certificates are specified:

- (a) an IAPP certificate;
- (b) an IEE certificate.

- (2) Division 3 of *Marine Order 1 (Administration) 2013* (other than section 17) applies to an application to AMSA for a certificate mentioned in subsection (1).

*Note* Division 3 of *Marine Order 1 (Administration) 2013* prescribes general rules about the making and determination of various kinds of applications. Section 17 of that Order provides for internal review of decisions about applications. That section does not apply to decisions about pollution certificates because those decisions are reviewable under subsection 313(1) of the Navigation Act.

#### 13 Form of certificates

A pollution certificate must be in the form mentioned in the following table.

Item	Certificate	Form
1	IAPP certificate	International Air Pollution Prevention Certificate set out in Appendix I to Annex VI
2	IEE certificate	International Energy Efficiency Certificate set out in Appendix VIII to Annex VI

#### 14 Reports of alterations to vessels

For paragraph 137(1)(c) of the Navigation Act (which requires an owner or master of a vessel to report alterations to the vessel if they might affect the pollution certificates held by the vessel) the period within which AMSA and an issuing body must be informed of an alteration is 7 days after the alteration is made.

*Note 1* An approved form for reporting of alterations to vessels is available from the AMSA website: <http://www.amsa.gov.au>.

## CONSULTATION DRAFT

**15 Exemption**

- (1) The owner of a vessel may apply, in accordance with the application process set out in *Marine Order 1 (Administration) 2013*, for an exemption from the requirement for the vessel to have an IAPP certificate.
  - (2) AMSA may issue an IAPP exemption certificate in the form set out in Appendix XI to Annex VI, exempting a vessel from the requirement to have an IAPP certificate, if it is satisfied that:
    - (a) the vessel is a barge; and
    - (b) the vessel has undergone a survey that shows that the vessel:
      - (i) is not propelled by mechanical means; and
      - (ii) has no system, equipment or machinery capable of generating emissions regulated by Annex VI; and
      - (iii) has no person or living animal on board.
- Note* Sections 17 and 18 of *Marine Order 1 (Administration) 2013* provide for review of decisions that are made in accordance with the application process in that Order.
- (3) An IAPP exemption certificate comes into force on the day it is issued and ceases to be in force on the earlier of:
    - (a) the day mentioned in the exemption certificate; and
    - (b) the day 5 years from the day it is issued.

**Subdivision 3.2 IAPP certificates****16 Criteria for issue of IAPP certificates**

For paragraph 132(1)(b) of the Navigation Act, the criteria for issue of an IAPP certificate are that:

- (a) the vessel has been surveyed in accordance with regulation 5 of Annex VI; and
- (b) the vessel complies with the requirements that apply to it under regulation 5 of Annex VI; and
- (c) each marine diesel engine with an output >130 kW that is installed on the vessel has been surveyed in accordance with the NO<sub>x</sub> Technical Code and issued with an EIAPP certificate.

**17 Criteria for variation of IAPP certificates**

For subsection 133(1) of the Navigation Act, the criteria for variation of an IAPP certificate are that:

- (a) the vessel has been surveyed in accordance with regulation 5 of Annex VI; and
- (b) for an IAPP certificate that is required to be endorsed under regulation 6 of Annex VI — the certificate is endorsed accordingly; and
- (c) to the extent that the variation relates to the period of validity of an IAPP certificate — the variation is in accordance with regulation 9 of Annex VI.

**18 Commencement and duration of IAPP certificates**

An IAPP certificate comes into force on the day it is issued and ceases to be in force on the occurrence of any of the matters mentioned in paragraph 9 of regulation 9 of Annex VI.

*Note* A certificate may be revoked in accordance with the criteria mentioned in this Division.

**19 Criteria for revocation of IAPP certificates**

For section 134 of the Navigation Act, the criteria for revocation of an IAPP certificate are that:

- (a) the vessel does not comply with the requirements that apply to it under regulation 5 of Annex VI; or
- (b) the emissions from a marine diesel engine installed on the vessel are not within the limits set out in regulation 13 of Annex VI; or
- (c) a marine diesel engine installed on the vessel has not been surveyed in accordance with the NOx Technical Code.

*Note for paragraph (a)* Regulation 5 of Annex VI includes a requirement for maintenance of equipment — see paragraph 5 of regulation 5.

**20 Endorsement of IAPP certificate**

An issuing body may endorse an IAPP certificate in accordance with regulations 5 and 9 of Annex VI.

*Note* It is practice for an issuing body endorsing a certificate to be the same as the issuing body that originally issued the certificate.

**Subdivision 3.3 IEE certificates****21 Criteria for issue of IEE certificates**

For paragraph 132(1)(b) of the Navigation Act, the criteria for issue of an IEE certificate are that the vessel:

- (a) has been surveyed in accordance with regulation 5 of Annex VI; and
- (b) complies with the requirements that apply to it under regulation 5 of Annex VI.

**22 Commencement and duration of IEE certificates**

- (1) An IEE certificate comes into force on the day it is issued and remains in force for the life of the vessel.
- (2) However, the certificate ceases to be in force on the occurrence of any of the matters mentioned in paragraphs 9 and 11 of regulation 9 of Annex VI.

*Note* A certificate may be revoked in accordance with the criteria mentioned in this Division.

**23 Criteria for revocation of IEE certificates**

For section 134 of the Navigation Act, the criterion for revocation of an IEE certificate is that the vessel to which the certificate applies undergoes a major conversion within the meaning of regulation 2 of Annex VI.

## Division 4 Requirements for foreign vessels and certain recreational vessels

### 24 Requirements for foreign vessels and certain recreational vessels

- (1) This Division applies to a foreign vessel and a recreational vessel that does not have Australian nationality.
- (2) A vessel to which Annex VI applies must have any certificate or other document that it is required to have in accordance with regulations 5 and 6 of Annex VI.
- (3) A marine diesel engine to which regulation 13 of Annex VI applies must comply with the NO<sub>x</sub> Technical Code in accordance with regulation 13 of Annex VI.
- (4) If Annex VI does not apply to a vessel but regulations 5 and 6 of Annex VI would apply if the country in which the vessel is registered were a party to Annex VI, the vessel must carry any certificate that:
  - (a) is issued for the vessel by or for the administration of the country in which it is registered; and
  - (b) deals with the prevention of air pollution by the vessel.
- (5) If Annex VI does not apply to a vessel but regulation 13 of Annex VI would apply if the country in which the vessel is registered were a party to Annex VI, the vessel must carry any certificate that:
  - (a) is issued for a marine diesel engine installed on the vessel; and
  - (b) deals with the prevention of air pollution from the engine.

## Division 5 Vessels not engaged on overseas voyages

### 25 Vessels $\geq 400$ GT not on overseas voyages

A vessel  $\geq 400$  GT that does not engage in overseas voyages, must be surveyed in accordance with regulation 5 of Annex VI to ensure that the vessel complies with Chapter 3 of Annex VI.

*Note* Once a vessel  $\geq 400$ GT proceeds on an overseas voyage, it is not covered by this section and therefore must have all the certificates required by Annex VI.

## Division 6 Ozone depleting substances

### 26 Ozone depleting substances — equipment and installations

For this Division:

*equipment* does not include permanently sealed equipment, whether or not it is part of an installation, that has no refrigerant charging connections or potentially removable components containing ozone depleting substances.

*installation* has the same meaning as *Installations* in regulation 2 of Annex VI.

### 27 Release of ozone depleting substances

- (1) A person commits an offence if:
  - (a) the person is the master of a vessel; and
  - (b) an emission of an ozone depleting substance occurs from the vessel.Penalty: 50 penalty units.
- (2) In this section, an emission includes an emission occurring in the course of maintaining, servicing, repairing or disposing of systems or equipment but does

## CONSULTATION DRAFT

not include a minimal release associated with the recapture or recycling of an ozone depleting substance.

- (3) An offence against subsection (1) is a strict liability offence.
- (4) A person is liable to a civil penalty if the person contravenes subsection (1).  
Civil penalty: 50 penalty units.

## **28 Ozone depleting substances on vessels constructed after 2019**

- (1) A person commits an offence if:
  - (a) the person is the owner of a vessel; and
  - (b) the vessel is constructed after 31 December 2019; and
  - (c) an installation on the vessel, or equipment contained in an installation on the vessel, contains an ozone depleting substance.Penalty: 50 penalty units.
- (2) An offence against subsection (1) is a strict liability offence.
- (3) A person is liable to a civil penalty if the person contravenes subsection (1).  
Civil penalty: 50 penalty units.

## **29 Ozone depleting substances on vessels constructed between 2005 and 2019**

- (1) A person commits an offence if:
  - (a) the person is the owner of a vessel; and
  - (b) the vessel is constructed after 18 May 2005 and before 31 December 2019; and
  - (c) an installation on the vessel, or equipment contained in an installation on the vessel, contains an ozone depleting substance, other than a hydrochlorofluorocarbon.Penalty: 50 penalty units.
- (2) An offence against subsection (1) is a strict liability offence.
- (3) A person is liable to a civil penalty if the person contravenes subsection (1).  
Civil penalty: 50 penalty units.

## **30 Delivery of ozone depleting substances to reception facilities**

- (1) A person commits an offence if:
  - (a) the person is the master of a vessel; and
  - (b) an ozone depleting substance or equipment containing an ozone depleting substance is removed from the vessel; and
  - (c) the substance or equipment is not delivered to a reception facility designated to receive ozone depleting substances.Penalty: 50 penalty units.
- (2) An offence against subsection (1) is a strict liability offence.
- (3) A person is liable to a civil penalty if the person contravenes subsection (1).  
Civil penalty: 50 penalty units.

**31 Ozone depleting substances record book**

- (1) For paragraph 26FET(3)(a) of the Pollution Prevention Act, an ozone depleting substances record book must be:
  - (a) part of an existing logbook; or
  - (b) the official logbook; or
  - (c) an electronic record book.
- (2) For subsections 26FET(3), (7) and (8) of the Pollution Prevention Act, each entry and page in an electronic record book mentioned in paragraph (1)(c) is taken to have been signed by the master of the vessel.
- (3) For paragraphs 26FET(6)(a) and (8)(b) of the Pollution Prevention Act, the following operations or occurrences are prescribed:
  - (a) recharge, full or partial, of equipment containing ozone depleting substances;
  - (b) repair or maintenance of equipment containing ozone depleting substances;
  - (c) discharge of ozone depleting substances to the atmosphere:
    - (i) deliberately; or
    - (ii) not deliberately;
  - (d) discharge of ozone depleting substances to land-based reception facilities;
  - (e) supply of ozone depleting substances to the vessel.

**Division 7 Nitrogen oxide emissions from marine diesel engines****32 EIAPP certificates for engines on regulated Australian vessels and recreational vessels with Australian nationality**

- (1) This section applies if regulation 13 of Annex VI applies to:
  - (a) a marine diesel engine installed on a regulated Australian vessel or a recreational vessel with Australian nationality; or
  - (b) a marine diesel engine that has undergone a major conversion after installation on a regulated Australian vessel or a recreational vessel with Australian nationality.

- (2) The marine diesel engine must have an EIAPP certificate and associated technical file in accordance with the NO<sub>x</sub> Technical Code.

*Note* Regulation 13 of Annex VI applies to a marine diesel engine with a power output >130 kW.

**33 EIAPP certificates for engines on domestic commercial vessels**

- (1) This section applies if regulation 13 of Annex VI applies to a marine diesel engine installed on a domestic commercial vessel.
- (2) The marine diesel engine must have an EIAPP certificate and associated technical file in accordance with the NO<sub>x</sub> Technical Code if:
  - (a) the engine is installed on the vessel after 31 December 2022; or
  - (b) the engine undergoes a major conversion after 31 December 2022.

*Note* Regulation 13 of Annex VI applies to a marine diesel engine with a power output >130 kW.

**34 Application for EIAPP certificate**

A person may apply in accordance with *Marine Order 1 (Administration) 2013* for an EIAPP certificate for a marine diesel engine.

**35 Issue of EIAPP certificate**

- (1) An issuing body may issue an EIAPP certificate for a marine diesel engine if:
  - (a) the engine has been surveyed in accordance with the NOx Technical Code; and
  - (b) a technical file in accordance with the NOx Technical Code has been approved by the issuing body; and
  - (c) the emissions from the engine have been measured in accordance with the NOx Technical Code and the measurements indicate that the emissions from the engine are likely to be within the limits set out in regulation 13 of Annex VI for the operation of the engine.

*Note* Sections 17 and 18 of *Marine Order 1 (Administration) 2013* provide for review of decisions that are made in accordance with the application process in that Order.

**36 Commencement and duration of EIAPP certificates**

- (1) An EIAPP certificate comes into force on the day it is issued and remains in force for the life of the engine.
- (2) However, the certificate ceases to be in force if:
  - (a) the engine undergoes a major conversion; or
  - (b) the onboard NOx verification procedures required by the NOx Technical Code:
    - (i) have not been carried out; or
    - (ii) show that the engine:
      - (A) does not conform to its technical file; or
      - (B) no longer complies with regulation 13 of Annex VI.

**37 Taking vessels to sea without required documents**

- (1) A person commits an offence if:
  - (a) the person takes a vessel to sea, or causes or permits another person to take the vessel to sea; and
  - (b) there is installed on the vessel a marine diesel engine to which regulation 13 of Annex VI applies; and
  - (c) section 32 or 33 requires the engine to have an EIAPP certificate and technical file; and
  - (d) the marine diesel engine does not have an EIAPP certificate and technical file.

Penalty: 50 penalty units.
- (2) An offence against subsection (1) is a strict liability offence.
- (3) A person is liable to a civil penalty if the person contravenes subsection (1).  
Civil penalty: 50 penalty units.

**38 Documents to be kept on board vessels**

- (1) A person commits an offence if:

**CONSULTATION DRAFT**

- (a) the person is the owner of a vessel; and
  - (b) there is installed on the vessel a marine diesel engine to which regulation 13 of Annex VI applies; and
  - (c) the marine diesel engine has an EIAPP certificate and technical file required by section 32 or 33; and
  - (d) the EIAPP certificate and technical file are not kept on board the vessel.  
Penalty: 50 penalty units.
- (2) An offence against subsection (1) is a strict liability offence.
- (3) A person is liable to a civil penalty if the person contravenes subsection (1).  
Civil penalty: 50 penalty units.

### **39 Engine suppliers must provide documents**

- (1) This section applies if a person supplies a marine diesel engine for installation on:
- (a) a domestic commercial vessel; or
  - (b) a recreational vessel with Australian nationality that:
    - (i) is not going overseas; or
    - (ii) is going overseas and is <400GT.
- (2) The person commits an offence if:
- (a) the person supplies the engine after 31 December 2022; and
  - (b) regulation 13 of Annex VI applies to the engine; and
  - (c) the person does not provide an EIAPP certificate and associated technical file for the engine at the time of its supply.  
Penalty: 50 penalty units.
- (3) An offence against subsection (2) is a strict liability offence.
- (4) A person is liable to a civil penalty if the person contravenes subsection (2).  
Civil penalty: 50 penalty units.

### **40 Person who carries out major conversion must provide documents**

- (1) This section applies if a person carries out a major conversion of a marine diesel engine for:
- (a) a domestic commercial vessel; or
  - (b) a recreational vessel with Australian nationality that:
    - (i) is not going overseas; or
    - (ii) is going overseas and is <400GT.
- (2) The person commits an offence if:
- (a) the person carries out the major conversion after 31 December 2022; and
  - (b) regulation 13 of Annex VI applies to the engine; and
  - (c) the person does not, as soon as practicable, provide an EIAPP certificate and associated technical file for the engine to the owner of the vessel.  
Penalty: 50 penalty units.
- (3) An offence against subsection (2) is a strict liability offence.
- (4) A person is liable to a civil penalty if the person contravenes subsection (2).

## **CONSULTATION DRAFT**



Civil penalty: 50 penalty units.

#### 41 Operation of engines not in accordance with emission limits

- (1) A person commits an offence if:
  - (a) the person operates a marine diesel engine on a vessel; and
  - (b) the engine is of a kind to which regulation 13 of Annex VI applies; and
  - (c) the emissions of nitrogen oxides from the engine are not within the limits mentioned in regulation 13 of Annex VI for the operation of the engine and equipment.

Penalty: 50 penalty units.
- (2) Subsection (1) does not apply, for the periods mentioned in regulation 13.5.5 of Annex VI, to emissions from a vessel mentioned in subsection (3) if:
  - (a) the emissions occur in relation to:
    - (i) for a newly constructed vessel — the building and sea trials of the vessel; or
    - (ii) converting, repairing or maintaining the vessel; or
    - (iii) converting, repairing or maintaining, a Tier II engine installed on the vessel; or
    - (iv) converting, repairing or maintaining a dual fuel engine on the vessel if the vessel is required for safety reasons not to have gas fuel or gas cargo on board; and
  - (b) the activities mentioned in subparagraphs (a)(i) to (iv) take place in a shipyard or other repair facility located in a NO<sub>x</sub> Tier III emission control area; and
  - (c) the engine meets the Tier II NO<sub>x</sub> limits; and
  - (d) the vessel:
    - (i) sails directly to or from the shipyard or other repair facility; and
    - (ii) does not load or unload cargo; and
    - (iii) follows any routing requirements of the port State in which the shipyard or other repair facility is located.
- (3) The vessels are as follows:
  - (a) a vessel constructed after 31 December 2015 and operating in the North American Emission Control Area or the United States Caribbean Sea Emission Control Area;
  - (b) a vessel constructed after 31 December 2020 and operating in the Baltic Sea Emission Control Area or the North Sea Emission Control Area;
  - (c) a vessel operating in a NO<sub>x</sub> Tier III emission control area not mentioned in paragraphs (a) or (b) if the vessel is constructed after the later of:
    - (i) the date of adoption under Annex VI of the emission control area; or
    - (ii) the date mentioned, if one is mentioned, in the amendment to Annex VI that designates the emission control area.
- (4) For subsection (3), each of the following terms has the meaning given for that term by paragraph 6 of regulation 13 of Annex VI:
  - (a) ***North American Emission Control Area***;

### CONSULTATION DRAFT

- (b) *United States Caribbean Sea Emission Control Area*;
  - (c) *Baltic Sea Emission Control Area*;
  - (d) *North Sea Emission Control Area*.
- (5) An offence against subsection (1) is a strict liability offence.
- (6) A person is liable to a civil penalty if the person contravenes subsection (1).  
Civil penalty: 50 penalty units.

#### **42 Engine status in NOx Tier III emission control areas**

- (1) This section applies if the following vessels are operating in a NOx Tier III emission control area:
- (a) a regulated Australian vessel;
  - (b) a recreational vessel with Australian nationality that is  $\geq 24$  m long, in accordance with the meaning of length in Annex I, if the vessel is:
    - (i)  $\geq 500$  GT; or
    - (ii) constructed after 31 December 2020.
- (2) A person commits an offence if:
- (a) the person is the master of a vessel to which this section applies; and
  - (b) the person does not ensure that a record required for the vessel under paragraph 5.3 of regulation 13 of Annex VI is entered in:
    - (i) the official logbook; or
    - (ii) an electronic record book.
- Penalty: 50 penalty units
- (3) An offence against subsection (2) is a strict liability offence.
- (4) A person is liable to a civil penalty if the person contravenes subsection (2).  
Civil penalty: 50 penalty units.

### **Division 8 Incineration on board vessels**

#### **43 Restrictions on incineration on board vessels**

- (1) A person commits an offence if:
- (a) the person incinerates any matter on board a vessel; and
  - (b) the incinerator is one to which regulation 16 of Annex VI applies; and
  - (c) the person incinerates the matter in a circumstance or a way that is prohibited by regulation 16 of Annex VI; and
  - (d) the incinerator is not excluded by AMSA from the application of paragraph 6.1 of regulation 16 of Annex VI.
- Penalty: 50 penalty units.

*Note* The Unified Interpretation of paragraph 9 of regulation 16 of Annex VI provides that sludge oil generated during the normal operation of a ship should not be regarded as waste for regulation 16 and can be fed into the unit when the required preheat temperature of 650°C in the combustion chamber is reached.

- (2) A person commits an offence if:
- (a) the person incinerates any matter in an incinerator on board a vessel; and
  - (b) the incinerator is one to which regulation 16 of Annex VI applies; and

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### **CONSULTATION DRAFT**

- (c) the incinerator does not comply with regulation 16 of Annex VI; and
  - (d) the incinerator is not excluded by AMSA from the application of paragraph 6.1 of regulation 16 of Annex VI.
- Penalty: 50 penalty units.
- (3) An offence against subsection (1) or (2) is a strict liability offence.
  - (4) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).
- Civil penalty: 50 penalty units.

#### 44 Exclusion of incinerator from Annex VI requirements

- (1) The owner of a vessel on which an incinerator is installed may apply, in accordance with the application process set out in *Marine Order 1 (Administration) 2013*, for exclusion of the incinerator from the application of paragraph 6.1 of regulation 16 of Annex VI.
- (2) AMSA may allow exclusion from the application of paragraph 6.1 of regulation 16 of Annex VI if the requirements of paragraph 6.2 of regulation 16 of Annex VI are met.

*Note* Sections 17 and 18 of *Marine Order 1 (Administration) 2013* provide for review of decisions that are made in accordance with the application process in that Order.

#### 45 Responsibilities of owner

- (1) A person commits an offence if:
    - (a) the person is the owner of a vessel; and
    - (b) the vessel has on board an incinerator to which regulation 16 of Annex VI applies; and
    - (c) the person does not ensure that a copy of the manufacturer's operating manual for the incinerator is available in accordance with paragraph 7 of regulation 16 of Annex VI.

Penalty: 50 penalty units.
  - (2) A person commits an offence if:
    - (a) the person is the owner of a vessel; and
    - (b) the vessel has on board an incinerator to which regulation 16 of Annex VI applies; and
    - (c) the person does not ensure that the seafarers responsible for operating the incinerator are trained so that they can implement the guidance given by the manufacturer's operating manual.

Penalty: 50 penalty units.
  - (3) An offence against subsection (1) or (2) is a strict liability offence.
  - (4) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).
- Civil penalty: 50 penalty units.

#### 46 Responsibilities of master

- (1) A person commits an offence if:
  - (a) the person is the master of a vessel; and

## CONSULTATION DRAFT

- (b) the vessel has on board an incinerator to which regulation 16 of Annex VI applies; and
- (c) the combustion chamber gas outlet temperature of the incinerator is not monitored at all times.

Penalty: 50 penalty units.

- (2) A person commits an offence if:

- (a) the person is the master of a vessel; and
- (b) the vessel has on board an incinerator to which regulation 16 of Annex VI applies; and
- (c) waste is fed into the incinerator when the combustion chamber gas outlet temperature is below 850°C.

Penalty: 50 penalty units.

*Note* The Unified Interpretation of paragraph 9 of regulation 16 of Annex VI provides that sludge oil generated during the normal operation of a ship should not be regarded as waste for regulation 16 and can be fed into the unit when the required preheat temperature of 650°C in the combustion chamber is reached.

- (3) An offence against subsection (1) or (2) is a strict liability offence.
- (4) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 50 penalty units.

## Division 9 Energy efficiency

### Subdivision 9.1 Application of Division

#### 47 Application of this Division

- (1) This Division applies to a vessel to which Chapter 4 of Annex VI applies.
- (2) However, sections 48 to 51 do not apply to a vessel:
  - (a) defined in the Polar Code as a category A ship; or
  - (b) with non-conventional propulsion, other than a vessel delivered after 31 August 2019 that is:
    - (i) a cruise passenger vessel; or
    - (ii) an LNG carrier.
- (3) For paragraph (2)(b):
  - (a) ***non-conventional propulsion*** has the meaning given by regulation 2 of Annex VI; and
  - (b) ***vessel delivered after 31 August 2019*** has the same meaning as ***A ship delivered on or after 1 September 2019*** in regulation 2 of Annex VI; and
  - (c) ***cruise passenger vessel*** has the same meaning as ***Cruise passenger ship*** in regulation 2 of Annex VI; and
  - (d) ***LNG carrier*** has the meaning given by regulation 2 of Annex VI.

## **Subdivision 9.2 EEDI and EEXI**

### **48 Attained EEDI**

The attained EEDI for a vessel must be worked out in accordance with regulation 22 of Annex VI.

*Note* The guidelines mentioned in regulation 22 for working out the attained EEDI are the *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.

### **49 Attained EEXI**

The attained EEXI for a vessel must be worked out in accordance with regulation 23 of Annex VI.

*Note* The guidelines mentioned in regulation 23 for working out the attained EEXI are the *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.

### **50 Required EEDI**

The required EEDI for a vessel must be worked out in accordance with regulation 24 of Annex VI.

*Note* For guidance on working out reference line values for required EEDI — see the *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.

### **51 Required EEXI**

The required EEXI for a vessel must be worked out in accordance with regulation 25 of Annex VI.

### **52 Ship energy efficiency management plan (SEEMP)**

- (1) For subsection 26FEW(3) of the Pollution Prevention Act, a ship energy efficiency management plan must contain the matters mentioned in:
  - (a) regulation 26 of Annex VI; and
  - (b) the *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.
- (2) However, for a vessel defined in the Polar Code as a category A ship, the information mentioned in subsection (1) does not include CII calculations.

### **53 Waiver of certain requirements**

- (1) The owner of a vessel may apply, in accordance with the application process set out in *Marine Order 1 (Administration) 2013*, for a waiver from the requirements mentioned in sections 48 and 50.
- (2) AMSA may give a waiver if the vessel is not mentioned in paragraph 5 of regulation 19 of Annex VI.

*Note* Sections 17 and 18 of *Marine Order 1 (Administration) 2013* provide for review of decisions that are made in accordance with the application process in that Order.

**Subdivision 9.3 Fuel oil consumption and CII reporting****54 Requirement for statement of compliance**

- (1) A vessel  $\geq 5000$  GT must have:
  - (a) a statement of compliance; or
  - (b) for a vessel that is registered in a country that is not a party to Annex VI — documentary evidence issued by or on behalf of the Administration of that State that the vessel complies with the requirements of the State for the reporting of:
    - (i) fuel oil consumption; and
    - (ii) carbon intensity data.
- (2) A statement of compliance must be kept on board the vessel for at least 5 years from its date of issue.

**55 Issue of statement of compliance**

- (1) An issuing body may issue a statement of compliance if:
  - (a) the owner of the vessel has applied to the issuing body; and
  - (b) the owner of the vessel has given the issuing body fuel oil consumption data for the vessel, collected in accordance with regulation 27 of Annex VI; and
  - (c) for a vessel other than a vessel defined in the Polar Code as a category A ship — the owner of the vessel has given the issuing body the attained annual operational CII for the vessel, calculated in accordance with regulation 28 of Annex VI; and
  - (d) in the case of a vessel that is required to develop a plan of corrective actions in accordance with regulation 28 of Annex VI — the issuing body is satisfied that the revised ship energy efficiency management plan for the vessel adequately addresses the plan of corrective actions.
- (2) A decision not to issue a statement of compliance is a reviewable decision for section 17 of *Marine Order 1(Administration) 2013*.

**56 Form and duration of statement of compliance**

A statement of compliance:

- (a) must be in the form set out in Appendix X to Annex VI; and
- (b) remains valid in accordance with paragraph 12 of regulation 9 of Annex VI.

**Division 10 Matters prescribed for the Pollution Prevention Act****Subdivision 10.1 Sulphur content of fuel oil****57 Sulphur content of fuel oil — prescribed limits**

- (1) For paragraph 26FEG(1)(b) of the Pollution Prevention Act, the prescribed limit is 0.50% m/m.
- (2) For paragraph 26FEH(4)(a) of the Pollution Prevention Act, the prescribed limit is 0.10% m/m.

**58 Prescribed level of total emission of sulphur oxides**

For paragraphs 26FEGA(4)(b) and 26FEHA(2)(b) of the Pollution Prevention Act, the prescribed level is the level set out in Table 1, paragraph 1.3 of the 2015 Guidelines.

**59 Operation of Annex VI approved equivalent**

- (1) For paragraph 26FEGA(1)(b) and subparagraph 26FEH(4)(b)(ii) of the Pollution Prevention Act, an Annex VI approved equivalent that is an exhaust gas cleaning system must be operated in the manner mentioned in the 2015 Guidelines as if the 2015 Guidelines were mandatory.
- (2) For paragraph 26FEGA(1)(c) and subparagraph 26FEH(4)(b)(iii) of the Pollution Prevention Act, a waste stream arising from the operation of an exhaust gas cleaning system may be discharged only if:
  - (a) there is continuous monitoring and recording of the waste stream; and
  - (b) the measures in section 10 of the 2015 Guidelines are applied to the waste stream and the waste stream is found to be in accordance with the limits mentioned.

**60 Notification of fuel oil non-availability**

For paragraphs 26FEGA(7)(b), 26FEGA(7)(c), 26FEHA(5)(b), 26FEHA(5)(c), 26FEHA(6)(b) and 26FEHA(6)(c) of the Pollution Prevention Act:

- (a) notification must be on the approved form; and
- (b) notification must occur as soon as the person responsible for obtaining fuel oil for use on board the ship becomes aware that it will not be possible to obtain compliant fuel oil; and
- (c) a copy of the notification must be kept on board the ship for 3 years.

*Note* The approved form is available on the AMSA website: at <http://www.amsa.gov.au>.

**61 Flushing fuel oil service systems**

For paragraphs 26FEI(1)(d) and 26FEI(2)(d) of the Pollution Prevention Act, the prescribed limit is 0.10% m/m.

**62 Record of prescribed fuel-changeover operations**

- (1) For paragraphs 26FEJ(1)(a) and 26FEJ(3)(a) of the Pollution Prevention Act, the following are prescribed record books:
  - (a) for a vessel  $\geq 400$  GT or an oil tanker  $\geq 150$ GT —
    - (i) the vessel's oil record book (Part 1); or
    - (ii) the official logbook; or
    - (iii) an electronic record book.
  - (b) for any other vessel —
    - (i) the official logbook; or
    - (ii) an electronic record book.
- (2) For paragraph 26FEJ(1)(a) of the Pollution Prevention Act, a prescribed fuel-changeover operation is any fuel-changeover operation carried out before entering a SO<sub>x</sub> emission control area.
- (3) For paragraph 26FEJ(1)(a) of the Pollution Prevention Act, an entry must:

**CONSULTATION DRAFT**

- (a) be made as soon as fuel oil with a sulphur content of less than 0.10% m/m is the only fuel oil being burned; and
- (b) include:
  - (i) the volume of low-sulphur fuel oil (up to 0.10% sulphur content) in each tank; and
  - (ii) the date, time and position of the vessel when any fuel-changeover operation is completed.
- (4) For paragraph 26FEJ(1)(b) of the Pollution Prevention Act, the prescribed period is 3 years after the last entry has been made.

### **63 Approval of Annex VI approved equivalents**

- (1) For subsection 26FEKA(2) of the Pollution Prevention Act:
  - (a) a prescribed officer may approve an exhaust gas cleaning system as an Annex VI approved equivalent if the system is able to satisfy all the measures mentioned in the 2015 Guidelines as if those measures were mandatory; and
  - (b) an issuing body is a prescribed officer.
- (2) A decision about an application for approval of an exhaust gas cleaning system as an Annex VI approved equivalent is a reviewable decision for section 17 of *Marine Order 1 (Administration) 2013*.

### **Subdivision 10.2 Fuel oil — suppliers and delivery**

#### **64 Register of Local Suppliers of Fuel Oil**

- (1) For paragraph 26FEM(3)(a) of the Pollution Prevention Act, the Register must contain the information given by:
  - (a) an initial application and declaration mentioned in subsection 65(2); and
  - (b) an annual declaration mentioned in subsection (2).
- (2) For subparagraph 26FEM(3)(b)(ii) of the Pollution Prevention Act, a person registered on the Register must give AMSA an annual declaration in the approved form by 1 July each year.

*Note* The approved form is available on the AMSA website: at <http://www.amsa.gov.au>.

#### **65 Requirements for registration**

- (1) For subparagraph 26FEM(3)(b)(i) of the Pollution Prevention Act, a person seeking registration on the Register must apply in accordance with the application process set out in *Marine Order 1 (Administration) 2013*.
- (2) The application must be on the approved initial application and declaration form.

*Note* The approved form is available on the AMSA website: at <http://www.amsa.gov.au>.
- (3) AMSA may approve a person for inclusion on the Register if the person has applied in accordance with this section and provided the information required on the approved form.

*Note* Sections 17 and 18 of *Marine Order 1 (Administration) 2013* provide for review of decisions that are made in accordance with the application process in that Order.
- (4) If, at any time before the first annual declaration is due, any change occurs to information given in the initial application and declaration, the person who

## **CONSULTATION DRAFT**



completed that form must give to AMSA a new initial application and declaration form with the new information.

## 66 Removal from Register

- (1) AMSA may remove a person from the Register if:
  - (a) the person does not provide an annual declaration as required; or
  - (b) the person has failed to comply with a requirement of the Pollution Prevention Act.
- (2) AMSA may give a person on the register directions for compliance.
- (3) A decision by AMSA to remove a person's name from the Register is a reviewable decision for section 17 of *Marine Order 1 (Administration) 2013*.

## 67 AMSA to conduct inspections, audit, sampling

For subparagraphs 26FEM(3)(b)(i) and 26FEM(3)(b)(ii) of the Pollution Prevention Act, AMSA may conduct inspections or audits of, or take samples from, a fuel oil supplier:

- (a) to assess whether a person should be included on the Register; and
- (b) to monitor fuel oil suppliers on the Register.

## 68 Bunker delivery note and sample

- (1) For paragraph 26FEO(1A)(c) of the Pollution Prevention Act, a completed bunker delivery note must be provided when the bunkering operation is complete.

*Note 1* AMSA has approved the Bunker Delivery Note set out in Appendix V to Annex VI as the approved form.

*Note 2* Under section 26FEQ of the Pollution Prevention Act, the master and owner of a vessel commit an offence if the bunker delivery note is not kept for 3 years. The local fuel oil supplier must keep a copy of the bunker delivery note or an offence is committed.

- (2) For paragraph 26FEO(2)(d) of the Pollution Prevention Act, when the bunkering operation is complete a representative sample must be:
  - (a) signed and sealed by the supplier's representative and either the master of the vessel or the officer in charge of the bunker operation; and
  - (b) provided to the master of the vessel as soon as practicable.

## 69 Fuel oil sample retention

For paragraph 26FER(1)(d) of the Pollution Prevention Act, the sample of fuel oil must be retained:

- (a) on board the vessel; or
- (b) at a shore based location, for example a port office or other similar facility, where the samples can be accessed readily.

*Note* Under paragraph 26FER(1)(d) of the Pollution Prevention Act, a sample must be retained until the later of the time of substantial consumption or 12 months after the supply of the fuel.

# Division 11 Transitional and savings

## 70 Transitional

- (1) Subsection (2) applies to an application made under *Marine Order 97 (Marine pollution prevention — air pollution) 2013* if the application:

## CONSULTATION DRAFT

- (a) is made before 1 January 2023; and
  - (b) is not decided before 1 January 2023.
- (2) The application is taken to be an application to which this Marine Order applies.

## **71 Savings**

An EIAPP certificate issued before 1 January 2023 is taken to be an EIAPP certificate for this Marine Order.

*Note* IAPP and IEE certificates continue in operation after the making of this Marine Order as they are issued under the Navigation Act.

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## **Note**

1. All legislative instruments and compilations of legislative instruments are registered on the Federal Register of Legislation under the *Legislation Act 2003*. See <https://www.legislation.gov.au>.