

Amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships

Background

- 8.1 The treaty action being considered brings into force amendments to the *International Convention for the Prevention of Pollution from Ships*, otherwise known as MARPOL. In this chapter, the amendments are referred to as the 2009 amendments to MARPOL. The amendments include the addition of a new chapter 8 to Annex I of MARPOL.¹
- 8.2 MARPOL addresses the problem of marine pollution from ships. In particular, it deals with the following pollutants:
- oil;
 - bulk noxious liquid substances;
 - harmful substances in packaged form;
 - sewage;
 - garbage; and
 - air pollution.²

1 *National Interest Analysis (NIA)*, [2010] ATNIA 59, Resolution MEPC.186(59) Amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, Adopted on 17 July 2009 [2010] ATNIF 46, para. 1.

2 NIA, para. 3.

The 2009 amendments to MARPOL

- 8.3 In 2009, the Marine Environment Protection Committee of the International Maritime Organisation (IMO) adopted the 2009 amendments to MARPOL, which add a new Chapter 8 entitled 'Prevention of Pollution during Transfer of Oil Cargo between Oil Tankers at Sea' to Annex I of MARPOL. Annex I deals with the prevention of pollution by oil.³
- 8.4 The 2009 amendments to MARPOL apply to oil tankers of 150 gross tonnage and above involved in ship to ship oil transfers at sea.⁴
- 8.5 The amendments require the adoption of techniques to minimise the risk of oil pollution at sea during ship to ship transfers.⁵ Ships involved in ship to ship transfers have to carry an on board operations plan, written in the working language of the ship. The transfer also has to be supervised by appropriately qualified persons.⁶
- 8.6 The 2009 amendments will also require the retention of records of each operation. These records will be available for inspection by any of the states signatory to MARPOL.⁷
- 8.7 Each oil tanker subject to the 2009 amendments to MARPOL that wishes to engage in a ship to ship transfer of oil within the territorial waters of a signatory state must notify the state of its intentions 48 hours before the transfer takes place. The notification should include the:
- name, flag, call sign, IMO Number and estimated time of arrival of the oil tankers involved in the operations;
 - date, time and geographical location at the commencement of the planned operations;
 - whether operations are to be conducted at anchor or underway;
 - oil type and quantity;
 - planned duration of the operations;

3 NIA, para. 4.

4 Resolution MEPC.186(59) *Amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973*, adopted on 17 July 2009 [2010] ATNIF 46, Regulation 40.

5 NIA, para. 5.

6 NIA, para. 6.

7 NIA, para. 6.

- identification of the operations service provider or person in overall control and their contact information; and
 - confirmation that the oil tanker has on board an operations plan meeting the requirements of MARPOL.⁸
- 8.8 If all of the information specified above is not available, the oil tanker discharging the oil cargo has to notify the signatory state 48 hours in advance that a transfer operation will occur and the information specified above will be provided at the earliest opportunity.⁹
- 8.9 Responsibility for ensuring the requirements of MARPOL are met lies with the flag states of the vessels involved.¹⁰
- 8.10 A number of types of operations are exempt from the application of the new chapter. In particular, the chapter does not apply to transfers:
- associated with fixed or floating platforms, such as oil rigs;
 - involving floating oil storage units;
 - related to securing the safety of ships or lives at sea;
 - associated with the removal of oil to prevent an environmental hazard; and
 - involving warships or other ships operated by a state.¹¹

Implementation in Australia

- 8.11 The *National Interest Analysis* for the proposals argues that Australia's acceptance of the 2009 amendments to MARPOL:

... is consistent with Australia's long-standing support for protection of the marine environment and Australia's active backing of, and participation in, IMO.¹²

8 Resolution MEPC.186(59) *Amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973*, Adopted on 17 July 2009 [2010] ATNIF 46, Regulation 42.

9 Resolution MEPC.186(59) *Amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973*, Adopted on 17 July 2009 [2010] ATNIF 46, Regulation 42.

10 NIA, para. 6.

11 Resolution MEPC.186(59) *Amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973*, Adopted on 17 July 2009 [2010] ATNIF 46, Regulation 40.

- 8.12 Australia's implementing legislation will apply to any such transfers in Australia's territorial sea or exclusive economic zone, as well as to transfers involving Australian flagged vessels wherever they may be located.¹³

Conclusion

- 8.13 Amendments to the MARPOL Treaty occur automatically and do not require signatory states to ratify amendments. The amendments automatically came into force on 1 January 2011.¹⁴ Because of this, the Committee is not required to make a recommendation. Nevertheless, the Committee would like to record its support for the provisions contained in the 2009 amendments to MARPOL.
- 8.14 It is possible to remove amendments to MARPOL if one-third or more of the signatory states or signatory states with a combined fleet of 50 per cent or more of the gross tonnage of the world's merchant fleet, communicate to the IMO their objection to the amendments.¹⁵
- 8.15 Signatory states wishing to object to amendments to MARPOL have approximately twelve months to do so. In this case, the period for objections closed on 1 July 2010.¹⁶
- 8.16 The Committee notes that this treaty action was tabled in Parliament on 24 November 2010, a full five months after the period during which Australia could lodge an objection to the amendments. This effectively removes an opportunity for the Parliament to express a meaningful view on the amendments. The Committee would like future amendments to MARPOL to be tabled sufficiently promptly for the Committee to express its view before the period for lodging objections expires.

12 NIA, para. 6.

13 NIA, para. 4.

14 NIA, para. 2.

15 NIA, para. 2.

16 NIA, para. 2.

Recommendation 10

The Committee recommends that all future amendments to *International Convention for the Prevention of Pollution from Ships 1973* (MARPOL) be tabled in Parliament in sufficient time for the view of the Parliament to be taken into consideration before the period for objections to the amendments ends.

