

## Revised MARPOL Annex V: Regulations for the Prevention of Pollution by Garbage from Ships (Resolution MEPC.201(62)) Adopted at London on 15 July 2011

### Introduction

- 4.1 On 2 November 2011, the *Revised MARPOL Annex V: Regulations for the Prevention of Pollution by Garbage from Ships (Resolution MEPC.201(62)) adopted at London on 15 July 2011* was tabled in the Commonwealth Parliament.
- 4.2 The revised Annex V includes a new requirement specifying that discharge of all garbage into the sea is prohibited, except as expressly provided otherwise. The only discharges permitted in certain circumstances include food wastes, cargo residues, water used for washing deck and external surfaces containing cleaning agents or additives which are not harmful to the marine environment, and animal carcasses. The existing requirements for placards and garbage management plans are extended to fixed and floating platforms engaged in sea-bed exploration.<sup>1</sup>

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<sup>1</sup> National Interest Analysis [2011] ATNIA 33 with attachment on consultation, *Revised MARPOL Annex V: Regulations for the Prevention of Pollution by Garbage from Ships, (Resolution MEPC.201(62))*, Adopted at London on 15 July 2011, [2011] ATNIF 24, (hereafter referred to as 'NIA'), para 5.

## Background

- 4.3 Marine debris is one of the major threats to the marine environment, estimated to kill more than one million seabirds and 100,000 marine animals each year through ingestion and entanglement. Certain types of garbage also have the potential to cause damage to vessels and harm to human life.<sup>2</sup>
- 4.4 The *International Convention for the Prevention of Pollution from Ships* (MARPOL) is one of the key international instruments addressing the problem of marine pollution from ships. MARPOL contains six technical annexes dealing with, respectively: oil; noxious liquid substances in bulk; harmful substances in packaged form; sewage; garbage; and air pollution. It is administered by the International Maritime Organization (IMO)<sup>3</sup>
- 4.5 Australia is a Party to MARPOL and its six Annexes. The revised Annex V will upgrade current international regulations for the prevention of pollution by garbage from ships following a review undertaken by the IMO to place additional restrictions on the disposal of garbage from ships at sea.<sup>4</sup>
- 4.6 The proposed treaty action is tacit acceptance of a revised version of Annex V of MARPOL (1990), adopted by the IMO Marine Environment Protection Committee (MEPC) under cover of resolution MEPC.201(62) on 15 July 2011.<sup>5</sup>

## Reasons for Australia to take the proposed treaty action

- 4.7 The revised Annex V is in accordance with Australia's general obligations under the *United Nations Convention on the Law of the Sea* 1982 (UNCLOS). This provides for nations to adopt laws and regulations that at least have the same effect as that of generally accepted international rules and standards for the prevention, reduction and control of pollution of the marine environment from vessels.<sup>6</sup>
- 4.8 MARPOL's preamble includes a reference to the desire of the parties to achieve the complete elimination of intentional pollution of the marine environment. The review and resulting amendments is a major step towards achieving that goal.<sup>7</sup>

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2 NIA, para 6.

3 NIA, para 1.

4 NIA, para 4.

5 NIA, para 2.

6 NIA, para 10.

7 NIA, para 8.

4.9 Australian laws restricting the discharge of certain types of garbage, including the prohibition of plastics, have been in place since 1990. Australia's acceptance of the revised Annex V is consistent not only with Australia's long-standing support for protection of the marine environment, but also with Australia's active backing of, and participation in, the IMO.<sup>8</sup>

## Obligations

4.10 Australia is obliged to give effect in domestic law to the provisions of MARPOL and its Annexes.<sup>9</sup> The revised Annex V prohibits the discharge of all garbage into the sea except as provided otherwise. These exemptions comprise:

- the discharge of garbage from a ship necessary for the purpose of securing the safety of a ship and those on board or saving life at sea;
- the accidental loss of garbage resulting from damage to a ship or its equipment;
- the accidental loss of fishing gear from a ship;
- the discharge of fishing gear from a ship for the protection of the marine environment or for the safety of that ship or its crew.<sup>10</sup>

4.11 The discharges permitted in certain limited circumstances include:

- food wastes (3 nautical miles from the nearest land if treated, 12 nautical miles if not treated);
- cargo residues that are not harmful to the marine environment (12 nautical miles from the nearest land);
- water used for washing deck and external surfaces containing cleaning agents or additives which are not harmful to the marine environment; and
  - o animal carcasses providing the discharge is as far as possible from the nearest land, taking into account the guidelines developed by the IMO.<sup>11</sup>

4.12 Every ship of 12 metres or more in length, and fixed or floating platforms, would be required to display placards notifying passengers and crew of the discharge requirements. Ships of 100 gross tonnage and above or

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8 NIA, para 11.

9 NIA, para 12.

10 NIA, para 12.

11 NIA, para 13.

which are certified to carry 15 or more persons, as well as fixed and floating platforms, will be required to carry a garbage management plan setting out written procedures for the collection, storage, processing and disposal of garbage. Ships of 400 gross tonnage and above would be required to maintain a Garbage Record Book.<sup>12</sup>

*Port state obligations*

- 4.13 Australia would need to ensure adequate facilities are provided at its ports and terminals for the reception of garbage without causing undue delay to ships, and according to the needs of the ships using them, and notify the IMO of all cases where the facilities were alleged to be inadequate. Similar obligations exist in respect of ports where ships depart en route to, or arrive from, the Antarctic area and in relation to ports and terminals within special areas.<sup>13</sup>
- 4.14 Australia is obligated to ensure that the master or crew of a foreign flagged ship is familiar with essential shipboard procedures relating to the prevention of pollution by garbage, and that the ship is inspected when in an Australian port or offshore terminal.<sup>14</sup>
- 4.15 Australia would also need to ensure that any inspection of a ship's Garbage Record Book or ship's official log-book shall be performed as expeditiously as possible without causing the ship to be unduly delayed.<sup>15</sup>
- 4.16 The accidental loss or discharge of fishing gear which poses a significant threat to the marine environment or navigation is required to be reported to the ship's flag State, and, where the loss or discharge occurs within waters subject to the jurisdiction of a coastal State, also to that coastal State.<sup>16</sup>
- 4.17 Monitoring ships and possible breaches of the new and existing regulations remains difficult. In response to a Committee question on monitoring and the extent of marine pollution and garbage in the sea the Australian Maritime Safety Authority (AMSA) responded:

It is a difficult one. With garbage on the beach it is sometimes difficult to establish whether it has come from a ship at sea – which is obviously the area we are concerned about – or some other land based source. We have arrangements with a lot of organisations in Australia – nongovernment organisations and

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12 NIA, para 14.

13 NIA, para 15.

14 NIA, para 16.

15 NIA, para 17.

16 NIA, para 18.

government – so that whenever they do things like beach surveys and beach clean-up activities, they let us know and we try to give them advice on how to tell the difference between something that may have come from a ship at sea and something that may not have. For example, a package that might be in a foreign language or something that has some sort of barnacle or sea crustacean on it indicates that it has been at sea for a while.

It is a challenge in working out what is ship sourced and what is not but we have some data. We do not have a lot of data in Australia but there is a lot of international data that has indicated that the problem is getting worse. We do what we can in Australia but there are certain challenges to interpreting the data.<sup>17</sup>

## Implementation

4.18 AMSA explained that the process through which MARPOL agreements are implemented is essentially done through the member states as MARPOL itself does not have a framework or a structure for trying to measure and monitor the extent of marine pollution.

...the convention itself does not [have such a framework]. That is up to the member states working through the International Maritime Organisation. They have a committee called the Marine Environment Protection Committee. Any member states that have data on the marine debris problem that indicates that it is getting worse or getting better or which is relevant brings it to that committee meeting and the committee members determine whether any amendment might be necessary to the convention. So the convention does not have anything explicit in it in terms of monitoring and data. It is up to the member states, working through the International Maritime Organisation.<sup>18</sup>

4.19 From an Australian legislative perspective, amendments will be needed to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cth) and Marine Orders - Part 95 (Marine Pollution Prevention - Garbage) to implement the proposed treaty action.<sup>19</sup>

4.20 AMSA explained the Australian mechanisms through which implementation is to occur:

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17 Mr Paul Nelson, Manager, Marine Environment Standards, Marine Environment Division, Australian Maritime Safety Authority, *Committee Hansard*, 6 February 2012, p. 12.

18 Mr Paul Nelson, Manager, Marine Environment Standards, Marine Environment Division, Australian Maritime Safety Authority, *Committee Hansard*, 6 February 2012, p. 12.

19 NIA, para 19.

There is an obligation on all parties to the convention to ensure that facilities are available in ports to receive garbage from ships. In Australia that issue tends to be up to the states and I am aware that Queensland and New South Wales have specific legislation that applies. Other states, for example, might have the requirement as part of the licensing requirements for ports. So states look after it in a different way, but there is an obligation on parties. From the perspective of the Australian Maritime Safety Authority, we have a program in place where we go and audit ports, not a lot but we aim to do two or three ports every year. We will go and look at the facilities that are available in the port and test them against the International Maritime Organisation guidelines. They have audit guidelines that we follow.<sup>20</sup>

## Costs

- 4.21 The revised Annex V is expected to have a minimal cost impact on Australia. Many Australian shipowners and operators already follow the revised Annex V provisions.<sup>21</sup> While the expansion of the requirements for placards and garbage management plans to fixed and floating platforms will have an administrative impact, this impact is expected to be negligible.<sup>22</sup>
- 4.22 Australia already has mandatory requirements for livestock management and shipment, including requirements for the disposal of animal carcasses. The disposal requirements Australia applies are currently more stringent than the revised Annex V. None of the vessels currently engaged in livestock export are Australian flagged, although they all comply with Australian requirements.<sup>23</sup>
- 4.23 It is expected the revised Annex V will result in an increased demand for waste reception facilities in ports. As waste removal services in Australian ports are almost exclusively provided by private waste removal contractors, it is anticipated that any increase in demand will be met through commercial arrangements.<sup>24</sup>

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20 Mr Paul Nelson, Manager, Marine Environment Standards, Marine Environment Division, Australian Maritime Safety Authority, *Committee Hansard*, 6 February 2012, p. 11.

21 NIA, para 20

22 NIA, para 21

23 NIA, para 22

24 NIA, para 23

## Conclusion

- 4.24 The Committee recognises the importance of the proposed amendments and supports their approval. Protection of the maritime environment will become increasingly important given the growth of ship traffic and as the importance of preserving fish stocks increases.
- 4.25 The amendments contribute to the protection of the maritime environment and are in accordance with Australia's general obligations under the *United Nations Convention on the Law of the Sea 1982 (UNCLOS)*.
- 4.26 Australia's acceptance of the revised Annex V is consistent not only with Australia's long-standing support for protection of the marine environment, but also with Australia's active backing of, and participation in, the IMO.
- 4.27 The Committee concludes that these amendments should be supported with binding treaty action.

### Recommendation 3

**The Committee supports the *Revised MARPOL Annex V: Regulations for the Prevention of Pollution by Garbage from Ships (Resolution MEPC.201(62)) adopted at London on 15 July 2011* and recommends that binding treaty action be taken.**

