

# Review of the NSW Marine Pollution Act 2012 Q&As

## Background to review

### What is the Marine Pollution Act?

The *Marine Pollution Act 2012* is the main piece of legislation the NSW Government uses to regulate pollution from ships in NSW waters, to protect the marine environment.

It gives effect to Australia's obligations under the international MARPOL Convention aimed at preventing pollution from ships.

The Act also applies important State measures, like Ministerial powers for responding to pollution incidents, insurance requirements and requirements for transferring oil and chemical substances between ships and the shore.

### What is MARPOL?

MARPOL is the main international convention aimed at the prevention of pollution from ships.

MARPOL, otherwise known as the International Convention for the Prevention of Pollution from Ships, deals with pollution from ships by oil, noxious liquid substances, harmful substances in packaged forms, sewage, garbage and air emissions.

MARPOL is currently in force in 158 countries, applying to 99% of the world's merchant tonnage. MARPOL is considered to have greatly contributed to a significant decrease in pollution from international shipping, particularly from oil spills.

The Australian Maritime Safety Authority (AMSA) is Australia's national agency responsible for protection of the marine environment, and enforces MARPOL standards in Australian waters.

### Why is NSW implementing an international convention?

As a signatory to MARPOL, the Australian Government has an obligation to implement MARPOL in Australian waters. This is done through the Commonwealth *Protection of the Sea (Prevention of Pollution by Oil) Act* and the *Navigation Act 2012*. All States and the Northern Territory have complementary legislation intended to give effect to MARPOL in their waters.

### Why is the Marine Pollution Act being reviewed?

Section 251 of the Act requires that it be reviewed five years after its assent. The review will consider whether the policy objectives of the Act remain valid and the terms are appropriate for securing those objectives.

## Proposed changes to the Act

All vessels have a responsibility not to pollute NSW waters.

The discussion paper puts forward proposals to amend the Marine Pollution Act. The intent of these proposals are to:

- Ensure the State has robust laws to protect the NSW marine environment from pollution from vessels; and
- Harmonise NSW laws with international standards, Commonwealth legislation and the marine pollution legislation of other States and the Northern Territory.

The two key proposed changes are:

- Broadening the definition of 'State waters' to include all waters of the State where a vessel could be used; and
- Including recreational vessels under the Marine Pollution Act by removing the current exclusion for recreational vessels in the definition of 'ships'.

These changes would mean one piece of law will cover marine pollution from all vessels in NSW waters. Other changes address specific issues, streamline regulatory requirements and support implementation of the Act requirements.

The practical impacts of any proposed changes for vessel owners and users will be minimised where possible.

### What are the likely impacts on recreational vessels?

A proposed change to the Act is to include recreational vessels in the definition of '*ship*'. This will mean that recreational vessels will be subject to the requirements under the Act, including offences for illegally discharging or disposing of oil, sewage and garbage. There should be limited practical change from the current requirements to not pollute NSW waters.

Pollution offences from recreational vessels are currently regulated by the NSW *Protection of the Environment Operations Act 1997* (POEO Act). The POEO Act is the primary environmental legislation in NSW and it is broad in its application. The Marine Pollution Act is specifically designed for regulating ship sourced pollution. The Marine Pollution Act is also intended to be consistent with the international convention and Commonwealth legislation, as well as the marine pollution legislation of other States.

Depending on the size of the recreational vessel, some administrative requirements may also apply. Information about complying with requirements, and easy to use materials would be made available prior to implementation.

Recreational vessels with a gross tonnage of 100 and above or with a carrying capacity of 15 or more people would be required to have a garbage management plan, which covers how garbage is disposed. Recreational vessels over 12 metres in length would need to display at least one garbage placard on the vessel. Garbage placards are signs that inform crew and passengers of the garbage discharge requirements for that vessel.

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### What are the likely impacts on trading ships and recreational vessels on an international voyage?

There will be no change for trading ships or recreational vessels on international voyages. MARPOL standards and requirements will continue to apply to these vessels. Please see the Australian Maritime Safety Authority's website [amsa.gov.au/marine-environment/marine-pollution/marpol-and-its-implementation-australia](https://amsa.gov.au/marine-environment/marine-pollution/marpol-and-its-implementation-australia) for further detail on specific standards and requirements.

### What are the likely impacts on domestic commercial vessels?

The proposed changes are not expected to have significant impacts on domestic commercial vessels.

Broadening the definition of 'State waters' to potentially cover all waters in the State, would mean that some domestic commercial vessels are covered by the Act rather than the Protection of the Environment Operations Act. This would mean these vessels would be subject to the requirements under the Act, including offences for illegally discharging or disposing of oil, sewage and garbage. There should be limited practical change from the current requirements to not pollute NSW waters.

Changes to align with the MARPOL convention may be relevant for some domestic commercial vessels. Refer to Appendix 3 of the Discussion Paper for a list of recent changes to MARPOL.

## Submission process

Transport for NSW is undertaking the review and a discussion paper was released on Wednesday, 18 September 2019 for public consultation. Submissions are due by Wednesday, 16 October 2019.

The discussion paper can be accessed at [transport.nsw.gov.au/marine-pollution-act-2012-review](https://transport.nsw.gov.au/marine-pollution-act-2012-review). Key questions and answers can also be found on the website.

### What will happen with my submission?

Transport for NSW will consider feedback received when developing potential amendments to the Act. The review findings, summary of public consultation, and any policy proposals to amend the Act will be reported to the NSW Parliament.

### What criteria will the submissions be considered against?

Transport for NSW will refer to the NSW Guide to Better Regulation when considering submissions, including whether there are clear obligations and accountabilities, the impacts on stakeholders and whether the proposed changes would be effective and proportional.

TfNSW will also consider whether proposed changes are consistent with MARPOL and Commonwealth law, and support effective compliance and enforcement to deal with marine pollution incidents, while taking into account the diversity and scale of operations of the maritime sector.

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### **What are the next steps in the review process?**

TfNSW will consider all submissions received and finalise the review for consideration by the NSW Parliament. The review report will outline key issues and put forward any policy proposals to amend the Act. If these are approved by the NSW Parliament, a draft Bill with any proposed amendments to the Act would be introduced in Parliament.