# Maritime Legislation Amendment Bill 2022—Explanatory Material

To meet Australia’s international obligations as signatory to the *International Convention for the Prevention of Pollution from Ships* (MARPOL) and the *International Convention on the Control of Harmful Anti-Fouling Systems on Ships* (HAFS Convention), Australia needs to implement in domestic legislation three Resolutions by the International Maritime Organization (IMO) Marine Environment Protection Committee (MEPC) that amend these conventions. The three MEPC Resolutions are described below.

A key objective for implementing these amendments in domestic legislation is to support effective and consistent global application of international regulations to prevent pollution of the marine environment by ships.

## MEPC.315(74) Residues

1. Resolution ‘MEPC.315(74) Residues’ was adopted on 17 May 2019, and entered into force on 1 January 2021. The Department was unable to refer this treaty action to the Joint Standing Committee on Treaties before the amendments were deemed accepted and entered into force. This delay was caused by the re‑allocation of Departmental resources to other priorities during the COVID pandemic. However, these amendments have negligible practical and legal effect for Australia.
2. The Resolution amends the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (POTS Act) to introduce controls for the discharge of residues and wash water of category Y noxious liquid substances that are ‘persistent floaters’. Persistent floaters are substances that can form surface slicks on water such as selected grades of vegetable oil or paraffin-like substances, with the characteristics defined in MARPOL Annex II.
3. Under MARPOL Annex II, a persistent floater means a slick forming substance with the following properties:
	* Density: ≤ sea water (1025 kg/m3 at 20°C);
	* Vapour pressure: ≤ 0.3 kPa;
	* Solubility: ≤ 0.1% (for liquids) ≤ 10% (for solids); and
	* Kinematic viscosity: > 10 cSt at 20°C.
4. The new discharge requirements for persistent floaters only apply in European waters: the North West European Waters, Baltic Sea, Western European Waters and Norwegian Sea.
5. The Resolution also amends Appendix IV to MARPOL Annex II (*Standard format for the Procedures and Arrangements Manual*), as well as Appendix VI (*Prewash procedures*), to include the necessary cargo tank washing and prewash procedures for category Y noxious liquid substances that are persistent floaters.

**MEPC.329(76) Arctic Heavy Fuel Oil (HFO)**

1. Resolution ‘MEPC.329(76) HFO’ was adopted on 17 June 2021, and will enter into force on 1 November 2022.
2. The Resolution amends the POTS Act to prohibit ships from using HFO or carrying HFO for use as fuel (excluding HFO carried as cargo) in Arctic waters from 1 July 2024, or from 1 July 2029 for ships which meet certain construction standards for oil fuel tank protection. The ban aims to reduce the environmental impact on sensitive Arctic environments of a potential ship oil spill and emissions of ship air pollutants from burning HFO.
3. Ships engaged in securing the safety of ships, engaged in search and rescue operations, and ships dedicated to oil spill preparedness and response are exempted.
4. The Arctic ban is consistent with the existing ban under MARPOL Annex I on the carriage and use of HFO as fuel in the Antarctic, with the exception of temporary waivers able to be issued by coastal state Parties bordering Arctic waters, for ships flying their flag, until 2029.

**MEPC.331(76) Anti-fouling Systems (AFS)**

1. Resolution ‘MEPC.331(76) AFS’ was adopted on 17 June 2021, and will enter into force on 1 January 2023.
2. The Resolution amends the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006* to ban the use of cybutryne (a chemical-based anti­fouling agent) used in paints on the ship’s hull. Cybutryne is acutely and chronically toxic for marine organisms. The substance accumulates in sediments and causes long-term effects on the marine environment. In some respects, cybutryne is more harmful than earlier toxic biocides in anti-fouling paints such as tributyltin (TBT), which Australia banned in 2008.
3. The amendments add cybutryne to the list of substances to be controlled or banned in anti‑fouling systems and specifies the certification requirements for ships bearing controlled anti-fouling systems that pre-date the amendment.
4. The proposed amendments are:
5. Addition of ‘Cybutryne CAS No. 28159-98-0’ to Annex 1 of the HAFS Convention table. As of 1 January 2023 all ships shall not apply, or re-apply, anti-fouling systems containing cybutryne.
6. Addition of ‘Cybutryne CAS No. 28159-98-0’ to Annex 1 of the HAFS Convention requiring ships with cybutryne anti-fouling systems already in place on 1 January 2023 to either remove the system, or apply a coating to prevent leaching of the chemical, by the next scheduled renewal of their anti-fouling system, and no later than 60 months from the last anti-fouling system application. Exempted ships are:
7. fixed and floating platforms constructed prior to 1 January 2023 that have not been in dry-dock on/after 1 January 2023, and
8. ships not engaged in international voyages.
9. The section listing compliance options on the model form of the International Anti-fouling System Certificate in Appendix 1 to Annex 4 is replaced. The new format utilises a table, allowing ship compliance to be easily recorded and assessed for each harmful non-fouling substance, including cybutryne.
10. Ships in operation will need to comply with the requirement within the first anti-fouling renewal survey after 1 January 2023 and will be issued a new International Anti‑fouling System Certificate which includes cybutryne-free compliance.
11. Ships under construction, which will be delivered after 1 January 2023, will need to be delivered as cybutryne-free, and will be issued with an International Anti‑fouling System Certificate at the initial survey.