Environment Protection (Sea Dumping) Act 1981

No. 101, 1981

Compilation No. 21

Compilation date:	18 December 2020
Includes amendments up to:	Act No. 154, 2020
Registered:	2 February 2021

Prepared by the Office of Parliamentary Counsel, Canberra

Authorised Version C2021C00058 registered 02/02/2021

About this compilation

This compilation

This is a compilation of the *Environment Protection (Sea Dumping) Act 1981* that shows the text of the law as amended and in force on 18 December 2020 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

1	Short title	1
2	Commencement	1
3	Repeal	1
4	Interpretation	1
4A	Application of Act in relation to certain waters that are subject to the Torres Strait Treaty	7
4B	Application of Act in relation to certain waters that are subject to the Australia-Indonesia Delimitation Treaty	7
4C	Application of Act in relation to Greater Sunrise special regime area	9
5	Exemption	10
6	Operation of Act	11
7	Exemption for defence force vessels etc.	11
8	Act to bind the Crown	11
8A	*Criminal Code* applies	11
9	Declaration by Minister in relation to coastal waters of State etc.	12
10A	Dumping of controlled material	12
10B	Incineration of controlled material	13
10C	Loading for the purpose of dumping or incineration	13
10D	Export for the purpose of dumping or incineration	14
10E	Placement of artificial reef	15
10F	Offence by person responsible for offending craft or material	15
15	Exceptions to certain offences	16
16	Restoration of environment	17
17	Liability for expenses incurred by the Commonwealth	18
18	Application for permit	20
19	Grant of permit	22
20	Suspension and revocation of permits	25
21	Conditions in respect of permits	26
23	Applications to Minister to vary operation of permits	26
24	Applications for review	27
25	Matters to be published in *Gazette*	27
26	Appointment of inspectors	27
27	Inspectors ex officio	28
28	Identity cards	28
29	Boarding of vessels etc. by inspectors	28
30	Access to premises	30

Authorised Version C2021C00058 registered 02/02/2021

30A Warrants may be granted by telephone or other electronic means 31
31 Functions of inspector 33
32 Powers of arrest of inspectors 34
33 Injunction 35
34 Delegation 36
35 False statements 36
36 Compliance with conditions of permit 37
37 Indictable offences 37
37A No time limit for prosecution 38
38 Evidence 38
39 Evidence of analyst 40
40 Fees 41
41 Regulations 41

Endnotes 43

Endnote 1—About the endnotes 43

Endnote 2—Abbreviation key 45

Endnote 3—Legislation history 46

Endnote 4—Amendment history 49

Endnote 5—Editorial changes 53

Authorised Version C2021C00058 registered 02/02/2021

An Act providing for the protection of the environment by regulating dumping into the sea, incineration at sea and artificial reef placements, and for related purposes

1 Short title

This Act may be cited as the *Environment Protection (Sea Dumping) Act 1981*.

2 Commencement

This Act shall come into operation on a date to be fixed by Proclamation.

3 Repeal

The following Acts are repealed:
Beaches, Fishing Grounds and Sea Routes Protection Act 1932.
Beaches, Fishing Grounds and Sea Routes Protection Act 1961.

4 Interpretation

(1) In this Act, unless the contrary intention appears:

Antarctic Treaty means the Treaty concerning Antarctica, to which Australia is a party, done at Washington on 1 December 1959.

Note: The text of the Treaty is set out in the Australian Treaty Series 1961 No. 12.

artificial reef means a structure or formation placed on the seabed:

(a) for the purpose of increasing or concentrating populations of marine plants and animals; or

(b) for the purpose of being used in human recreational activities;

Authorised Version C2021C00058 registered 02/02/2021

and includes anything prescribed by the regulations to be an artificial reef for the purposes of this definition, but does not include anything prescribed by the regulations not to be an artificial reef for the purposes of this definition.

artificial reef permit means a permit under section 19 for the placement of an artificial reef.

artificial reef placement means the placement of any controlled material into the sea for the purpose of creating an artificial reef, being a placement that is not contrary to the aims of the Protocol.

Australian aircraft means an aircraft that:

(a) is owned by:
  (i) the Commonwealth or an authority of the Commonwealth; or
  (ii) a State or an authority of a State; or
  (iii) the Northern Territory or an authority of the Northern Territory; or
(b) is registered in Australia.

Australian platform means a platform in Australian waters that is:

(a) owned by:
  (i) an Australian citizen; or
  (ii) a person who holds a permanent visa under the *Migration Act 1958* and is domiciled in Australia or an external Territory; or
  (iii) a corporation incorporated in Australia or an external Territory; or
  (iv) the Commonwealth, a State, a Territory or an authority of the Commonwealth, a State or a Territory; or
(b) operated by:
  (i) a corporation incorporated in Australia or an external Territory; or
  (ii) the Commonwealth, a State, a Territory or an authority of the Commonwealth, a State or a Territory; or

Authorised Version C2021C00058 registered 02/02/2021

(c) prescribed by regulations made for the purposes of this paragraph as being an Australian platform;

except a platform prescribed by the regulations as not being an Australian platform.

Note: For prescription by class, see subsection 13(3) of the *Legislation Act 2003*.

Australian vessel means a vessel that:

(a) is owned by:
  (i) the Commonwealth or an authority of the Commonwealth; or
  (ii) a State or an authority of a State; or
  (iii) the Northern Territory or an authority of the Northern Territory; or
(b) is registered in Australia or flying the Australian flag.

Australian waters means:

(a) the territorial sea of Australia and any sea that is on the landward side of the territorial sea of Australia, other than any part of the sea that is within the limits of a State or of the Northern Territory; or
(b) the territorial sea of an external Territory and any sea that is on the landward side of that territorial sea; or
(c) the exclusive economic zone adjacent to the coast of Australia or the coast of an external Territory; or
(d) any other area of sea that is above the continental shelf of Australia or above the continental shelf of an external Territory.

and includes any area of sea that is declared by the regulations to be included in Australian waters for the purposes of this Act.

Note: Section 4A can affect the scope of the definition of ***Australian waters***.

coastal waters means:

(a) in relation to a State—that part of the sea that is included in the coastal waters of the State within the meaning of the *Coastal Waters (State Powers) Act 1980*; or

Authorised Version C2021C00058 registered 02/02/2021

(b) in relation to the Northern Territory—that part of the sea that is included in the coastal waters of the Territory within the meaning of the *Coastal Waters (Northern Territory Powers) Act 1980*.

controlled material means:

(a) wastes or other matter (within the meaning of the Protocol); and

(b) a vessel, aircraft or platform.

Greater Sunrise special regime area has the same meaning as in the *Seas and Submerged Lands Act 1973*.

holder, in relation to a permit, means the person to whom the permit has been granted.

inspector means:

(a) a person appointed as an inspector under section 26; or

(b) a member of a police force, or an officer of Customs, who is an inspector by force of section 27.

offending craft, in relation to an offence against section 10F, means:

(a) if the primary offence referred to in section 10F is an offence against section 10A—any vessel, aircraft or platform from which, or on which, the controlled material was dumped; or

(b) if the primary offence referred to in section 10F is an offence against section 10B—the vessel or platform on which the controlled material was incinerated; or

(c) if the primary offence referred to in section 10F is an offence against section 10C—the vessel, aircraft or platform on which the controlled material was loaded; or

(d) if the primary offence referred to in section 10F is an offence against section 10D—any vessel, aircraft or platform used to export the controlled material; or

(e) if the primary offence referred to in section 10F is an offence against section 10E—any vessel, aircraft or platform from which the artificial reef placement occurred.

Authorised Version C2021C00058 registered 02/02/2021

offending material means:

(a) in relation to an offence against section 10A—the controlled material that was dumped; or

(b) in relation to an offence against section 10B—the controlled material that was incinerated; or

(c) in relation to an offence against section 10C—the controlled material that was loaded; or

(d) in relation to an offence against section 10D—the controlled material that was exported; or

(e) in relation to an offence against section 10E—the controlled material that was placed for the purpose of creating an artificial reef; or

(f) in relation to an offence against section 10F—the offending material in relation to the primary offence referred to in section 10F.

owner, in relation to a vessel, aircraft or platform, includes:

(a) every person who is a co-owner of the vessel, aircraft or platform or of any part of, or any share in, the vessel, aircraft or platform; and

(b) every person who has the use or control (whether alone or jointly with another person or other persons) of the vessel, aircraft or platform.

permit means a permit granted under section 19.

person in charge means:

(a) in relation to a vessel—the master or other person in charge of the vessel;

(b) in relation to an aircraft—the person in charge of the aircraft; or

(c) in relation to a platform—the person in charge of the operations conducted on or from the platform.

platform includes any man-made structure at sea, whether floating or fixed to the seabed, but does not include a vessel.

Authorised Version C2021C00058 registered 02/02/2021

Protocol means the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, done at London on 7 July 1996, as amended and in force for Australia from time to time.

Note: The English text of the Protocol is set out in Australian Treaty Series 2006 No. 11. In 2006, the text of a Protocol in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

radioactive material means material that has an activity of more than 35 becquerels per gram.

seriously harmful material means:

(a) radioactive material; or

(b) any other material that is prescribed by the regulations for the purposes of this paragraph.

Note: Subsection 41(3) places limitations on the making of regulations for the purposes of paragraph (b) of this definition.

Torres Strait Treaty means the Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as Torres Strait, and Related Matters done at Sydney on 18 December 1978.

Note: The text of the Treaty is set out in Australian Treaty Series 1985 No. 4.

(2) A reference in this Act to an offence shall be read as including a reference to an offence against section 6 of the *Crimes Act 1914*, or against section 11.1 or 11.4 of the *Criminal Code*, in relation to this Act.

(3) A reference in this Act to a member of the Australian Federal Police or to a member of a police force shall be read as including a reference to a special member of the Australian Federal Police.

(4) Except so far as the contrary intention appears, an expression that is used both in this Act and in the Protocol (whether or not a

Authorised Version C2021C00058 registered 02/02/2021

particular meaning is assigned to it by the Protocol) has, in this Act, the same meaning as in the Protocol.

(5) For the purposes of this Act, where any controlled material is disposed of from a vessel, an aircraft or a platform into part of the seabed or its subsoil, that controlled material shall be taken to have been disposed of into the sea above that part.

4A Application of Act in relation to certain waters that are subject to the Torres Strait Treaty

(1) For the purposes of this Act, ***Australian waters*** does not include the top hat area unless a notice is in force under subsection (2).

(2) The Minister may, by notice in the *Gazette*, declare that Papua New Guinea has notified Australia that Papua New Guinea agrees to Australia's exercise of jurisdiction under this Act in relation to the top hat area.

Note: The notice can be revoked under subsection 33(3) of the *Acts Interpretation Act 1901*.

(3) In this section:

top hat area means the area described in Article 4.3 of the Torres Strait Treaty.

4B Application of Act in relation to certain waters that are subject to the Australia-Indonesia Delimitation Treaty

(1) This section commences to have effect when the Australia-Indonesia Delimitation Treaty enters into force for Australia.

(2) The Minister must not issue a permit in relation to the overlap area unless:

(a) the Minister has first consulted the Government of the Republic of Indonesia about issuing the permit; or

Authorised Version C2021C00058 registered 02/02/2021

(b) a notice is in force under subsection (3) and the issue of the permit is within the scope of the agreement to which the notice relates.

(3) The Minister may, by notice in the *Gazette*, declare that the Government of the Republic of Indonesia has notified Australia that the Government of the Republic of Indonesia agrees to the issue of permits under this Act in relation to the overlap area, either generally or in particular circumstances.

Note: The notice can be revoked under subsection 33(3) of the *Acts Interpretation Act 1901*.

(4) An inspector must not exercise powers under this Act in the overlap area in relation to:

(a) a vessel other than an Australian vessel; or

(b) an aircraft other than an Australian aircraft; or

(c) a platform, other than a platform that is subject to Australia's jurisdiction under paragraph 7(b) or (h) of the Australia-Indonesia Delimitation Treaty;

unless:

(d) the Minister has first consulted the Government of the Republic of Indonesia about the exercise of powers by inspectors in the overlap area in relation to that vessel, aircraft or platform; or

(e) a notice is in force under subsection (5) and the exercise of the powers is within the scope of the agreement to which the notice relates.

(5) The Minister may, by notice in the *Gazette*, declare that the Government of the Republic of Indonesia has notified Australia that the Government of the Republic of Indonesia agrees to the exercise by inspectors of powers under this Act in the overlap area, either generally or in particular circumstances.

Note: The notice can be revoked under subsection 33(3) of the *Acts Interpretation Act 1901*.

(6) The validity of the exercise of a power is not affected by a failure to comply with subsection (4).

Authorised Version C2021C00058 registered 02/02/2021

(7) In this section:

Australia-Indonesia Delimitation Treaty means the Treaty between the Government of Australia and the Government of the Republic of Indonesia establishing an Exclusive Economic Zone Boundary and Certain Seabed Boundaries done at Perth on 14 March 1997.

overlap area means the overlapping area described in Article 7 of the Australia-Indonesia Delimitation Treaty.

4C Application of Act in relation to Greater Sunrise special regime area

Limit on issuing permits

(1) The Minister must not issue a permit in relation to the Greater Sunrise special regime area unless:
  (a) the Minister has first consulted Timor-Leste about issuing the permit; or
  (b) a declaration is in force under subsection (2) and the issue of the permit is within the scope of the agreement to which the declaration relates.

(2) The Minister may, by notifiable instrument, declare that Timor-Leste has notified Australia that Timor-Leste agrees to the issue of permits under this Act in relation to the Greater Sunrise special regime area, either generally or in particular circumstances.

Note: The declaration can be revoked: see subsection 33(3) of the *Acts Interpretation Act 1901*.

Limit on inspectors exercising powers

(3) An inspector must not exercise powers under this Act in or above the Greater Sunrise special regime area in relation to:
  (a) a vessel other than an Australian vessel; or
  (b) an aircraft other than an Australian aircraft; or
  (c) a platform other than an Australian platform;

Authorised Version C2021C00058 registered 02/02/2021

unless:

(d) the Minister has first consulted Timor-Leste about the exercise of powers by inspectors in the Greater Sunrise special regime area in relation to that vessel, aircraft or platform; or

(e) a declaration is in force under subsection (4) and the exercise of the powers is within the scope of the agreement to which the declaration relates.

(4) The Minister may, by notifiable instrument, declare that Timor-Leste has notified Australia that Timor-Leste agrees to the exercise by inspectors of powers under this Act in or above the Greater Sunrise special regime area, either generally or in particular circumstances.

Note: The declaration can be revoked: see subsection 33(3) of the *Acts Interpretation Act 1901*.

(5) The validity of the exercise of a power is not affected by a failure to comply with subsection (3).

Act not limited by the Seas and Submerged Lands Act 1973

(6) Subsection 13AB(1) of the *Seas and Submerged Lands Act 1973* does not affect the application of a provision of this Act.

Note: Subsection 13AB(1) of the *Seas and Submerged Lands Act 1973* provides that a law of the Commonwealth does not apply in relation to an act, omission, matter or thing directly or indirectly connected with the exploration of, or exploitation of the natural resources of, the continental shelf in the Greater Sunrise special regime area.

5 Exemption

(1) This Act does not apply in relation to the disposal or storage of controlled material (other than a vessel, aircraft or platform) directly arising from, or related to, the exploration, exploitation and associated off-shore processing, of seabed mineral resources.

(2) This Act does not apply in relation to the disposal or storage, in the Greater Sunrise special regime area or the waters above it, of a

Authorised Version C2021C00058 registered 02/02/2021

vessel, aircraft or platform directly arising from, or related to, the exploration, exploitation and associated off-shore processing, of seabed mineral resources.

6 Operation of Act

This Act applies both within and outside Australia and extends to every external Territory.

7 Exemption for defence force vessels etc.

(1) This Act does not apply in relation to a vessel or aircraft belonging to the Australian Defence Force, when it is being used:
  (a) in a situation of armed conflict; or
  (b) in an emergency situation other than a situation of armed conflict.

(2) This Act does not apply in relation to a vessel or aircraft belonging to the naval, military or air forces of a foreign country.

8 Act to bind the Crown

(1A) This Act binds the Crown in each of its capacities.

(1) This Act does not make the Crown liable to be prosecuted for an offence.

(2) Subsection (1) does not affect any liability of a person in charge of a vessel, aircraft or platform of which the Commonwealth, a State, the Northern Territory or the Administration of Norfolk Island is the owner to be prosecuted for an offence.

8A *Criminal Code* applies

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Authorised Version C2021C00058 registered 02/02/2021

9 Declaration by Minister in relation to coastal waters of State etc.

(1) If the Minister is satisfied that the law of a State makes provision for giving effect to the Protocol in relation to the coastal waters of that State, the Minister may, by legislative instrument, make a declaration that limits the operation of this Act in relation to that State and the coastal waters of that State. A declaration may be made in relation to a State whether or not the Protocol extends to the whole of the coastal waters of that State.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* allows the declaration to be revoked or amended.

(2) However, this Act continues to apply in relation to the State and its coastal waters in relation to the following activities where they involve seriously harmful material:

(a) dumping or incineration at sea;

(b) loading for dumping or incineration at sea;

(c) export for dumping or incineration at sea;

(d) artificial reef placements.

(4) In this section:

State includes the Northern Territory.

10A Dumping of controlled material

(1) A person commits an offence against this section if, otherwise than in accordance with a permit, the person:

(a) dumps controlled material into Australian waters from any vessel, aircraft or platform; or

(b) dumps controlled material into any part of the sea from any Australian vessel or Australian aircraft; or

(c) dumps a vessel, aircraft or platform into Australian waters; or

(d) dumps an Australian vessel or Australian aircraft into any part of the sea.

Authorised Version C2021C00058 registered 02/02/2021

(2) An offence against this section is punishable, on conviction, as follows:

(a) if it is proved that any of the offending material is seriously harmful material—imprisonment for up to 10 years or a fine up to 2,000 penalty units, or both;

(b) if it is proved that any of the offending material is not within Annex 1 to the Protocol—imprisonment for up to 2 years or a fine up to 500 penalty units, or both;

(c) in any other case—imprisonment for up to 1 year or a fine up to 250 penalty units, or both.

10B Incineration of controlled material

(1) A person commits an offence against this section if, otherwise than in accordance with a permit, the person incinerates controlled material at sea:

(a) on a vessel or platform in Australian waters; or

(b) on an Australian vessel in any part of the sea.

(2) An offence against this section is punishable, on conviction, as follows:

(a) if it is proved that any of the offending material is seriously harmful material—imprisonment for up to 10 years or a fine up to 2,000 penalty units, or both;

(b) if it is proved that any of the offending material is not within Annex 1 to the Protocol—imprisonment for up to 2 years or a fine up to 500 penalty units, or both;

(c) in any other case—imprisonment for up to 1 year or a fine up to 250 penalty units, or both.

10C Loading for the purpose of dumping or incineration

(1) A person commits an offence against this section if, otherwise than in accordance with a permit, the person:

(a) loads controlled material on a vessel, aircraft or platform in Australia or Australian waters:

Authorised Version C2021C00058 registered 02/02/2021

(i) knowing that it will be dumped into the sea or incinerated at sea; or

(ii) reckless as to whether it will be dumped into the sea or incinerated at sea; or

(b) loads controlled material on any Australian vessel or Australian aircraft:

(i) knowing that it will be dumped into the sea or incinerated at sea; or

(ii) reckless as to whether it will be dumped into the sea or incinerated at sea.

(2) An offence against this section is punishable, on conviction, as follows:

(a) if it is proved that any of the offending material is seriously harmful material—imprisonment for up to 10 years or a fine up to 2,000 penalty units, or both;

(b) if it is proved that any of the offending material is not within Annex 1 to the Protocol—imprisonment for up to 2 years or a fine up to 500 penalty units, or both;

(c) in any other case—imprisonment for up to 1 year or a fine up to 250 penalty units, or both.

10D Export for the purpose of dumping or incineration

(1) A person commits an offence against this section if the person exports controlled material from Australia to another country:

(a) knowing that it will be dumped into the sea or incinerated at sea; or

(b) reckless as to whether it will be dumped into the sea or incinerated at sea.

(2) An offence against this section is punishable, on conviction, as follows:

(a) if it is proved that any of the offending material is seriously harmful material—imprisonment for up to 10 years or a fine up to 2,000 penalty units, or both;

Authorised Version C2021C00058 registered 02/02/2021

(b) if it is proved that any of the offending material is not within Annex 1 to the Protocol—imprisonment for up to 2 years or a fine up to 500 penalty units, or both;

(c) in any other case—imprisonment for up to 1 year or a fine up to 250 penalty units, or both.

10E Placement of artificial reef

(1) A person commits an offence against this section if, otherwise than in accordance with a permit, the person carries out an artificial reef placement.

(2) An offence against this section is punishable, on conviction, as follows:

(a) if it is proved that any of the offending material is seriously harmful material—imprisonment for up to 10 years or a fine up to 2,000 penalty units, or both;

(b) if it is proved that any of the offending material is not within Annex 1 to the Protocol—imprisonment for up to 2 years or a fine up to 500 penalty units, or both;

(c) in any other case—imprisonment for up to 1 year or a fine up to 250 penalty units, or both.

10F Offence by person responsible for offending craft or material

(1) If an offence is committed against section 10A, 10B, 10C, 10D or 10E (the ***primary offence***), then each person who is a responsible person in relation to the offending craft or offending material commits an offence against this section if the person:

(a) knew that the offending craft or offending material would be used in committing the primary offence, or was reckless as to whether it would be used in committing the primary offence; and

(b) did not take reasonable steps to prevent the use of the offending craft or offending material in committing the primary offence.

Authorised Version C2021C00058 registered 02/02/2021

(2) Subsection (1) applies whether or not any person has been charged with, or convicted of, the primary offence.

(3) An offence against this section is punishable, on conviction, as follows:

(a) if it is proved that any of the offending material is seriously harmful material—imprisonment for up to 10 years or a fine up to 2,000 penalty units, or both;

(b) if it is proved that any of the offending material is not within Annex 1 to the Protocol—imprisonment for up to 2 years or a fine up to 500 penalty units, or both;

(c) in any other case—imprisonment for up to 1 year or a fine up to 250 penalty units, or both.

(4) For the purposes of this section:

(a) each of the following persons is a ***responsible person*** in relation to an offending craft:

(i) the owner of the offending craft;

(ii) the person in charge of the offending craft; and

(b) the owner of offending material is a ***responsible person*** in relation to the offending material.

15 Exceptions to certain offences

(1) Sections 10A and 10B do not apply in relation to:

(a) dumping into waters that are not Australian waters; or

(b) incineration at sea in waters that are not Australian waters;

if the dumping or incineration is in accordance with a permit granted in accordance with the Protocol by a party to the Protocol (other than Australia).

(2) Section 10C does not apply in relation to loading for the purpose of:

(a) dumping into waters that are not Australian waters; or

(b) incineration at sea in waters that are not Australian waters;

if the loading is in accordance with a permit granted in accordance with the Protocol by a party to the Protocol (other than Australia).

Authorised Version C2021C00058 registered 02/02/2021

(3) Section 10A, 10B, 10C, 10E or 36 does not apply if:

(a) the relevant conduct was necessary to secure the safety of human life or of a vessel, aircraft or platform in a case of *force majeure* caused by stress of weather; or

(b) the relevant conduct appeared to be the only way of averting a threat to human life, or to the safety of a vessel, aircraft or platform, and there was every probability that the damage caused by the conduct would be less than would otherwise occur;

and, in either case:

(c) the relevant conduct was so carried out as to minimise the likelihood of damage to human or marine life; and

(d) a report of the relevant conduct, setting out the prescribed information, was given to the Minister as soon as practicable after the conduct occurred.

(4) In a proceedings for an offence, the defendant bears the evidential burden of proving an exception set out in this section.

16 Restoration of environment

(1) If the Minister considers that a regulated occurrence is likely to:

(a) cause an obstruction, or constitute a danger, to vessels; or

(b) result in harm to human or marine life; or

(c) result in an interference with the exercise of the sovereign rights of Australia as a coastal State:

(i) to explore the seabed and subsoil beneath Australian waters; and

(ii) to exploit the natural resources of the seabed and subsoil beneath Australian waters;

then the Minister may cause to be taken such steps as the Minister considers proper to repair or remedy any condition, or to mitigate any damage, arising from the occurrence.

(2) In this section:

regulated occurrence means any of the following:

Authorised Version C2021C00058 registered 02/02/2021

(a) the dumping of controlled material into Australian waters;
(b) the incineration at sea in Australian waters of controlled material;
(c) an artificial reef placement in Australian waters;
(d) a contravention of a condition of a permit.

17 Liability for expenses incurred by the Commonwealth

(1) Where:
(a) a person has been convicted of an offence against section 10A, 10B, 10E, 10F or 36; and
(b) because the Minister has exercised his or her powers under section 16, the Commonwealth has incurred expenses or other liabilities in repairing or remedying any condition, or mitigating any damage, arising from:
(i) if the offence is an offence against section 10A, 10B, 10E or 36—the conduct that constituted the offence; or
(ii) if the offence is an offence against section 10F—the conduct that constituted the primary offence referred to in that section;

a person so convicted is liable to pay to the Commonwealth an amount equal to the total amount of those expenses and liabilities of the Commonwealth and that amount may be recovered, as a debt due to the Commonwealth by the person, by action in a court of competent jurisdiction.

(2) Where 2 or more persons have been convicted of offences referred to in subsection (1) in respect of the same occurrence, the Commonwealth is not, by virtue of that subsection, entitled to recover from those persons amounts that, in the aggregate, exceed the total amount of the expenses and liabilities incurred by the Commonwealth, by reason of the exercise by the Minister of his or her powers under section 16, as a result of that occurrence.

(3) Subject to subsection (4), where the owner of a vessel, aircraft or platform:
(a) has been convicted of:

Authorised Version C2021C00058 registered 02/02/2021

(i) an offence against section 10A or 36 with respect to dumping from the vessel, aircraft or platform; or

(ii) an offence against section 10B or 36 with respect to incineration at sea on the vessel or platform; or

(iii) an offence against section 10E or 36 with respect to an artificial reef placement from the vessel, aircraft or platform; or

(iv) an offence against section 10F with respect to the vessel, aircraft or platform; and

(b) is liable by virtue of subsection (1) of this section to pay an amount to the Commonwealth in respect of that offence;

that amount is a charge upon the vessel, aircraft or platform, as the case may be, and, in the case of a vessel or aircraft, the vessel or aircraft may be detained by an inspector until the amount is paid or security for the payment of the amount is provided to the satisfaction of the Minister.

(4) Subsection (3) does not entitle a person to detain a vessel or aircraft unless the vessel or aircraft:

(a) is an Australian vessel or Australian aircraft, as the case may be; or

(b) is in Australia or an external Territory or in Australian waters.

(5) If a person:

(a) takes to sea any vessel that been detained under subsection (3), before it is released from detention, knowing that it is still under detention or being reckless as to whether it is still under detention; or

(b) removes from Australia or an external Territory any aircraft that has been detained under subsection (3), before it is released from detention, knowing that it is still under detention or being reckless as to whether it is still under detention;

the person commits an offence punishable, on conviction, by imprisonment for up to 2 years or a fine up to 120 penalty units, or both.

Authorised Version C2021C00058 registered 02/02/2021

(6) If an offence (the ***primary offence***) is committed against subsection (5) in respect of taking a vessel to sea or removing an aircraft from Australia or an external Territory, then each person who is a responsible person in relation to the vessel or aircraft commits an offence against this subsection if the person:

(a) knew that the vessel or aircraft would be used in committing the primary offence, or was reckless as to whether it would be used in committing the primary offence; and

(b) did not take reasonable steps to prevent the use of the vessel or aircraft in committing the primary offence.

(7) Subsection (6) applies whether or not any person has been charged with, or convicted of, the primary offence.

(8) An offence against subsection (6) is punishable, on conviction, by imprisonment for up to 2 years or a fine up to 120 penalty units, or both.

(9) For the purposes of subsection (6), each of the following persons is a ***responsible person*** in relation to a vessel or aircraft:

(a) the owner of the vessel or aircraft;

(b) the person in charge of the vessel or aircraft.

18 Application for permit

(1) A person may make an application to the Minister for the grant of a permit required for the purposes of this Act.

(2) An application for a permit shall be made in accordance with the appropriate form approved by the Minister from time to time.

(3) Where an application is made for the grant of a permit and the Minister requires further information for the purpose of enabling him or her to deal with the application, he or she may, by notice in writing served on the applicant not later than 60 days after the application is made, require the applicant to furnish to the Minister, as specified in the notice, a statement in writing setting out that further information and, if a notice is so served, the application

Authorised Version C2021C00058 registered 02/02/2021

shall be deemed, for the purposes of section 19, not to have been duly made until the statement is furnished.

(4) Where, in his or her preliminary consideration of an application for a permit for dumping or artificial reef placement, the Minister forms the view that, in order to enable him or her to decide whether a permit should be granted or not, or to formulate conditions that should be imposed in respect of a permit if a permit is granted, it will be necessary for research or analysis to be undertaken to determine the effect that the proposed dumping or artificial reef placement may have on the marine environment, the Minister, before giving further consideration to the application, may require the applicant to enter into an agreement with the Commonwealth that includes provisions of any, or all, of the following kinds:

(a) a provision that the applicant will, at his or her own expense, undertake such research or analysis as is specified in the agreement, being research or analysis relating to the effect that the proposed dumping or artificial reef placement might have on the marine environment;

(b) a provision that the applicant will reimburse the Commonwealth the amount, as ascertained by the Minister, of any expense incurred by the Commonwealth in undertaking research or analysis of a kind referred to in paragraph (a);

(c) a provision that the applicant will reimburse the Commonwealth the amount, as ascertained by the Minister, of any expense incurred by the Commonwealth in supervising any research or analysis undertaken by the applicant in accordance with the agreement;

(d) a provision that, if the applicant fails, or neglects, to carry out any research or analysis as required by the agreement:

(i) the Commonwealth may undertake the necessary research or analysis, as the case may be; and

(ii) in that event, the applicant will reimburse the Commonwealth the amount, as ascertained by the Minister, of the expense incurred by the Commonwealth in connection with such undertaking;

Authorised Version C2021C00058 registered 02/02/2021

(e) a provision that the applicant is to give a security to the Commonwealth for the payment of any amount that he or she may become liable to pay to the Commonwealth under the agreement;

(f) a provision that the applicant will report to the Minister the results of any research or analysis undertaken by him or her in accordance with the agreement.

(5) Where an applicant is required under subsection (4) to enter into an agreement with the Commonwealth providing for the undertaking of research or analysis as specified in the agreement, his or her application shall be deemed, for the purposes of section 19, not to have been duly made until the research or analysis, as the case may be, has been completed to the satisfaction of the Minister.

19 Grant of permit

(1) Subject to this section, the Minister may, in his or her discretion, grant, or refuse to grant, a permit to a person who has made an application in accordance with section 18.

(2) The Minister must either grant or refuse to grant the permit within 90 days after the application is made.

(3) However, if Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999* applies in relation to the granting of the permit, the Minister must grant or refuse to grant the permit within whichever of the following periods ends later (or either of them if they end at the same time):

(a) 30 days after the day on which the Minister receives advice given under section 163 of that Act;

(b) 90 days after the application is made.

Note: Under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, certain persons must get advice from the Minister administering that Subdivision before authorising an action. Under section 163 of that Act, that Minister must give advice within 30 days after receiving a report of an environmental assessment of the action.

Authorised Version C2021C00058 registered 02/02/2021

(4) Despite Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, that Subdivision does not apply in relation to the granting of a permit described in subsection (7) if the Minister is of the opinion described in that subsection.

(5) Subject to subsection (7), a permit for dumping or loading for dumping:
  (a) may only be granted for controlled material that is within Annex 1 to the Protocol; and
  (b) may only be granted in accordance with Annex 2 to the Protocol.

(6) Subject to subsection (7), a permit cannot be granted for incineration at sea or loading for incineration at sea.

(7) The Minister may grant a permit for dumping, incineration at sea or loading for dumping or incineration at sea, of any controlled material if, in the Minister's opinion, there is an emergency that:
  (a) poses an unacceptable risk to human health, safety, or the marine environment; and
  (b) admits of no other feasible solution.

(7A) For the purposes of subsection (7), an emergency includes an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates.

(8) A permit cannot be granted for an artificial reef placement of seriously harmful material.

(8A) In considering the granting of a permit, the Minister must have regard to the following (so far as they are relevant):
  (a) the Protocol;
  (b) the Torres Strait Treaty;
  (c) the Antarctic Treaty;
  (d) any other treaty or convention to which Australia is a party and that relates to dumping at sea or to Antarctica or Antarctic resources.

Authorised Version C2021C00058 registered 02/02/2021

(9) Before granting a permit for dumping or artificial reef placement, the Minister may require the applicant to enter into an agreement with the Commonwealth that includes provisions of any, or all, of the following kinds:

(a) in the case of a permit for dumping or artificial reef placement—a provision that the applicant will, at his or her own expense, undertake such research and monitoring as is specified in the agreement, being research and monitoring relating to the consequences of the release into the marine environment through the proposed dumping operation or artificial reef placement of any contaminants;

(b) in the case of a permit for dumping—a provision that the applicant will investigate, as specified in the agreement, the possibility of avoiding or reducing the need for further dumping by him or her;

(c) a provision that the applicant will reimburse the Commonwealth the amount, as ascertained by the Minister, of any expense incurred by the Commonwealth in undertaking research, monitoring or investigation of a kind referred to in a preceding paragraph;

(d) a provision that the applicant will reimburse the Commonwealth the amount, as ascertained by the Minister, of any expense incurred by the Commonwealth in supervising any research, monitoring or investigation undertaken by the applicant in accordance with the agreement;

(e) a provision that, if the applicant fails, or neglects, to carry out any research, monitoring or investigation as required by the agreement:

(i) the Commonwealth may undertake the necessary research, monitoring or investigation, as the case may be; and

(ii) in that event, the applicant will reimburse the Commonwealth the amount, as ascertained by the Minister, of the expense incurred by the Commonwealth in connection with such undertaking;

Authorised Version C2021C00058 registered 02/02/2021

(f) a provision that the applicant is to give a security to the Commonwealth for the payment of any amount that he or she may become liable to pay to the Commonwealth under the agreement;

(g) a provision that the applicant will report to the Minister the results of any research, monitoring or investigation undertaken by him or her in accordance with the agreement.

20 Suspension and revocation of permits

(1) The Minister may, at any time, by notice in writing served on the holder of a permit, vary, suspend or revoke the permit where he or she is satisfied that:

(a) a provision of this Act relating to the permit or a condition imposed in respect of the permit has been contravened; or

(b) it is necessary or expedient to do so in order properly to regulate the activities with which this Act is concerned.

(2) A suspension of a permit may be of indefinite duration or for a period specified in the notice.

(3) Where proceedings for an offence in relation to a permit are commenced during a period of suspension of the permit, the suspension may be continued until the proceedings (including any appeal) are completed.

(4) During the period of suspension of a permit, the permit has no force or effect, but the period of currency of the permit continues to run.

(5) The suspension of a permit does not prevent its revocation.

(6) The revocation or suspension of a permit takes effect when notice of the revocation or suspension, as the case may be, is served on the holder of the permit or on such later date (if any) as is specified in the notice.

Authorised Version C2021C00058 registered 02/02/2021

21 Conditions in respect of permits

(1) The Minister may, when granting a permit or at any time while a permit is in force, impose conditions in respect of the permit and may, at any time, revoke, suspend or vary, or cancel a suspension of, a condition so imposed.

(2) A condition imposed in respect of a permit, or a revocation, suspension or variation, or a cancellation of a suspension, of such a condition, takes effect when notice of the condition or of the revocation, suspension or variation or of the cancellation of the suspension is served on the holder of the permit or on such later date (if any) as is specified in the notice.

23 Applications to Minister to vary operation of permits

(1) The holder of a permit may apply to the Minister for:
  (a) variation of the permit; or
  (b) revocation, suspension or variation of a condition of the permit.

(2) The holder of a permit that is suspended may make application to the Minister for the cancellation of that suspension.

(3) The Minister shall, within 60 days after the receipt of an application under subsection (1) or (2):
  (a) if he or she is satisfied that the application should be granted:
    (i) revoke or suspend the condition;
    (ii) vary the permit or the condition in accordance with the application; or
    (iii) cancel the suspension of the permit;
  as the case may be; or
  (b) if he or she is not so satisfied—refuse to grant the application.

Authorised Version C2021C00058 registered 02/02/2021

24 Applications for review

(1) Applications may be made to the Administrative Appeals Tribunal for review of decisions by the Minister under section 19, 20, 21 or 23.

(2) Subsection (1) does not apply in relation to:

(a) a decision by the Minister under section 19 in connection with an application for a permit where an inquiry has been held under Part 8 of the *Environment Protection and Biodiversity Conservation Act 1999* (as it applies of its own force or because of Subdivision A of Division 4 of Part 11 of that Act) in relation to the conduct in respect of which the application is made; or

(b) a decision by the Minister under subsection 19(7) granting, or refusing to grant, a permit.

25 Matters to be published in *Gazette*

The Minister shall cause to be published in the *Gazette* particulars of the following:

(a) applications for permits;

(b) permits granted and any conditions imposed in respect of those permits;

(c) refusals to grant permits;

(d) any revocation, variation, suspension, or cancellation of the suspension, of a permit;

(e) any revocation, suspension or variation, or any cancellation of a suspension, of a condition imposed in respect of a permit;

(f) the reasons for a decision by the Minister under subsection 19(7) granting, or refusing to grant, a permit.

26 Appointment of inspectors

The Minister may, by instrument in writing, appoint a person as an inspector.

Authorised Version C2021C00058 registered 02/02/2021

27 Inspectors ex officio

The following persons are inspectors, by force of this section:

(a) members of the Australian Federal Police or of the police force of a Territory;

(b) officers of Customs.

28 Identity cards

(1) The Minister may cause to be issued to an inspector, other than a member of a police force or an officer of Customs, an identity card in a form approved by the Minister.

(2) Where a person in possession of an identity card issued to him or her under subsection (1) ceases to be an inspector, he or she shall forthwith return the identity card to the Minister.

Penalty: One penalty unit.

29 Boarding of vessels etc. by inspectors

(1) This section applies to the following:

(a) any Australian vessel or Australian aircraft;

(b) any vessel, aircraft or platform that is in Australia or an external Territory;

(c) any vessel or platform that is in Australian waters;

(d) any aircraft that is capable of landing on water and is in Australian waters.

(2) An inspector may, with such assistance as he or she thinks necessary, board any vessel, aircraft or platform to which this section applies for the purpose of exercising the functions of an inspector in accordance with section 31 if he or she believes on reasonable grounds that there is in, or on, that vessel, aircraft or platform:

(a) any controlled material that is to be dumped into the sea or incinerated at sea; or

Authorised Version C2021C00058 registered 02/02/2021

(aa) any controlled material that is to be placed as part of an artificial reef placement; or

(b) any matter or thing that may afford evidence as to the commission of an offence against this Act;

and, in the case of a vessel or aircraft, may, for that purpose, stop and detain that vessel or aircraft.

(3) An inspector may require any person on board a vessel, aircraft or platform to which this section applies whom he or she finds committing, or whom he or she suspects on reasonable grounds of having committed, an offence against this Act to state his or her full name and usual place of residence.

(4) Where an inspector believes on reasonable grounds that a vessel to which this section applies and that is in Australian waters has been used or otherwise involved in the commission of an offence against this Act, he or she may bring, or require the person in charge of the vessel to bring, the vessel to the nearest port in Australia or an external Territory to which it is safe and practicable to bring the vessel.

(5) An inspector may, for the purposes of this Act, require the person in charge of a vessel, aircraft or platform to which this section applies to give information concerning the vessel, aircraft or platform and her crew and any other person on board the vessel, aircraft or platform.

(6) Where an inspector (other than a member of a police force, or officer of Customs, who is in uniform) boards a vessel, aircraft or platform to which this section applies, he or she shall:

(a) in the case of a member of a police force—produce, for inspection by the person in charge of that vessel, aircraft or platform, written evidence of the fact that he or she is a member of that police force; or

(aa) in the case of an officer of Customs—produce, for inspection by the person in charge of that vessel, aircraft or platform, written evidence of the fact that the officer is an officer of Customs; or

Authorised Version C2021C00058 registered 02/02/2021

(b) in any other case—produce his or her identity card for inspection by that person;

and, if he or she fails to do so, he or she is not authorized to remain, or to require any person assisting him or her to remain, on board that vessel, aircraft or platform or to detain that vessel or aircraft.

(7) Where an inspector (other than a member of a police force, or officer of Customs, who is in uniform) makes a requirement of a person under this section, the inspector shall:

(a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of that police force; or

(aa) in the case of an officer of Customs—produce, for inspection by that person, written evidence of the fact that the officer is an officer of Customs; or

(b) in any other case—produce his or her identity card for inspection by that person;

and, if he or she fails to do so, that person is not obliged to comply with the requirement.

(8) A person who, without reasonable excuse, fails to comply with a requirement made of him or her by an inspector under this section commits an offence punishable on conviction by a fine not exceeding 20 penalty units.

30 Access to premises

(1) An inspector may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the functions of an inspector in accordance with section 31.

(2) Where an inspector has reason to believe that there is on premises:

(a) any controlled material that is to be dumped into the sea or incinerated at sea; or

(aa) any controlled material that is to be placed as part of an artificial reef placement; or

Authorised Version C2021C00058 registered 02/02/2021

(b) any matter or thing that may afford evidence as to the commission of an offence against this Act;

the inspector may make application to a magistrate for a warrant authorizing the inspector to enter the premises for the purpose of exercising the functions of an inspector in accordance with section 31.

(3) If, on an application under subsection (2), the magistrate is satisfied, by information on oath or affirmation:

(a) that there is reasonable ground for believing that there is on the premises to which the application relates:

(i) any controlled material that is to be dumped into the sea or incinerated at sea; or

(ia) any controlled material that is to be placed as part of an artificial reef placement; or

(ii) any matter or thing that may afford evidence as to the commission of an offence against this Act; and

(b) that the issue of the warrant is reasonably required for the purposes of this Act;

the magistrate may grant a warrant authorizing the inspector, with such assistance as he or she thinks necessary, to enter the premises, during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose of exercising the functions of an inspector in accordance with section 31.

(4) Where an inspector has entered any premises in pursuance of subsection (1) or in pursuance of a warrant granted under subsection (3), he or she may exercise the functions of an inspector in accordance with section 31.

30A Warrants may be granted by telephone or other electronic means

(1) An application to a magistrate for a warrant under section 30 may be made by telephone, fax or other electronic means:

(a) in an urgent case; or

Authorised Version C2021C00058 registered 02/02/2021

(b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

(2) The magistrate may require voice communication to the extent that it is practicable in the circumstances.

(3) An application under this section must include all information required to be provided in an ordinary application for a warrant under section 30, but the application may, if necessary, be made before the information is sworn or affirmed.

(4) If the magistrate is satisfied:

(a) after having considered the information mentioned in subsection (3); and

(b) after having received any further information that the magistrate requires about the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same form of warrant as would be issued under section 30.

(5) If the magistrate signs a warrant under subsection (4):

(a) the magistrate must notify the inspector, by telephone, fax or other electronic means, of the terms of the warrant and the date on which and the time at which it was signed, and write on it the reasons for granting it; and

(b) the inspector must complete a form of warrant in the terms notified to the inspector by the magistrate and write on it the name of the magistrate and the date on which and the time at which it was signed.

(6) If the inspector completes a form of warrant under subsection (5), the inspector must, not later than the day after the day on which the warrant ceased to be in force or was executed, whichever is the earlier, give or send to the magistrate the form of warrant completed by the inspector and, if the information mentioned in subsection (3) was not sworn or affirmed, that information duly sworn or affirmed.

Authorised Version C2021C00058 registered 02/02/2021

(7) The magistrate must attach to the documents provided under subsection (6) the warrant signed by the magistrate.

(8) A form of warrant that has been duly completed by the inspector under subsection (5), and is in accordance with the terms of the warrant signed by the magistrate, has the same authority as the warrant signed by the magistrate.

(9) If:

(a) it is material, in any proceedings, for a court to be satisfied that an exercise of power was authorised under this section; and

(b) the warrant signed by the magistrate under this section authorising the exercise of power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of power was not authorised by such a warrant.

31 Functions of inspector

(1) The functions of an inspector who boards a vessel, aircraft or platform under section 29 or enters premises under section 30 are as follows:

(a) to search for, and take possession of, any matter or thing that may afford evidence as to the commission of an offence against this Act;

(b) to search for, inspect, takes extracts from and make copies of any document that relates to:

(i) the loading, dumping or incineration at sea of any controlled material; or

(ii) the export of any controlled material that is to be dumped into the sea or incinerated at sea; or

(iii) any controlled material that is to be placed as part of an artificial reef placement;

(c) to inspect, and take samples of:

(i) any controlled material; or

Authorised Version C2021C00058 registered 02/02/2021

(ii) any controlled material that is to be placed as part of an artificial reef placement;

(d) to observe:

(i) the loading on a vessel, aircraft or platform of any controlled material that is to be dumped into the sea or incinerated at sea; or

(ii) the dumping into the sea, or the incineration at sea, of any controlled material; or

(iii) an artificial reef placement.

(2) For the purposes of carrying out his or her functions under subsection (1), an inspector may break open any hold or compartment, or any container or other receptacle, on a vessel, aircraft or platform or on any premises.

32 Powers of arrest of inspectors

(1) An inspector may, without warrant, arrest any person, if the inspector believes on reasonable grounds that:

(a) the person is committing or has committed an offence against this Act; and

(b) proceedings against the person by summons would not be effective.

(2) Where an inspector (other than a member of a police force, or officer of Customs, who is in uniform) arrests a person under subsection (1), the inspector shall:

(a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of that police force; or

(aa) in the case of an officer of Customs—produce, for inspection by that person, written evidence of the fact that the officer is an officer of Customs; or

(b) in any other case—produce his or her identity card for inspection by that person.

(3) Where a person is arrested under subsection (1), an inspector shall forthwith bring the person, or cause him or her to be brought,

Authorised Version C2021C00058 registered 02/02/2021

before a magistrate or other proper authority to be dealt with in accordance with law.

(4) Nothing in this section prevents the arrest of a person in accordance with any other law.

33 Injunction

(1) A prescribed court of a State or Territory may:

(a) upon application by the Attorney-General or by an interested person, grant an injunction restraining a person from engaging in conduct that constitutes, or would constitute, an offence against section 10A, 10B, 10C, 10D or 10E; and

(b) make any order incidental or supplementary to an order made on an application under paragraph (a), including an order as to costs.

(2) The reference in paragraph (1)(a) to an interested person shall be read as including a reference to a person whose use or enjoyment of any part of the sea, or of the air space above, or of the seabed or subsoil beneath, any part of the sea, is, or is likely to be, adversely affected by the conduct concerned.

(3) The reference in paragraph (1)(a) to engaging in conduct shall be read as including a reference to:

(a) doing, refusing to do or refraining from doing, any act or thing; or

(b) causing or permitting another person to do, refuse to do or refrain from doing, any act or thing.

(4) Each prescribed court of a State is invested with federal jurisdiction, and jurisdiction is conferred, to the extent that the Constitution permits, on each prescribed court of a Territory, to hear and to determine proceedings instituted in that court under this section.

(4A) This section, so far as it relates to the Supreme Court of Norfolk Island, has effect subject to section 60AA of the *Norfolk Island Act 1979*.

Authorised Version C2021C00058 registered 02/02/2021

(5) In this section, ***prescribed court***, in relation to a State or Territory, means a court of the State or Territory that is declared by the regulations to be a prescribed court in relation to the State or Territory, as the case may be, for the purposes of this section.

34 Delegation

(1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him or her, delegate to a person all or any of his or her powers under this Act, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.

(3) A delegation under this section does not prevent the exercise of a power by the Minister.

35 False statements

(1) A person who, in, or in connection with, an application for a permit:

(a) makes a statement that, to his or her knowledge, is false or misleading in a material particular; or

(b) furnishes to an officer or other person doing duty in relation to this Act a document that, to the knowledge of the first-mentioned person, contains information that is false or misleading in a material particular;

commits an offence against this subsection punishable, on conviction, by imprisonment for a term not exceeding 2 years.

(2) A person who:

(a) makes to an inspector doing duty in relation to this Act a statement that, to the knowledge of the person, is false or misleading in a material particular; or

(b) furnishes to an inspector doing duty in relation to this Act a document that, to the knowledge of the person, contains

Authorised Version C2021C00058 registered 02/02/2021

information that is false or misleading in a material particular;

commits an offence against this subsection punishable, on conviction, by imprisonment for up to 1 year or a fine up to 60 penalty units, or both.

36 Compliance with conditions of permit

(1) The holder of a permit commits an offence against this section if:

(a) the holder does an act that constitutes a contravention of a condition imposed in respect of the permit; and

(b) at the time of that act, the holder knows of the existence of that condition, or is reckless as to the existence of that condition.

(2) An offence against this section is punishable, on conviction, by imprisonment for up to 1 year or a fine up to 250 penalty units, or both.

(3) In this section:

act includes omission.

37 Indictable offences

(1) An offence against section 10A, 10B, 10C, 10D, 10E or 10F or subsection 17(5), 35(1), 35(2) or 36(1) is an indictable offence.

(2) Even though an offence referred to in subsection (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings for such an offence if:

(a) the court is satisfied that it is proper to do so; and

(b) the defendant and the prosecutor consent.

(3) The penalty that a court of summary jurisdiction may impose for an offence against section 10A, 10B, 10C, 10D, 10E or 10F is as follows:

Authorised Version C2021C00058 registered 02/02/2021

(a) if it is proved that any of the offending material is seriously harmful material—imprisonment for up to 2 years or a fine up to 240 penalty units, or both;

(b) if it is proved that any of the offending material is not within Annex 1 to the Protocol—imprisonment for up to 1 year or a fine up to 120 penalty units, or both;

(c) in any other case—imprisonment for up to 6 months or a fine up to 60 penalty units, or both.

(4) The penalty that a court of summary jurisdiction may impose for an offence against subsection 17(5) or 35(1) is imprisonment for up to 1 year or a fine up to 60 penalty units, or both.

(5) The penalty that a court of summary jurisdiction may impose for an offence against subsection 35(2) is imprisonment for up to 6 months or a fine up to 30 penalty units, or both.

(6) The penalty that a court of summary jurisdiction may impose for an offence against subsection 36(1) is imprisonment for up to 6 months or a fine up to 60 penalty units, or both.

37A No time limit for prosecution

A prosecution for an offence against this Act may be brought at any time.

38 Evidence

(1) In any proceedings for an offence against this Act:

(a) any record kept in pursuance of the regulations is admissible as prima facie evidence of the facts stated in the record;

(b) a copy of an entry in such a record, being a copy certified by the person by whom the record is required to be kept to be a true copy of the entry, is admissible as prima facie evidence of the facts stated in the entry; and

(c) a document purporting to be a record kept in pursuance of the regulations, or purporting to be such a certified copy as is referred to in paragraph (b), shall, unless the contrary is

Authorised Version C2021C00058 registered 02/02/2021

established, be deemed to be such a record or certified copy, as the case may be.

(2) In any proceedings for an offence against this Act, evidence of the result of finding out a distance or position by means of an electronic, optical or other device ordinarily used for finding out such a distance or position is prima facie evidence of the distance or position.

(3) In any proceedings for an offence against this Act, evidence by an inspector that he or she believes that a place or area is within Australian waters is prima facie evidence that the place or area is within Australian waters.

(4) The Minister may give a certificate stating any of the following:

(a) that a permit was granted to a specified person on a specified day;

(b) that a specified permit contained specified terms;

(ba) that a specified permit was revoked, suspended or varied on a specified day;

(bb) that the suspension of a specified permit was cancelled on a specified day;

(c) that specified conditions were imposed in respect of a specified permit;

(d) that a specified condition imposed in respect of a specified permit was revoked, suspended or varied on a specified day;

(e) that the suspension of a specified condition imposed in respect of a specified permit was cancelled on a specified day;

(f) that a specified notice containing specified terms was served on the holder of a specified permit on a specified day;

(g) that Australian waters did, or did not, at a particular time include the top hat area referred to in section 4A;

and the certificate is prima facie evidence of the matters stated in it.

Authorised Version C2021C00058 registered 02/02/2021

39 Evidence of analyst

(1) The Minister may appoint a person to be an analyst for the purposes of this Act.

(2) Subject to subsection (4), a certificate signed by an analyst appointed under subsection (1) setting out, in relation to a substance, one or more of the following:

(a) that he or she is appointed as the analyst under subsection (1);

(b) when and from whom the substance was received;

(c) what labels or other means of identification accompanied the substance when it was received;

(d) what container the substance was in when it was received;

(e) a description, including the weight, of the substance when it was received;

(f) the name of any method used to analyse the substance or any portion of it;

(g) the results of any such analysis;

(h) how the substance was dealt with after handling by the analyst, including details of:

(i) the quantity of the substance retained after analysis; and

(ii) names of any person to whom any of the retained substance was given after analysis; and

(iii) measures taken to secure any retained quantity of the substance after analysis;

is admissible in any proceeding for an offence against this Act as prima facie evidence of the matters in the certificate and the correctness of the results of the analysis.

(3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

(4) A certificate shall not be admitted in evidence in pursuance of subsection (2) in proceedings for an offence unless the person

Authorised Version C2021C00058 registered 02/02/2021

charged with the offence has been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings.

40 Fees

(1) The regulations may prescribe the fees to be paid in respect of an application for a permit or of any other application under this Act.

(2) A fee prescribed in respect of an application under this Act shall be paid when the application is made or at such other time (if any) as is prescribed and, if the fee is not so paid, the application shall be deemed not to be duly made.

(3) The Minister may, if he or she considers it necessary or desirable to do so, waive or remit the payment of any fee payable in respect of an application and, if he or she does so, subsection (2) does not apply in relation to that application.

(4) The Minister may, if he or she considers it necessary or desirable to do so, waive or remit the payment of part of any fee payable in respect of an application and, if the Minister does so, the fee prescribed in respect of the application shall, for the purposes of subsection (2), be taken to be reduced by the amount waived or remitted.

41 Regulations

(1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular:

(a) providing for the manner of service of notices under this Act; and

(b) providing for the imposition of penalties not exceeding 10 penalty units.

(2) Regulations under subsection (1) may declare that a specified area of sea on the seaward side of the territorial sea of Australia or the

Authorised Version C2021C00058 registered 02/02/2021

territorial sea of an external Territory is included in Australian waters for the purposes of this Act.

(3) Before the Governor-General makes a regulation prescribing material for the purposes of paragraph (b) of the definition of ***seriously harmful material*** in subsection 4(1), the Minister must be satisfied that the material is capable of causing serious harm to the marine environment.

(4) The Minister may be satisfied that material is capable of causing serious harm to the marine environment even though there is no conclusive evidence to prove a causal relationship between the input of the material into the marine environment and serious harm to the marine environment.

(5) For the purposes of subsection (3), the Minister must have regard to the principle that material should be prescribed as seriously harmful material if there is reason to believe that the material is likely to cause serious harm to the marine environment even though there is no conclusive evidence to prove a causal relationship between the input of the material into the marine environment and serious harm to the marine environment.

Authorised Version C2021C00058 registered 02/02/2021

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Authorised Version C2021C00058 registered 02/02/2021

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

Authorised Version C2021C00058 registered 02/02/2021

Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

Authorised Version C2021C00058 registered 02/02/2021

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Environment Protection (Sea Dumping) Act 1981	101, 1981	24 June 1981	6 Mar 1984 (*see Gazette* 1984, No. S85)	
Environment Protection (Sea Dumping) Amendment Act 1986	141, 1986	9 Dec 1986	6 Jan 1987	—
Arts, Territories and Environment Legislation Amendment Act 1989	60, 1989	19 June 1989	ss. 11 and 13: 7 Dec 1988 Part 5 (ss. 14, 15): 11 May 1989 (*see* s. 2(3) and *Gazette* 1989, No. S164) Remainder: Royal Assent	—
as amended by				
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 3 (item 3): 19 June 1989 (s 2(3))	—
Arts, Sport, Environment and Territories Legislation Amendment Act 1992	21, 1992	10 Apr 1992	8 May 1992	—
Environment Protection (Sea Dumping) Amendment Act 1993	16, 1994	19 Jan 1994	19 Jan 1995	s. 4(2)–(5)
Environment, Sport and Territories Legislation Amendment Act 1997	118, 1997	7 July 1997	Schedule 1 (items 27–35): Royal Assent	Sch. 1 (item 30)
Environmental Reform (Consequential Provisions) Act 1999	92, 1999	16 July 1999	Schedule 3 (items 38–40): 16 July 2000 (*see* s. 2(1))	Sch. 3 (item 40)

Authorised Version C2021C00058 registered 02/02/2021

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Environment and Heritage Legislation Amendment Act 2000	107, 2000	19 July 2000	16 Aug 2000	ss. 4 and 5
Environmental Legislation Amendment Act 2001	118, 2001	18 Sept 2001	Schedule 2 (item 1): Royal Assent	—
Environment and Heritage Legislation Amendment Act (No. 1) 2006	165, 2006	12 Dec 2006	Schedule 1 (items 852, 853): 1 Jan 2007 (*see* F2006L04046)	—
Customs Legislation Amendment (Name Change) Act 2009	33, 2009	22 May 2009	Schedule 2 (items 25–29): 23 May 2009	—
Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010	4, 2010	19 Feb 2010	Schedule 11 (item 8): 20 Feb 2010	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Schedule 5 (item 48): Royal Assent	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 563–565) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Statute Law Revision Act 2013	103, 2013	29 June 2013	Schedule 3 (items 109, 110, 343): Royal Assent	Sch. 3 (item 343)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 4 (items 81, 82): 24 June 2014	—

Authorised Version C2021C00058 registered 02/02/2021

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (items 138–141): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 2) 2015	145, 2015	12 Nov 2015	Sch 3 (item 12): 10 Dec 2015 (s 2(1) item 7)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 160): 10 Mar 2016 (s 2(1) item 6)	—
Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019	57, 2019	7 Aug 2019	Sch 1 (items 68–71): 30 Aug 2019 (s 2(1) item 2)	—
National Emergency Declaration (Consequential Amendments) Act 2020	129, 2020	15 Dec 2020	Sch 1 (item 23): 16 Dec 2020 (s 2(1) item 2)	—
Territories Legislation Amendment Act 2020	154, 2020	17 Dec 2020	Sch 1 (item 88): 18 Dec 2020 (s 2(1) item 2)	—

Authorised Version C2021C00058 registered 02/02/2021

Endnote 4—Amendment history

Provision affected	How affected
Title	am No 141, 1986
	rs No 107, 2000
s 4	am No 141, 1986; No 16, 1994; No 118, 1997; No 107, 2000; No 165, 2006; No 33, 2009; No 4, 2010; No 8, 2010; No 46, 2011; No 59, 2015; No 57, 2019
s 4A	ad No 107, 2000
s 4B	ad No 107, 2000
s 4C	ad No 57, 2019
s 5	am No 107, 2000; No 57, 2019
s 7	rs No 107, 2000
s 8	am No 145, 2015
s 8A	ad No 107, 2000
s 9	am No 141, 1986; No 60, 1989 (as am by No 43, 1996); No 16, 1994
	rs No 107, 2000
	am No 103, 2013
s 9A	ad No 141, 1986
	rep No 107, 2000
s 9B	ad No 141, 1986
	rep No 107, 2000
s 9C	ad No 141, 1986
	rep No 107, 2000
s 9D	ad No 141, 1986
	am No 60, 1989; No 16, 1994
	rep No 107, 2000
s 10	am No 141, 1986
	rep No 107, 2000
s 10A	ad No 107, 2000
	am No 4, 2016
s 10B	ad No 107, 2000

Authorised Version C2021C00058 registered 02/02/2021

Endnote 4—Amendment history

Provision affected	How affected
	am No 4, 2016
s 10C	ad No 107, 2000
	am No 4, 2016
s 10D	ad No 107, 2000
	am No 4, 2016
s 10E	ad No 107, 2000
	am No 4, 2016
s 10F	ad No 107, 2000
	am No 4, 2016
s. 11	rep. No. 107, 2000
s. 12	am. No. 141, 1986; No. 16, 1994
	rep. No. 107, 2000
s. 13	am. No. 60, 1989; No. 16, 1994
	rep. No. 107, 2000
s. 14	am. No. 141, 1986; No. 60, 1989; No. 16, 1994
	rep. No. 107, 2000
s. 15	am. No. 141, 1986; No. 16, 1994
	rs. No. 107, 2000
s. 16	am. No. 16, 1994; No. 118, 1997
	rs. No. 107, 2000
s. 17	am. No. 141, 1986; No. 60, 1989; No. 16, 1994; No. 118, 1997; No. 107, 2000; No 4, 2016
s. 18	am. No. 118, 1997; No. 107, 2000
s 19	am No 141, 1986; No 16, 1994; No 118, 1997; No 92, 1999; No 107, 2000; No 118, 2001; No 129, 2020
s. 20	am. No. 118, 1997
s. 22	rep. No. 141, 1986
s. 23	am. No. 118, 1997; No. 107, 2000
s. 24	am. No. 16, 1994; No. 92, 1999; No. 107, 2000
s. 25	am. No. 107, 2000
s. 27	rs. No. 107, 2000

Authorised Version C2021C00058 registered 02/02/2021

Provision affected	How affected
	am. No. 33, 2009
s 28	am. No. 16, 1994; No. 118, 1997; No. 107, 2000; No. 33, 2009
s 29	am. No. 16, 1994; No. 118, 1997; No. 107, 2000; No. 33, 2009; No 4, 2016
s. 30	am. No. 118, 1997; No. 107, 2000
s. 30A	ad. No. 107, 2000
	am No 31, 2014
s. 31	am. No. 118, 1997; No. 107, 2000
s. 32	am. No. 118, 1997; No. 107, 2000; No. 33, 2009
s 33	am No 141, 1986; No 107, 2000; No 154, 2020
s. 34	am. No. 118, 1997
s. 35	am. No. 60, 1989; No. 16, 1994; No. 118, 1997; No. 107, 2000; No 4, 2016
s. 36	am. No. 60, 1989; No. 16, 1994
	rs. No. 107, 2000
	am No 4, 2016
s. 37	am. No. 141, 1986; No. 60, 1989; No. 16, 1994
	rs. No. 107, 2000
s. 37A	ad. No. 60, 1989
s. 38	am. No. 60, 1989; No. 107, 2000
	ed C21
s. 39	am. No. 21, 1992
	ed C21
s. 40	am. No. 60, 1989; No. 118, 1997
s. 41	am. No. 60, 1989; No. 16, 1994; No. 107, 2000
Schedule 1	rs. No. 107, 2000
	rep. No. 165, 2006
Schedule 2	rep. No. 107, 2000
Schedule 3	rep. No. 107, 2000
Schedule 3A	ad. No. 118, 1997
	rep. No. 107, 2000

Authorised Version C2021C00058 registered 02/02/2021

Endnote 4—Amendment history

Provision affected	How affected
Schedule 3B	ad. No. 118, 1997
	rep. No. 107, 2000
Schedule 3C	ad. No. 118, 1997
	rep. No. 107, 2000
Schedule 4	ad. No. 16, 1994
	rep. No. 107, 2000

Authorised Version C2021C00058 registered 02/02/2021

Endnote 5—Editorial changes

In preparing this compilation for registration, the following kinds of editorial change(s) were made under the *Legislation Act 2003*.

Section 38 and subsection 39(2)

Kind of editorial change

Changes to typeface

Details of editorial change

This compilation was editorially changed to update all occurrences of the italicised words *prima facie* to regular font.

Authorised Version C2021C00058 registered 02/02/2021