

Protection of the Sea (Prevention of Pollution from Ships) Act 1983

Act No. 41 of 1983 as amended

This compilation was prepared on 27 May 2004  
taking into account amendments up to Act No. 47 of 2003

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be   
affected by application provisions that are set out in the Notes section

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An Act relating to the protection of the sea from pollution by oil and other harmful substances discharged from ships

## Part I—Preliminary

##### 1 Short title [*see* Note 1]

This Act may be cited as the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

##### 2 Commencement [*see* Note 1]

(1) Sections 1 and 2 shall come into operation on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act shall come into operation on such respective dates as are fixed by Proclamation.

##### 3 Interpretation

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

***Antarctic Area*** means the sea area south of 60º south latitude.

***Antarctic Protocol*** means the Protocol on Environmental Protection to the Antarctic Treaty.

***Australia*** includes the external Territories.

***Australian ship*** means:

(a) a ship registered in Australia; or

(b) an unregistered ship having Australian nationality.

***Authority*** means the Australian Maritime Safety Authority established by the *Australian Maritime Safety Authority Act 1990*.

***exclusive economic zone*** means the exclusive economic zone, within the meaning of the *Seas and Submerged Lands Act 1973*, adjacent to the coast of Australia or the coast of an external Territory.

***foreign ship*** means a ship that is not an Australian ship.

***inspector*** means a person who:

(a) is a surveyor for the purpose of the  *Navigation Act 1912*; or

(aa) is a member or a special member of the Australian Federal Police; or

(b) is appointed by the Authority, in writing, to be an inspector for the purposes of this Act.

***Law of the Sea Convention*** means the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982.

***master***, in relation to a ship, means the person having command or charge of the ship.

***State*** includes the Northern Territory.

***territorial sea*** means the territorial sea of Australia.

***the Convention*** means the 1973 Convention as modified and added to by the 1978 Protocol.

***the 1973 Convention*** means the International Convention for the Prevention of Pollution from Ships, 1973, as corrected by the Procès‑Verbal of Rectification dated 13 June 1978, and as affected by any amendments (other than an amendment not accepted by Australia) made under Article 16 of the Convention.

***the 1978 Protocol*** means the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, being the Protocol as affected by any amendments (other than an amendment not accepted by Australia) made under Article VI of the Protocol.

***the regulations***, except in sections 33 and 34 or to the extent that the regulations provide otherwise, includes orders made under section 34.

***this Act*** includes the regulations and orders made under section 34.

***Tonnage Measurement Convention*** has the same meaning as in Part XA of the *Navigation Act 1912*.

(1A) A reference in this Act to the sea near a State shall be read as a reference to:

(a) the territorial sea of Australia adjacent to the State; and

(b) the sea on the landward side of the territorial sea of Australia adjacent to the State.

(1AA) A reference in this Act to the sea near the Jervis Bay Territory shall be read as a reference to the sea in that Territory.

(1B) A reference in this Act to the sea near an external Territory shall be read as a reference to:

(a) the territorial sea adjacent to the Territory; and

(b) the sea on the landward side of the territorial sea adjacent to the Territory.

(1BA) For the purposes of this Act, the laws of the Jervis Bay Territory shall be taken to include laws, other than this Act, in force in that Territory.

(2) A reference in a section of this Act to a prescribed officer is a reference to the Authority or such person, or the holder of such office in the Authority, as is prescribed for the purposes of that section.

(3) Except in so far as the contrary intention appears, an expression that is used in this Act and in the Convention, otherwise than in an annex to the Convention, (whether or not a particular meaning is assigned to it by the Convention) has, in this Act, the same meaning as in the Convention.

(4) Where, at any time, the gross tonnage applicable to a ship has been determined otherwise than in accordance with the Tonnage Measurement Convention, then, in the application of this Act to the ship at that time, a reference in this Act to the gross tonnage of a ship not expressed in tons shall be taken to be a reference to the gross tonnage of the ship expressed in tons.

##### 4 Act to bind Crown

(1) This Act binds the Crown in right of the Commonwealth, of each of the States and of Norfolk Island.

(2) Nothing in this Act renders the Commonwealth or a State or Territory liable to be prosecuted for an offence.

(3) Subsection (2) does not affect any liability of any servant or agent of the Commonwealth or of a State or Territory to be prosecuted for an offence.

##### 5 Saving of other laws

(1) This Act shall be read and construed as being in addition to, and not in derogation of or in substitution for, any other law of the Commonwealth.

(2) This Act, other than sections 9, 11, 21, 22, 26AB, 26D and 26F, shall be read and construed as being in addition to, and not in derogation of or in substitution for any law of a State or of an external Territory.

##### 6 Operation of Act

This Act applies both within and outside Australia and extends to every external Territory and to the exclusive economic zone.

##### 7 Application of the *Criminal Code*

Chapter 2 (other than Part 2.5) of the *Criminal Code* applies to all offences created by this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## Part II—Prevention of pollution by oil

##### 8 Interpretation

Except in so far as the contrary intention appears, an expression that is used in this Part and in Annex I to the Convention (whether or not a particular meaning is assigned to it by that Annex) has, in this Part, the same meaning as in that Annex.

##### 9 Prohibition of discharge of oil or oily mixtures into sea

(1) If:

(a) a person engages in conduct that causes a discharge of oil or of an oily mixture from a ship into the sea; and

(b) the person is reckless or negligent as to causing the discharge by that conduct; and

(c) one of the following subparagraphs applies:

(i) the discharge occurs into the sea near a State, the Jervis Bay Territory or an external Territory and there is no law of that State or Territory that makes provision giving effect to Regulations 9 and 11 of Annex I to the Convention in relation to that sea;

(ii) the discharge occurs into the sea in the exclusive economic zone;

(iii) the discharge occurs into the sea beyond the exclusive economic zone and the ship is an Australian ship;

the person commits an offence punishable, on conviction, by a fine not exceeding 2,000 penalty units.

(1A) In subsection (1):

***engage in conduct*** has the same meaning as in the *Criminal Code*.

(1B) Subject to subsections (2) and (4), if:

(a) oil or an oily mixture is discharged from a ship into the sea; and

(b) one of the following subparagraphs applies:

(i) the discharge occurs into the sea near a State, the Jervis Bay Territory or an external Territory and there is no law of that State or Territory that makes provision giving effect to Regulations 9 and 11 of Annex I to the Convention in relation to that sea;

(ii) the discharge occurs into the sea in the exclusive economic zone;

(iii) the discharge occurs into the sea beyond the exclusive economic zone and the ship is an Australian ship;

the master and the owner of the ship each commit an offence punishable, on conviction, by a fine not exceeding 500 penalty units.

(1C) An offence against subsection (1B) is an offence of strict liability.

(2) Subsection (1B) does not apply to the discharge of oil or of an oily mixture from a ship:

(c) for the purpose of securing the safety of a ship or saving life at sea; or

(d) if the oil or oily mixture, as the case may be, escaped from the ship in consequence of non‑intentional damage to the ship or its equipment, and all reasonable precautions were taken after the occurrence of the damage or the discovery of the discharge for the purpose of preventing or minimizing the escape of oil or oily mixture, as the case may be; or

(e) in the case of an oily mixture, if the discharge was for the purpose of combating specific pollution incidents in order to minimize the damage from pollution and was approved by a prescribed officer and, where the discharge occurred in the jurisdiction of the government of a country other than Australia, by that government.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(3) For the purposes of paragraph (2)(d), damage to a ship or to its equipment is not non‑intentional damage if the damage:

(a) arose in circumstances where the master or owner of the ship:

(i) acted with intent to cause the damage; or

(ii) acted recklessly and with knowledge that the damage would probably result; or

(b) arose as a result of the negligence of the master or owner of the ship.

(3A) For the purposes of this section, ***damage*** to a ship or to its equipment does not include:

(a) deterioration resulting from failure to maintain the ship or equipment; or

(b) defects that develop during the normal operation of the ship or equipment.

(4) Without limiting the generality of subsection (2) but subject to subsection (5), subsection (1B) does not apply to:

(a) the discharge from an oil tanker of oil or an oily mixture, not being oil or an oily mixture of the kind referred to in paragraph (c), if the following conditions are satisfied:

(i) the oil tanker is not within a special area and is more than 50 nautical miles from the nearest land;

(ii) the oil tanker is proceeding *en route*;

(iii) the instantaneous rate of discharge of oil content does not exceed 30 litres per nautical mile;

(iv) the total quantity of oil discharged into the sea does not exceed:

(A) in the case of an oil tanker that is an existing tanker—one part in 15,000 parts of the total quantity of the cargo of oil of which oil discharged formed a part; or

(B) in the case of an oil tanker that is a new tanker—one part in 30,000 parts of the total quantity of the cargo of oil of which oil discharged formed a part;

(v) the oil tanker has in operation an oil discharge monitoring and control system and a slop tank arrangement as required by regulations made by virtue of section 267A of the *Navigation Act 1912*;

(b) the discharge from a ship that is not an oil tanker of oil or an oily mixture if the following conditions are satisfied:

(i) the ship is not within a special area;

(ii) the ship is proceeding *en route*;

(iii) the oil content of the effluent is less than 15 parts in 1,000,000 parts;

(iv) the ship has in operation equipment as required by regulations made by virtue of section 267A of the *Navigation Act 1912*;

(c) the discharge from an oil tanker of oil or an oily mixture, being oil or an oily mixture that is from the machinery space bilges (other than the cargo pump room bilges) of the oil tanker and does not include oil cargo residue, if the conditions specified in paragraph (b) are satisfied in relation to the discharge;

(d) the discharge from an oil tanker, or another ship that has a gross tonnage of 400 or more, of an unprocessed oily mixture, not being an oily mixture that originated from the cargo pump room bilges of the ship or includes oil cargo residue, if the following conditions are satisfied:

(i) the ship is not within a special area;

(ii) the oil content of the unprocessed oily mixture without dilution is not more than 15 parts in 1,000,000 parts;

(e) subject to subsection (4A), the discharge of oil or an oily mixture from a machinery space bilge of a ship that has a gross tonnage of 400 or more if:

(i) the ship was delivered before 6 July 1993; and

(ii) the oil or oily mixture did not originate from a cargo pump‑room bilge; and

(iii) the oil or oily mixture is not mixed with oil cargo residues; and

(iv) the ship is not within a special area; and

(v) the ship is more than 12 nautical miles from the nearest land; and

(vi) the ship is proceeding *en route*; and

(vii) the oil content of the effluent is less than 100 parts per 1,000,000 parts; and

(viii) the ship has in operation oily‑water separating equipment as required by regulations made by virtue of section 267A of the *Navigation Act 1912*;

(g) the discharge within a special area from an oil tanker, or another ship that has a gross tonnage of 400 or more, of processed bilge water from machinery spaces, not being bilge water that originated from the cargo pump room bilges of the ship or includes oil cargo residue, if the following conditions are satisfied:

(i) the ship is proceeding *en route*;

(ii) the oil content of the effluent without dilution is not more than 15 parts in 1,000,000 parts;

(iii) the ship has in operation oil filtering equipment as required by regulations made by virtue of section 267A of the *Navigation Act 1912*;

(iv) the oil filtering equipment is equipped with a stopping device that automatically prevents any discharge of effluent when the oil content of the effluent without dilution is more than 15 parts in 1,000,000 parts;

(h) the discharge, within a special area from a ship that has a gross tonnage of less than 400 and is not an oil tanker of oil or an oily mixture, if the oil content of the effluent without dilution is less than 15 parts in 1,000,000 parts; or

(k) the discharge from a ship of clean or segregated ballast.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(4A) Paragraph (4)(e) does not apply after:

(a) 6 July 1998; or

(b) the date on which the ship is fitted with equipment of a kind described in Regulation 16 of the amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973;

whichever is the earlier.

(5) A reference to an oily mixture in subsection (4) shall be read as not including a reference to an oily mixture that contains:

(a) chemicals or other substances in quantities or concentrations that are hazardous to the marine environment; or

(b) chemicals or other substances that have been introduced for the purpose of attempting to prevent the application of subsection (1) to the discharge of an oily mixture from a ship.

##### 10 Prohibition of discharge of oil residues into sea

(1) If:

(a) a person engages in conduct that causes a discharge from an Australian ship of an oil residue into the sea; and

(b) the person is reckless or negligent as to causing the discharge by that conduct; and

(c) such a discharge cannot occur without the commission of an offence against subsection 9(1) or (1B) or of an offence against a law of a State or Territory;

the person commits an offence punishable, on conviction, by a fine not exceeding 2,000 penalty units.

(2) In subsection (1):

***engage in conduct*** has the same meaning as in the *Criminal Code*.

(3) If:

(a) an oil residue is discharged from an Australian ship into the sea; and

(b) such a discharge cannot occur without the commission of an offence against subsection 9(1) or (1B) or of an offence against a law of a State or Territory;

the master and the owner of the ship each commit an offence punishable, on conviction, by a fine not exceeding 500 penalty units.

(4) An offence against subsection (3) is an offence of strict liability.

##### 11 Duty to report certain incidents involving oil or oily mixture

(1A) This section does not apply in relation to prescribed incidents that occur in the sea near a State, the Jervis Bay Territory or an external Territory to the extent that a law of that State or Territory makes provision giving effect to Protocol I to the Convention in relation to those prescribed incidents.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(1B) This section does not apply in relation to a prescribed incident that occurs in relation to a foreign ship unless the incident occurs in the sea near a State, the Jervis Bay Territory or an external Territory or in the exclusive economic zone.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(1) Where a prescribed incident occurs in relation to a ship, the master of the ship shall, without delay, notify, in the prescribed manner:

(a) where Australia or an external Territory is the nearest coastal State to the place where the incident occurred—a prescribed officer; or

(b) where a foreign country is the nearest coastal State to that place—the government of that foreign country;

of the incident.

Penalty: 500 penalty units.

(2) Subsection (1) does not apply in relation to a prescribed incident in relation to a ship if the master of the ship was unable to comply with the subsection in relation to the incident.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(3) Where a prescribed incident occurs in relation to a ship and:

(a) the master of the ship fails to comply with subsection (1) (whether or not the master is able to comply with that subsection) in relation to the incident; or

(b) the incident occurs in circumstances in which the ship is abandoned;

the owner, charterer, manager or operator of the ship or an agent of the owner, charterer, manager or operator of the ship shall, without delay, notify, in the prescribed manner:

(c) where Australia or an external Territory is the nearest coastal State to the place where the incident occurred—a prescribed officer; or

(d) where a foreign country is the nearest coastal State to that place—the government of that foreign country;

of the incident, and, if a prescribed officer or a government, as the case may be, is not so notified, each of those persons is guilty of an offence punishable, upon conviction, by a fine not exceeding 500 penalty units.

(3A) An offence under subsection (3) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(4) Subsection (3) does not apply to a person in relation to a prescribed incident in relation to a ship if:

(a) the person was not aware of the incident; or

(b) in the case of a prescribed incident to which paragraph (3)(a) applies—the person neither knew nor suspected that the master of the ship had not complied with subsection (1) in relation to the incident.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(5) Subsection (4) shall not be taken to limit by implication any defence that would, but for that subsection, be available to a person charged with an offence against subsection (3).

(6) A master of a ship who, pursuant to subsection (1), has notified a prescribed officer or a government of the occurrence of a prescribed incident shall, if so requested by a prescribed officer or that government, as the case may be, furnish, within the prescribed time, a report to a prescribed officer or that government, as the case may be, in relation to the incident in accordance with the prescribed form.

Penalty: 200 penalty units.

(7) Where subsection (3) applies in relation to a prescribed incident in relation to a ship, a person who, pursuant to that subsection, has notified a prescribed officer or a government of the occurrence of the prescribed incident shall, if so requested by a prescribed officer or that government, as the case may be, furnish, within the prescribed time, a report to a prescribed officer or that government, as the case may be, in relation to the incident in accordance with the prescribed form.

Penalty: 200 penalty units.

(8) A person shall not, in a notice given to a prescribed officer or a government pursuant to subsection (1) or (3) or in a report furnished to a prescribed officer or a government pursuant to subsection (6) or (7), make a statement that is false or misleading in a material particular.

Penalty: 200 penalty units.

(9) A notice given to a prescribed officer or a government pursuant to subsection (1) or (3), and a report furnished to a prescribed officer or a government pursuant to subsection (6) or (7), shall not, without the consent of the person charged, be admitted in evidence in a prosecution for an offence against subsection 9(1).

(10) In this section:

***prescribed incident***, in relation to a ship, means:

(a) an incident involving a discharge from the ship of oil or an oily mixture, not being a discharge to which subsection 9(4) applies; or

(b) an incident involving the probability of a discharge from the ship of oil or an oily mixture, not being a discharge to which subsection 9(4) would apply; or

(c) if the ship is 15 metres or more in length—an incident (including, but not limited to, collision, grounding, fire, explosion, structural failure, flooding and cargo shifting) involving damage, failure or breakdown that affects the safety of the ship; or

(d) if the ship is 15 metres or more in length—an incident (including, but not limited to, failure or breakdown of steering gear, propulsion plant, electrical generating system and essential shipborne navigational aids) involving damage, failure or breakdown that impairs the safety of navigation of the ship.

##### 11A Shipboard oil pollution emergency plan

(1) This section applies to:

(a) an Australian ship (whether an oil tanker or not) that has a gross tonnage of 400 or more; and

(b) an Australian ship that is an oil tanker with a gross tonnage of less than 400 but not less than 150.

(2) In this section:

***prescribed incident***, in relation to a ship, has the same meaning as in section 11.

(3) There must be kept on board a ship to which this section applies a shipboard oil pollution emergency plan written in the working language of the master of, and the officers on board, the ship.

(4) A shipboard oil pollution emergency plan must be in accordance with the prescribed form and set out the following particulars:

(a) the procedure to be followed by the master, or any other person having charge, of the ship in notifying a prescribed incident in relation to the ship;

(b) a list of the authorities or persons that are to be notified by persons on the ship if a prescribed incident occurs in relation to the ship;

(c) a detailed description of the action to be taken, immediately after a prescribed incident, by persons on board the ship to reduce or control any discharge from the ship resulting from the incident;

(d) the procedures to be followed for co‑ordinating with the authorities or persons that have been contacted (whether in Australia or in a country near to the place where the incident occurred) any action taken in combating the pollution caused by the incident and, in particular, the person on board the ship through whom all communications are to be made.

(5) The procedure referred to in paragraph (4)(a) must be in accordance with the regulations prescribing, for the purposes of subsection 11(1), the manner in which a prescribed incident is to be notified.

(6) Subsection (4) does not prevent other relevant particulars from being included in the shipboard oil pollution emergency plan.

(7) If a ship to which this section applies does not have on board a shipboard oil pollution emergency plan, the master of the ship and the owner of the ship are each guilty of an offence punishable on conviction by a fine not exceeding 500 penalty units.

(8) An offence under subsection (7) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

##### 12 Oil record book

(1) This section applies to an Australian ship that:

(a) is an oil tanker; or

(b) has a gross tonnage of 400 or more and is not an oil tanker.

(2) Every ship to which this section applies shall carry such oil record books as are required by the regulations to be carried on the ship.

(3) An oil record book shall be in accordance with the appropriate prescribed form with provision made for a signature, in accordance with subsection (6), in relation to each entry made in it and for a signature, in accordance with subsection (7), in relation to each page of it.

(4) Where a ship to which this section applies does not carry an oil record book as required by this section, the master and the owner of the ship are each guilty of an offence punishable, upon conviction, by a fine not exceeding 200 penalty units.

(4A) An offence under subsection (4) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(5) Whenever a prescribed operation or prescribed occurrence is carried out or occurs in, or in relation to, a ship to which this section applies, the master of the ship shall make, without delay, appropriate entries in, or cause appropriate entries to be made, without delay, in, the ship’s oil record book, being entries in accordance with subsection (6).

Penalty: 200 penalty units.

(6) An entry in a ship’s oil record book:

(a) shall be made in the English language; and

(b) shall be signed by the master of the ship and, in the case of an entry made in relation to a prescribed operation, by the officer or other person in charge of the operation.

(7) Where a page of a ship’s oil record book is completed, the master of the ship shall, without delay, sign the page.

Penalty for a contravention of this subsection: 200 penalty units.

##### 13 False entries in oil record book

A person shall not make, in an oil record book of a ship to which section 12 applies, an entry that is false or misleading in a material particular.

Penalty: 200 penalty units.

##### 14 Oil record book to be retained

(1) An oil record book of a ship to which section 12 applies shall be retained in the ship until the expiration of a period of one year after the day on which the last entry was made in the book and shall be readily available for inspection at all reasonable times.

(2) Where an oil record book is not retained in a ship in accordance with subsection (1), the master and the owner of the ship are each guilty of an offence punishable, upon conviction, by a fine not exceeding 200 penalty units.

(2A) An offence under subsection (2) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) The owner of a ship to which section 12 applies shall cause each of the ship’s oil record books to be retained:

(a) in the ship; or

(b) at the registered office of the owner;

until the expiration of the period of 2 years next following the expiration of the period during which the book is required to be retained in the ship by virtue of subsection (1) and shall be readily available for inspection at all reasonable times.

Penalty: 200 penalty units.

(5) The owner of a ship to which section 12 applies who resides in Australia, or has an office or agent in Australia, may from time to time furnish to a prescribed officer notice, in writing, of an address, being the address of:

(a) the place at which he or she so resides;

(b) his or her office in Australia or, if he or she has more than one office in Australia, his or her principal office in Australia; or

(c) the office or place of residence of his or her agent or, if his or her agent has more than one office in Australia, the principal office in Australia of his or her agent;

and the place or office of which an address is furnished for the time being under this subsection is the registered office of the owner of the ship for the purposes of subsection (3).

(6) Where the owner of a ship to which section 12 applies does not reside in Australia and does not have an office or agent in Australia, the owner may deposit an oil record book of the ship with a prescribed officer and, while the book is so deposited, the book shall, for the purposes of subsection (3), be deemed to be retained at the registered office of the owner.

##### 14A Power to require discharge of oil or oily mixture at a reception facility

(1) A prescribed officer may require the owner or master of a ship, by written notice given to the owner or master, as the case may be, to cause a specified quantity of oil or of an oily mixture to be discharged within a specified period from the ship to a specified facility that is suitable to receive that quantity of the oil or oily mixture if the officer has reason to believe that retention of the oil or oily mixture would create a risk of discharge from the ship into the sea.

(2) The owner or master of a ship to whom a notice is given under subsection (1) must comply with the notice.

Penalty: 500 penalty units.

## Part III—Prevention of pollution by noxious substances

##### 15 Interpretation

(1) In this Part:

***Annex II*** means Annex II to the Convention.

***liquid substance*** does not include oil.

***mixture*** includes ballast water, tank washings and other residues.

***oil*** has the same meaning as it has in Part II.

(2) Except in so far as the contrary intention appears, an expression that is used in this Part and in Annex II (whether or not a particular meaning is assigned to it by that Annex) has, in this Part, the same meaning as in that Annex.

##### 16 Application of Act to mixture of oil and liquid substance

Where a mixture contains oil and a liquid substance or oil and liquid substances, Part II and this Part apply in relation to the mixture.

##### 17 Categories of noxious liquid substances

(1) The regulations may declare that a liquid substance specified in the regulations shall, for the purposes of this Act, be deemed to be referred to in Appendix II to Annex II and to be categorized in a category specified in the regulations, being Category A, B, C or D.

(2) Where, in accordance with subsection (1), the regulations declare that a liquid substance shall be deemed to be referred to in Appendix II to Annex II and to be categorized in Category A, the regulations shall declare that, for the purposes of this Act:

(a) a residual concentration specified in the regulations shall be deemed to be the residual concentration prescribed for that substance in Regulation 5(1) of Annex II; and

(b) a residual concentration specified in the regulations shall be deemed to be the residual concentration prescribed for that substance in Regulation 5(7) of Annex II.

(3) The regulations may declare that a liquid substance referred to in Appendix II to Annex II shall, for the purposes of this Act, be deemed not to be so referred to.

(4) The regulations may declare that a liquid substance referred to in Appendix II to Annex II and categorized in a particular category shall, for the purposes of this Act, be deemed not to be so categorized but to be categorized in a category specified in the regulations.

##### 18 Appendix III substances

(1) The regulations may declare that a liquid substance specified in the regulations shall, for the purposes of this Act, be deemed to be referred to in Appendix III to Annex II.

(2) The regulations may declare that a liquid substance referred to in Appendix III to Annex II shall, for the purposes of this Act, be deemed not to be so referred to.

##### 19 Provisional assessment of substances

Where:

(a) a liquid substance is not referred to in Appendix II to Annex II and is not referred to in Appendix III to that Annex; and

(b) the Authority has been notified under section 20 that it is proposed to carry that liquid substance in bulk in a ship;

the Authority may, in writing, declare that, for the purposes of this Act, that liquid substance so carried on that ship shall be taken to be a substance provisionally assessed under the provisions of Regulation 3(4) of Annex II as falling within, and to be a substance in, a category specified in the instrument, being Category A, B, C or D, and that declaration shall have effect accordingly.

##### 20 Notification of proposal to carry certain substances

Where a person who proposes to export or import a liquid substance referred to in paragraph 19(a) proposes to do so by having that liquid substance carried in bulk in a ship, that person or the master of the ship shall, within a prescribed time, notify, in the prescribed manner, a prescribed officer of the proposal and, if a prescribed officer is not so notified of the proposal and the liquid substance is carried as proposed, that person and the master are each guilty of an offence punishable, upon conviction, by a fine not exceeding 200 penalty units.

##### 21 Prohibition of discharge of substances into the sea

(1) If:

(a) a person engages in conduct that causes a discharge of a liquid substance, or of a mixture containing a liquid substance, being a substance or mixture carried as cargo or part cargo in bulk, from a ship into the sea; and

(b) the person is reckless or negligent as to causing the discharge by that conduct; and

(c) one of the following subparagraphs applies:

(i) the discharge occurs into the sea near a State, the Jervis Bay Territory or an external Territory and there is no law of that State or Territory that makes provision giving effect to Regulations 3, 4, 5 and 6 of Annex II to the Convention in relation to that sea;

(ii) the discharge occurs into the sea in the exclusive economic zone;

(iii) the discharge occurs into the sea beyond the exclusive economic zone and the ship is an Australian ship;

the person commits an offence punishable, on conviction, by a fine not exceeding 2,000 penalty units.

(1A) In subsection (1):

***engage in conduct*** has the same meaning as in the *Criminal Code*.

(1B) Subject to subsections (2) and (4) to (12), if:

(a) a liquid substance, or a mixture containing a liquid substance, being a substance or mixture carried as cargo or part cargo in bulk is discharged from a ship into the sea; and

(b) one of the following subparagraphs applies:

(i) the discharge occurs into the sea near a State, the Jervis Bay Territory or an external Territory and there is no law of that State or Territory that makes provision giving effect to Regulations 3, 4, 5 and 6 of Annex II to the Convention in relation to that sea;

(ii) the discharge occurs into the sea in the exclusive economic zone;

(iii) the discharge occurs into the sea beyond the exclusive economic zone and the ship is an Australian ship;

the master and the owner of the ship each commit an offence punishable, on conviction, by a fine not exceeding 500 penalty units.

(1C) An offence against subsection (1B) is an offence of strict liability.

(2) Subsection (1B) does not apply to the discharge of a liquid substance or a mixture from a ship:

(c) for the purpose of securing the safety of a ship or saving life at sea;

(d) if the substance or the mixture, as the case may be, escaped from the ship in consequence of non‑intentional damage to the ship or its equipment, and all reasonable precautions were taken after the occurrence of the damage or the discovery of the discharge for the purpose of preventing or minimizing the escape of the substance or the mixture, as the case may be; or

(e) if the discharge was for the purpose of combating specific pollution incidents in order to minimize the damage from pollution and was approved by a prescribed officer and, where the discharge occurred in the jurisdiction of the government of a country other than Australia, by that government.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(3) For the purposes of subsection (2), damage to a ship or to its equipment is not non‑intentional damage if the damage:

(a) arose in circumstances where the master or owner of the ship:

(i) acted with intent to cause the damage; or

(ii) acted recklessly and with knowledge that the damage would probably result; or

(b) arose as a result of the negligence of the master or owner of the ship.

(3A) For the purposes of this section, ***damage*** to a ship or to its equipment does not include:

(a) deterioration resulting from failure to maintain the ship or equipment; or

(b) defects that develop during the normal operation of the ship or equipment.

(4) Without limiting the generality of subsection (2), (5) or (12) but subject to subsection (13), where:

(a) the tank of a ship that held a substance in Category A or a mixture containing a substance in Category A has been washed in accordance with regulations under section 26;

(b) the resulting residues in the tank have been discharged to a reception facility until the concentration of that substance in the effluent to that facility is, in the opinion of an inspector, at or below the residual concentration prescribed for that substance in Regulation 5(1) of Annex II and until the tank is empty; and

(c) the residue then remaining in the tank has been subsequently diluted by the addition of a volume of water;

subsection (1B) does not apply to the discharge from the ship of the water containing that residue if the following conditions are satisfied:

(d) the discharge is made when the ship is not within a special area;

(e) the discharge is made when the ship is proceeding *en route* at a speed of:

(i) where the ship is self‑propelled, at least 7 knots; or

(ii) where the ship is not self‑propelled, at least 4 knots;

(f) the discharge is made below the water line of the ship taking into account the location of the sea‑water intakes; and

(g) the discharge is made when the ship is at a distance of not less than 12 nautical miles from the nearest land and is in a depth of water of not less than 25 metres.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(5) Without limiting the generality of subsection (2), (4) or (12) but subject to subsection (13), where:

(a) the tank of a ship that held a substance in Category A or a mixture containing a substance in Category A has been washed in accordance with regulations under section 26;

(b) the resulting residues in the tank have been discharged to a reception facility provided in accordance with Regulation 7 of Annex II by a State bordering a special area until the concentration of that substance in the effluent to that facility is, in the opinion of an inspector, at or below the residual concentration prescribed for that substance in Regulation 5(7) of Annex II and until the tank is empty; and

(c) the residue then remaining in the tank has been subsequently diluted by the addition of a volume of water;

subsection (1B) does not apply to the discharge into the sea of the water containing that residue if the conditions specified in paragraphs (4)(e), (f) and (g) are satisfied in relation to the discharge from the ship.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(6) Without limiting the generality of subsection (2), (7) or (12) but subject to subsection (13), subsection (1B) does not apply to the discharge from a ship of:

(a) a substance in Category B; or

(b) a mixture containing a substance in Category B, not being a mixture containing a substance in Category A;

if the following conditions are satisfied:

(c) the discharge is made when the ship is not within a special area;

(d) the discharge is made when the ship is proceeding *en route* at a speed of:

(i) where the ship is self‑propelled, at least 7 knots; or

(ii) where the ship is not self‑propelled, at least 4 knots;

(e) the procedures and arrangements for the discharge have been approved by a prescribed officer, being procedures and arrangements that ensure that the concentration and rate of discharge of the effluent is such that the concentration of the substance in Category B in the wake astern of the ship does not exceed 1 part in 1,000,000 parts;

(f) the maximum quantity of cargo discharged from each tank of the ship (including the associated piping system of the tank) does not exceed the maximum quantity specified in the procedures referred to in paragraph (e), not being a quantity exceeding 1 cubic metre or 1 part in 3,000 parts of the tank capacity in cubic metres, whichever is the greater;

(g) the discharge is made below the water line of the ship, taking into account the location of the sea‑water intakes; and

(h) the discharge is made when the ship is at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 metres.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(7) Without limiting the generality of subsection (2), (6) or (12) but subject to subsection (13), where:

(a) the tank of a ship that held:

(i) a substance in Category B; or

(ii) a mixture containing a substance in Category B, not being a mixture containing a substance in Category A;

has been pre‑washed in accordance with a procedure approved by a prescribed officer; and

(b) the resulting tank washings have been discharged to a reception facility;

subsection (1B) does not apply to the discharge from the ship of the residue in that tank if the conditions specified in paragraphs (6)(d), (e), (g) and (h) are satisfied in relation to the discharge from the ship.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(8) Without limiting the generality of subsection (2), (9) or (12) but subject to subsection (13), subsection (1B) does not apply to the discharge from a ship of:

(a) a substance in Category C; or

(b) a mixture containing a substance in Category C, not being a mixture containing a substance in Category A or B;

if the following conditions are satisfied:

(c) the discharge is made when the ship is not within a special area;

(d) the discharge is made when the ship is proceeding *en route* at a speed of:

(i) where the ship is self‑propelled, at least 7 knots; or

(ii) where the ship is not self‑propelled, at least 4 knots;

(e) the procedures and arrangements for the discharge have been approved by a prescribed officer, being procedures and arrangements that ensure that the concentration and rate of discharge of the effluent is such that the concentration of the substance in Category C in the wake astern of the ship does not exceed 10 parts in 1,000,000 parts;

(f) the maximum quantity of cargo discharged from each tank of the ship (including the associated piping system of the tank) does not exceed the maximum quantity specified in the procedures referred to in paragraph (e), not being a quantity exceeding 3 cubic metres or 1 part in 1,000 parts of the tank capacity in cubic metres, whichever is the greater;

(g) the discharge is made below the water line of the ship, taking into account the location of the sea‑water intakes; and

(h) the discharge is made when the ship is at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 metres.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(9) Without limiting the generality of subsection (2), (8) or (12) but subject to subsection (13), subsection (1B) does not apply to the discharge from a ship of:

(a) a substance in Category C; or

(b) a mixture containing a substance in Category C, not being a mixture containing a substance in Category A or B;

if the following conditions are satisfied:

(c) the discharge is made when the ship is proceeding *en route* at a speed of:

(i) where the ship is self‑propelled, at least 7 knots; or

(ii) where the ship is not self‑propelled, at least 4 knots;

(d) the procedures and arrangements for the discharge have been approved by a prescribed officer, being procedures and arrangements that ensure that the concentration and rate of discharge of the effluent is such that the concentration of the substance in Category C in the wake astern of the ship does not exceed 1 part in 1,000,000 parts;

(e) the maximum quantity of cargo discharged from each tank of the ship (including the associated piping system of the tank) does not exceed the maximum quantity specified in the procedures referred to in paragraph (d), not being a quantity exceeding 1 cubic metre or 1 part in 3,000 parts of the tank capacity in cubic metres, whichever is the greater;

(f) the discharge is made below the water line of the ship, taking into account the location of the sea‑water intakes; and

(g) the discharge is made when the ship is at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 metres.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(10) Without limiting the generality of subsection (2) or (12) but subject to subsection (13), subsection (1B) does not apply to the discharge from a ship of:

(a) a substance in Category D; or

(b) a mixture containing a substance in Category D, not being a mixture containing a substance in Category A, B or C;

if the following conditions are satisfied:

(c) the discharge is made when the ship is proceeding *en route* at a speed of:

(i) where the ship is self‑propelled, at least 7 knots; or

(ii) where the ship is not self‑propelled, at least 4 knots;

(d) the substance or mixture has been mixed with water so that the concentration of the substance in Category D in the effluent does not exceed 1 part in 11 parts; and

(e) the discharge occurs when the ship is not less than 12 nautical miles from the nearest land.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(11) Without limiting the generality of subsection (2), subsection (1B) does not apply to the discharge from a ship of bilge water, or of a mixture resulting from tank cleaning or de‑ballasting operations, that contains a liquid substance, or liquid substances, referred to in Appendix III to Annex II but does not contain any other liquid substance.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(12) Without limiting the generality of subsection (2) or subsections (4) to (10) (inclusive), subsection (1B) does not apply to the discharge from a ship of clean ballast or segregated ballast.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(13) Subsections (4) to (10) (inclusive) do not apply in relation to a mixture that contains a liquid substance that is neither a noxious liquid substance nor a liquid substance referred to in Appendix III to Annex II.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(14) Subsections (4) to (10) do not apply to the discharge from a ship of noxious liquid substances, or mixtures containing noxious liquid substances, in the Antarctic Area.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(15) In this section, ***inspector*** includes a surveyor appointed or authorized by the Government of a country that is a Party to the Convention for the purpose of implementing Regulation 8 of Annex II.

##### 21A Certain liquid substances to be treated as oil

(1) Notwithstanding any other provision of this Act, a prescribed substance in Category C or D, being a substance that has been identified by the Organization as an oil‑like substance under criteria developed by the Organization, may be carried on an oil tanker within the meaning of Part II if the following conditions are satisfied:

(a) the oil tanker complies with the provisions of Annex I of the Convention as applicable to product carriers within the meaning of that Annex;

(b) the oil tanker carries an International Oil Pollution Prevention Certificate and its Supplement B, being a certificate that has an endorsement:

(i) that indicates that the ship is permitted to carry oil‑like substances in conformity with Regulation 14 of Annex II of the Convention; and

(ii) that specifies the oil‑like substance or substances that the tanker is permitted to carry;

(c) the prescribed substance is the substance, or a substance, referred to in subparagraph (b)(ii);

(d) in the case of a substance in Category C—the tanker complies with the ship type 3 damage stability requirements of:

(i) in the case of a tanker constructed on or after 1 July 1986—the International Bulk Chemical Code; or

(ii) in the case of a tanker constructed before 1 July 1986—the Bulk Chemical Code applicable under Regulation 13 of Annex II of the Convention; and

(e) the oil content meter in the oil discharge monitoring and control system of the tanker has been approved by an inspector for use in monitoring the oil‑like substances to be carried.

(2) Where, by virtue of subsection (1), a substance is carried on an oil tanker within the meaning of Part II:

(a) section 9 applies in relation to the discharge of the substance as if the substance were oil within the meaning of Part II; and

(b) section 21 does not apply in relation to the discharge of the substance.

##### 22 Duty to report certain incidents involving certain substances

(1A) This section does not apply in relation to prescribed incidents that occur in the sea near a State, the Jervis Bay Territory or an external Territory to the extent that a law of that State or Territory makes provision giving effect to Protocol I to the Convention in relation to those prescribed incidents.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(1B) This section does not apply in relation to a prescribed incident that occurs in relation to a foreign ship unless the incident occurs in the sea near a State, the Jervis Bay Territory or an external Territory or in the exclusive economic zone.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(1) Where a prescribed incident occurs in relation to a ship, the master of the ship shall, without delay, notify, in the prescribed manner:

(a) where Australia or an external Territory is the nearest coastal State to the place where the incident occurred—a prescribed officer; or

(b) where a foreign country is the nearest coastal State to that place—the government of that foreign country;

of the incident.

Penalty: 500 penalty units.

(2) Subsection (1) does not apply in relation to a prescribed incident in relation to a ship if the master of the ship was unable to comply with the subsection in relation to the incident.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(3) Where a prescribed incident occurs in relation to a ship and:

(a) the master of the ship fails to comply with subsection (1) (whether or not the master is able to comply with that subsection) in relation to the incident; or

(b) the incident occurs in circumstances in which the ship is abandoned;

the owner, charterer, manager or operator of the ship or an agent of the owner, charterer, manager or operator of the ship shall, without delay, notify, in the prescribed manner:

(c) where Australia or an external Territory is the nearest coastal State to the place where the incident occurred—a prescribed officer; or

(d) where a foreign country is the nearest coastal State to that place—the government of that foreign country;

of the incident, and, if a prescribed officer or a government, as the case may be, is not so notified, each of those persons is guilty of an offence punishable, upon conviction, by a fine not exceeding 500 penalty units.

(3A) An offence under subsection (3) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(4) Subsection (3) does not apply to a person in relation to a prescribed incident in relation to a ship if:

(a) the person was not aware of the incident; or

(b) in the case of a prescribed incident to which paragraph (3)(a) applies—the person neither knew nor suspected that the master of the ship had not complied with subsection (1) in relation to the incident.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(5) Subsection (4) shall not be taken to limit by implication any defence that would, but for that subsection, be available to a person charged with an offence against subsection (3).

(6) A master of a ship who, pursuant to subsection (1), has notified a prescribed officer or a government of the occurrence of a prescribed incident shall, if so requested by a prescribed officer or that government, as the case may be, furnish, within the prescribed time, a report to a prescribed officer or that government, as the case may be, in relation to the incident in accordance with the prescribed form.

Penalty: 200 penalty units.

(7) Where subsection (3) applies in relation to a prescribed incident in relation to a ship, a person who, pursuant to that subsection, has notified a prescribed officer or a government of the occurrence of the prescribed incident shall, if so requested by a prescribed officer or that government, as the case may be, furnish, within the prescribed time, a report to a prescribed officer or that government, as the case may be, in relation to the incident in accordance with the prescribed form.

Penalty: 200 penalty units.

(8) A person shall not, in a notice given to a prescribed officer or a government pursuant to subsection (1) or (3) or in a report furnished to a prescribed officer or a government pursuant to subsection (6) or (7), make a statement that is false or misleading in a material particular.

Penalty: 200 penalty units.

(9) A notice given to a prescribed officer or a government pursuant to subsection (1) or (3), and a report furnished to a prescribed officer or a government pursuant to subsection (6) or (7), shall not, without the consent of the person charged, be admitted in evidence in a prosecution for an offence against subsection 21(1).

(10) In this section:

***liquid substance*** does not include a substance referred to in Appendix III to Annex II.

***prescribed incident***, in relation to a ship, means:

(a) an incident involving a discharge from the ship of a liquid substance, or a mixture containing a liquid substance, carried as cargo or as part cargo in bulk, not being a discharge to which subsection 21(4), (5), (6), (7), (8), (9), (10), (11) or (12) applies; or

(b) an incident involving the probability of a discharge from the ship of a liquid substance, or a mixture containing a liquid substance, carried as cargo or as part cargo in bulk, not being a discharge to which subsection 21(4), (5), (6), (7), (8), (9), (10), (11) or (12) would apply; or

(c) if the ship is 15 metres or more in length—an incident (including, but not limited to, collision, grounding, fire, explosion, structural failure, flooding and cargo shifting) involving damage, failure or breakdown that affects the safety of the ship; or

(d) if the ship is 15 metres or more in length—an incident (including, but not limited to, failure or breakdown of steering gear, propulsion plant, electrical generating system and essential shipborne navigational aids) involving damage, failure or breakdown that impairs the safety of navigation of the ship.

##### 23 Cargo record book

(1) This section applies to an Australian ship that carries liquid substances in bulk.

(2) A cargo record book shall be carried in every ship to which this section applies.

(3) A cargo record book shall be in accordance with the prescribed form with provision made for a signature, in accordance with subsection (7), in relation to each entry made in it and for a signature, in accordance with subsection (8), on each page of it.

(4) Where a ship to which this section applies does not carry a cargo record book as required by this section, the master and the owner of the ship are each guilty of an offence punishable, upon conviction, by a fine not exceeding 200 penalty units.

(4A) An offence under subsection (4) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(5) Whenever a prescribed operation or occurrence is carried out or occurs in, or in relation to, a ship to which this section applies, the master of the ship shall make, without delay, appropriate entries in, or cause appropriate entries to be made, without delay, in, the ship’s cargo record book, being entries in accordance with subsection (7).

Penalty: 200 penalty units.

(6) Where an inspector, or a person authorized by the Government of a country other than Australia that is a Party to the Convention to supervise any operations under Annex II, has inspected a ship to which this section applies, he or she shall make, without delay, appropriate entries in the ship’s cargo record book in accordance with subsection (7).

(7) An entry in a ship’s cargo record book:

(a) shall be made in the English language; and

(b) in the case of an entry made in relation to a prescribed operation, shall be signed by the officer or other person in charge of the operation.

(8) Where a page of a ship’s cargo record book is completed, the master of the ship shall, without delay, sign the page.

Penalty for a contravention of this subsection: 200 penalty units.

##### 24 False entries in cargo record book

A person shall not make, in a cargo record book of a ship to which section 23 applies, an entry that is false or misleading in a material particular.

Penalty: 200 penalty units.

##### 25 Cargo record book to be retained

(1) A cargo record book of a ship to which section 23 applies shall be retained in the ship until the expiration of a period of one year after the day on which the last entry was made in the book and shall be readily available for inspection at all reasonable times.

(2) Where a cargo record book is not retained in a ship in accordance with subsection (1), the master and the owner of the ship are each guilty of an offence punishable, upon conviction, by a fine not exceeding 200 penalty units.

(2A) An offence under subsection (2) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) The owner of a ship to which section 23 applies shall cause each of the ship’s cargo record books to be retained:

(a) in the ship; or

(b) at the registered office of the owner;

until the expiration of the period of 2 years next following the expiration of the period during which the book is required to be retained in the ship by virtue of subsection (1) and to be readily available for inspection at all reasonable times.

Penalty: 200 penalty units.

(5) The owner of a ship to which section 23 applies who resides in Australia, or has an office or agent in Australia, may from time to time furnish to a prescribed officer notice, in writing, of an address, being the address of:

(a) the place at which he or she so resides;

(b) his or her office in Australia or, if he or she has more than one office in Australia, his or her principal office in Australia; or

(c) the office or place of residence of his or her agent or, if his or her agent has more than one office in Australia, the principal office in Australia of his or her agent;

and the place or office of which an address is furnished for the time being under this subsection is the registered office of the owner of the ship for the purposes of subsection (3).

(6) Where the owner of a ship to which section 23 applies does not reside in Australia and does not have an office or agent in Australia, the owner may deposit a cargo record book of the ship with a prescribed officer and, while the book is so deposited, the book shall, for the purposes of subsection (3), be deemed to be retained at the registered office of the owner.

##### 26 Cleaning of tanks of ships

The regulations may make provision for and in relation to giving effect to Regulation 8 of Annex II.

##### 26AA Power to require discharge of a liquid substance or a mixture containing a liquid substance at a reception facility

(1) A prescribed officer may require the owner or master of a ship, by written notice given to the owner or master, as the case may be, to cause a specified quantity of a liquid substance or of a mixture containing a liquid substance to be discharged within a specified period from the ship to a specified facility that is suitable to receive that quantity of the substance or mixture if the officer has reason to believe that retention of the liquid substance or mixture would create a risk of discharge from the ship into the sea.

(2) The owner or master of a ship to whom a notice is given under subsection (1) must comply with the notice.

Penalty: 500 penalty units.

## Part IIIA—Prevention of pollution by packaged harmful substances

##### 26A Interpretation

(1) In this Part:

***harmful substance*** means a substance which is identified as a marine pollutant in the International Maritime Dangerous Goods (IMDG) Code.

***packaged form*** means a form of containment specified for harmful substances in the International Maritime Dangerous Goods (IMDG) Code.

(2) Except in so far as the contrary intention appears, an expression that is used in this Part and in Annex III to the Convention (whether or not a particular meaning is assigned to it by that Annex) has, in this Part the same meaning as in that Annex.

##### 26AB Prohibition of discharge by jettisoning of harmful substances into the sea

(1) If:

(a) a person engages in conduct that causes a harmful substance, being a substance carried as cargo in packaged form, to be jettisoned from a ship into the sea; and

(b) the person is reckless or negligent as to causing the jettisoning by that conduct; and

(c) one of the following subparagraphs applies:

(i) the jettisoning occurs into the sea near a State, the Jervis Bay Territory or an external Territory and there is no law of that State or Territory that makes provision giving effect to Regulation 7 of Annex III to the Convention in relation to that sea;

(ii) the jettisoning occurs into the sea in the exclusive economic zone;

(iii) the jettisoning occurs into the sea beyond the exclusive economic zone and the ship is an Australian ship;

the person commits an offence punishable, on conviction, by a fine not exceeding 2,000 penalty units.

(2) In subsection (1):

***engage in conduct*** has the same meaning as in the *Criminal Code*.

(3) Subject to subsections (5) and (6), if:

(a) a harmful substance, being a substance carried as cargo in packaged form, is jettisoned from a ship into the sea; and

(b) one of the following subparagraphs applies:

(i) the jettisoning occurs into the sea near a State, the Jervis Bay Territory or an external Territory and there is no law of that State or Territory that makes provision giving effect to Regulation 7 of Annex III to the Convention in relation to that sea;

(ii) the jettisoning occurs into the sea in the exclusive economic zone;

(iii) the jettisoning occurs into the sea beyond the exclusive economic zone and the ship is an Australian ship;

the master and the owner of the ship each commit an offence punishable, on conviction, by a fine not exceeding 500 penalty units.

(4) An offence against subsection (3) is an offence of strict liability.

(5) Subsection (3) does not apply to the jettisoning of a harmful substance from a ship for the purpose of securing the safety of the ship or saving life at sea.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(6) Where a harmful substance referred to in subsection (3) is discharged from a ship into the sea because of a leakage of the substance, the substance shall, for the purposes of this section, be taken to have been jettisoned, but that subsection does not apply to the discharge if:

(a) the substance was washed overboard from the ship in accordance with regulations or orders made pursuant to regulations; or

(b) the substance was washed overboard from the ship otherwise than in accordance with such regulations or orders in circumstances where compliance with such regulations or orders would have impaired the safety of the ship or of persons on board the ship.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

##### 26B Duty to report certain incidents involving harmful substances

(1) This section does not apply in relation to prescribed incidents that occur in the sea near a State, the Jervis Bay Territory or an external Territory to the extent that a law of that State or Territory makes provision giving effect to Protocol I to the Convention in relation to those prescribed incidents.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(2) This section does not apply in relation to a prescribed incident that occurs in relation to a foreign ship unless the incident occurs in the sea near a State, the Jervis Bay Territory or an external Territory or in the exclusive economic zone.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(3) Where a prescribed incident occurs in relation to a ship, the master of the ship shall, without delay, notify, in the prescribed manner:

(a) where Australia or an external Territory is the nearest coastal State to the place where the incident occurred—a prescribed officer; or

(b) where a foreign country is the nearest coastal State to that place—the government of that foreign country;

of the incident.

Penalty: 500 penalty units.

(4) Subsection (3) does not apply in relation to a prescribed incident in relation to a ship if the master of the ship was unable to comply with the subsection in relation to the incident.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(5) Where a prescribed incident occurs in relation to a ship and:

(a) the master of the ship fails to comply with subsection (3) (whether or not the master is able to comply with that subsection) in relation to the incident; or

(b) the incident occurs in circumstances in which the ship is abandoned;

the owner, charterer, manager or operator of the ship or an agent of the owner, charterer, manager or operator of the ship shall, without delay, notify, in the prescribed manner:

(c) where Australia or an external Territory is the nearest coastal State to the place where the incident occurred—a prescribed officer; or

(d) where a foreign country is the nearest coastal State to that place—the government of that foreign country;

of the incident, and, if a prescribed officer or a government, as the case may be, is not so notified, each of those persons is guilty of an offence punishable, upon conviction, by a fine not exceeding 500 penalty units.

(5A) An offence under subsection (5) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(6) Subsection (5) does not apply to a person in relation to a prescribed incident in relation to a ship if:

(a) the person was not aware of the incident; or

(b) in the case of a prescribed incident to which paragraph (5)(a) applies—the person neither knew nor suspected that the master of the ship had not complied with subsection (3) in relation to the incident.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(7) Subsection (6) shall not be taken to limit by implication any defence that would, but for that subsection, be available to a person charged with an offence against subsection (5).

(8) A master of a ship who, pursuant to subsection (3), has notified a prescribed officer or a government of the occurrence of a prescribed incident shall, if so requested by a prescribed officer or that government, as the case may be, give, within the prescribed time, a report to a prescribed officer or that government, as the case may be, in relation to the incident in accordance with the prescribed form.

Penalty: 200 penalty units.

(9) Where subsection (5) applies in relation to a prescribed incident in relation to a ship, a person who, pursuant to that subsection, has notified a prescribed officer or a government of the occurrence of the prescribed incident shall, if so requested by a prescribed officer or that government, as the case may be, give, within the prescribed time, a report to a prescribed officer or that government, as the case may be, in relation to the incident in accordance with the prescribed form.

Penalty: 200 penalty units.

(10) A person shall not, in a notice given to a prescribed officer or a government pursuant to subsection (3) or (5) or in a report given to a prescribed officer or a government pursuant to subsection (8) or (9), make a statement that is false or misleading in a material particular.

Penalty: 200 penalty units.

(10A) A notice given to a prescribed officer or a government pursuant to subsection (3) or (5), and a report given to a prescribed officer or a government pursuant to subsection (8) or (9), shall not, without the consent of the person charged, be admitted in evidence in a prosecution for an offence against subsection 26AB(1) or (3).

(11) In this section:

***prescribed incident***, in relation to a ship, means:

(a) an incident involving the discharge from the ship of a harmful substance carried as cargo in packaged form or in a freight container, portable tank, road or rail vehicle or shipborne barge, not being a discharge in accordance with the regulations or orders made under the regulations; or

(b) an incident involving the probability of the discharge from the ship of a harmful substance carried as cargo in packaged form or in a freight container, portable tank, road or rail vehicle or shipborne barge, not being a discharge in accordance with the regulations or orders made under the regulations; or

(c) if the ship is 15 metres or more in length—an incident (including, but not limited to, collision, grounding, fire, explosion, structural failure, flooding and cargo shifting) involving damage, failure or breakdown that affects the safety of the ship; or

(d) if the ship is 15 metres or more in length—an incident (including, but not limited to, failure or breakdown of steering gear, propulsion plant, electrical generating system and essential shipborne navigational aids) involving damage, failure or breakdown that impairs the safety of navigation.

## Part IIIB—Prevention of pollution by sewage

### Division 1—Discharge of sewage in the Antarctic Area

##### 26BA Interpretation

Unless the contrary intention appears, an expression that is used in this Division and in Annex IV of the Antarctic Protocol (whether or not a particular meaning is given to it by that Annex) has, in this Division, the same meaning as in that Annex.

##### 26BB Object of Division

The object of this Division is to give effect to Australia’s obligations regarding the discharge of sewage in the Antarctic Area under Annex IV of the Antarctic Protocol.

##### 26BC Prohibition of discharge of sewage

(1) If:

(a) a person engages in conduct that causes a discharge of untreated sewage from a ship (other than a ship certified to carry not more than 10 persons) into the sea in the Antarctic Area; and

(b) the person is reckless or negligent as to causing the discharge by that conduct; and

(c) where the discharge does not occur in the sea near the Australian Antarctic Territory—the ship is an Australian ship;

the person commits an offence punishable, on conviction, by a fine not exceeding 2,000 penalty units.

(2) In subsection (1):

***engage in conduct*** has the same meaning as in the *Criminal Code*.

(2A) Subject to subsections (3) and (4), if:

(a) untreated sewage is discharged from a ship (other than a ship certified to carry not more than 10 persons) into the sea in the Antarctic Area; and

(b) where the discharge does not occur in the sea near the Australian Antarctic Territory—the ship is an Australian ship;

the master and the owner of the ship each commit an offence punishable, on conviction, by a fine not exceeding 500 penalty units.

(2B) An offence against subsection (2A) is an offence of strict liability.

(3) Subsection (2A) does not apply if the sewage was discharged for the purpose of:

(a) securing the safety of the ship and persons on board the ship; or

(b) saving life at sea.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(4) Without limiting the generality of subsection (3), subsection (2A) does not apply to the discharge of sewage from a ship if:

(a) the sewage was stored in a holding tank; and

(b) the sewage is not discharged instantaneously but is discharged from the holding tank at a prescribed rate when the ship is proceeding en route at a speed of not less than 4 knots; and

(c) the discharge is made when the ship is at a distance of not less than 12 nautical miles from the nearest land or ice shelf.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

### Division 2—Discharge of sewage in other sea areas

##### 26C Interpretation

(1) Except in so far as the contrary intention appears, an expression that is used in this Division and in Annex IV to the Convention (whether or not a particular meaning is assigned to it by that Annex) has, in this Division, the same meaning as in that Annex.

(2) In this Division:

***sea*** does not include the sea in the Antarctic Area.

##### 26CA Object of Division

The object of this Division is to give effect to Australia’s obligations regarding the discharge of sewage into the sea under Annex IV of the Convention.

##### 26D Prohibition of discharge of sewage into the sea

(1) If:

(a) a person engages in conduct that causes a discharge of sewage from a ship into the sea; and

(b) the person is reckless or negligent as to causing the discharge by that conduct; and

(c) one of the following subparagraphs applies:

(i) the discharge occurs into the sea near a State, the Jervis Bay Territory or an external Territory and there is no law of that State or Territory that makes provision giving effect to Regulation 3 and to paragraph 1 of Regulation 11 of Annex IV to the Convention in relation to that sea;

(ii) the discharge occurs into the sea in the exclusive economic zone;

(iii) the discharge occurs into the sea beyond the exclusive economic zone and the ship is an Australian ship;

the person commits an offence punishable, on conviction, by a fine not exceeding 2,000 penalty units.

(2) In subsection (1):

***engage in conduct*** has the same meaning as in the *Criminal Code*.

(3) Subject to subsections (5) to (9), if:

(a) sewage is discharged from a ship into the sea; and

(b) one of the following subparagraphs applies:

(i) the discharge occurs into the sea near a State, the Jervis Bay Territory or an external Territory and there is no law of that State or Territory that makes provision giving effect to Regulation 3 and paragraph 1 of Regulation 11 of Annex IV to the Convention in relation to that sea;

(ii) the discharge occurs into the sea in the exclusive economic zone;

(iii) the discharge occurs into the sea beyond the exclusive economic zone and the ship is an Australian ship;

the master and the owner of the ship each commit an offence punishable, on conviction, by a fine not exceeding 500 penalty units.

(4) An offence against subsection (3) is an offence of strict liability.

(5) Subsection (3) does not apply to the discharge of sewage from a ship:

(a) for the purpose of securing the safety of a ship and persons on board the ship or of saving life at sea; or

(b) in a case where the sewage escaped from the ship in consequence of damage to the ship or its equipment and all reasonable precautions were taken before and after the occurrence of the damage for the purpose of preventing or minimising the escape of the sewage.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(5A) For the purposes of this section, ***damage*** to a ship or to its equipment does not include:

(a) deterioration resulting from failure to maintain the ship or equipment; or

(b) defects that develop during the normal operation of the ship or equipment.

(6) Without limiting the generality of subsection (5), subsection (3) does not apply to the discharge of sewage from a ship if the following conditions are satisfied:

(a) where the sewage has been comminuted and disinfected using a system approved in accordance with the regulations, or orders made pursuant to the regulations, giving effect to paragraph 1.2 of Regulation 9 of Annex IV to the Convention—the discharge is made when the ship is at a distance of not less than 3 nautical miles from the nearest land;

(b) where the sewage is not sewage referred to in paragraph (a)—the discharge is made when the ship is at a distance of not less than 12 nautical miles from the nearest land;

(c) where the sewage has been stored in holding tanks—the sewage is not discharged instantaneously but is discharged at a prescribed rate when the ship is proceeding *en route* at a speed of not less than 4 knots.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(7) Without limiting the generality of subsection (5), subsection (3) does not apply to the discharge of sewage from a ship if the following conditions are satisfied:

(a) the sewage has been treated in a sewage treatment plant on the ship, being a plant:

(i) that an inspector has certified meets the requirements of the regulations giving effect to paragraph 1.1 of Regulation 9 of Annex IV to the Convention; and

(ii) the test results of which are laid down in the ship’s sewage certificate within the meaning of Division 12C of Part IV of the *Navigation Act 1912*; and

(b) the effluent does not produce visible floating solids in the waters of the sea and does not cause discolouration of the waters of the sea.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(8) Without limiting the generality of subsection (5), subsection (3) does not apply to the discharge of sewage if the discharge is made into the territorial waters of a foreign country in accordance with the law of that country.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

##### 26DAA Power to require discharge of sewage at a reception facility

(1) A prescribed officer may require the owner or master of a ship, by written notice given to the owner or master, as the case may be, to cause a specified quantity of sewage to be discharged within a specified period from the ship to a specified facility that is suitable to receive that quantity of sewage if the officer has reason to believe that retention of the sewage would create a risk of discharge from the ship into the sea.

(2) The owner or master of a ship to whom a notice is given under subsection (1) must comply with the notice.

Penalty: 500 penalty units.

##### 26DA Operation of Division

In spite of anything in the *Protection of the Sea Legislation Amendment Act 1986*, this Division does not commence until a day fixed by Proclamation for the purposes of this section.

## Part IIIC—Prevention of pollution by garbage

##### 26E Interpretation

(1) Except in so far as the contrary intention appears, an expression that is used in this Part and in Annex V to the Convention (whether or not a particular meaning is assigned to it by that Annex) has, in this Part, the same meaning as in that Annex.

(2) Unless the contrary intention appears, an expression that is used in subsection 26F (8A) and in Annex IV to the Antarctic Protocol (whether or not a particular meaning is given by that Protocol) has, in that subsection, the same meaning as in that Annex.

##### 26EAA Overseas voyages

For the purposes of this Part:

(a) ***overseas voyage*** has the same meaning as it has in the *Navigation Act 1912* except that a voyage of an Australian fishing vessel (being a ship that is regularly engaged in making voyages from a port or ports in Queensland) beginning at a port in that State and ending at the same port or another port in that State is not to be taken to be an overseas voyage merely because, as an incidental part of its fishing operations on that voyage, the ship calls at a port or ports in Papua New Guinea; and

(b) ***Australian fishing vessel*** has the same meaning as in the *Navigation Act 1912*.

##### 26EA Object of Part

The object of this Part is to give effect to Australia’s obligations:

(a) regarding the prevention of pollution by garbage from ships under Annex V to the Convention; and

(b) regarding the disposal of garbage from ships under Annex IV to the Antarctic Protocol.

##### 26F Prohibition of disposal of garbage into the sea

(1) If:

(a) a person engages in conduct that causes a disposal of garbage from a ship into the sea; and

(b) the person is reckless or negligent as to causing the disposal by that conduct; and

(c) one of the following subparagraphs applies:

(i) the disposal occurs into the sea near a State, the Jervis Bay Territory or an external Territory and there is no law of that State or Territory that makes provision giving effect to Regulations 3, 5 and 6 of Annex V to the Convention in relation to that sea;

(ii) the disposal occurs into the sea in the exclusive economic zone;

(iii) the disposal occurs into the sea beyond the exclusive economic zone and the ship is an Australian ship;

the person commits an offence punishable, on conviction, by a fine not exceeding 2,000 penalty units.

(2) In subsection (1):

***engage in conduct*** has the same meaning as in the *Criminal Code*.

(3) Subject to subsections (5) to (11), if:

(a) there is a disposal of garbage from a ship into the sea; and

(b) one of the following subparagraphs applies:

(i) the disposal occurs into the sea near a State, the Jervis Bay Territory or an external Territory and there is no law of that State or Territory that makes provision giving effect to Regulations 3, 5 and 6 of Annex V to the Convention in relation to that sea;

(ii) the disposal occurs into the sea in the exclusive economic zone;

(iii) the disposal occurs into the sea beyond the exclusive economic zone and the ship is an Australian ship;

the master and the owner of the ship each commit an offence punishable, on conviction, by a fine not exceeding 500 penalty units.

(4) An offence against subsection (3) is an offence of strict liability.

(5) Subsection (3) does not apply to the disposal of garbage from a ship for the purpose of securing the safety of the ship and the persons on board the ship or of saving life at sea.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(6) Without limiting the generality of subsection (5) but subject to subsection (11), subsection (3) does not apply to the disposal of garbage (being dunnage, lining or packing materials which will float and are not plastics) from a ship into the sea if the following conditions are satisfied:

(a) the disposal takes place when the ship is not within a special area;

(b) the disposal takes place when the ship is as far as practicable from, and is at a distance of not less than 25 nautical miles from, the nearest land;

(c) the disposal takes place when the ship is not alongside, or within 500 metres of, a fixed or floating platform engaged in the exploration, exploitation and associated offshore processing of seabed mineral resources.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(7) Without limiting the generality of subsection (5) but subject to subsection (11), subsection (3) does not apply to the disposal of garbage (not being plastics, garbage referred to in subsection (6) or food wastes) from a ship into the sea if the following conditions are satisfied:

(a) the disposal occurs when the ship is not within a special area;

(b) the disposal occurs when the ship is as far as practicable from the nearest land;

(c) except where paragraph (d) applies—the ship is at a distance of not less than 12 nautical miles from the nearest land;

(d) where the garbage is passed through a comminuter or grinder so that it is capable of passing through a screen with no opening greater than 25 millimetres—when the ship is at a distance of not less than 3 nautical miles from the nearest land;

(e) the disposal occurs when the ship is not alongside, or within 500 metres of, a platform of a kind referred to in paragraph (6)(c).

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(8) Without limiting the generality of subsection (5) but subject to subsection (11), subsection (3) does not apply to the disposal of garbage, being food wastes, from a ship into the sea outside the Antarctic Area if:

(a) the following conditions are satisfied:

(i) the disposal occurs when the ship is as far as practicable from, and is at a distance of not less than 12 nautical miles from, the nearest land;

(ii) the disposal occurs when the ship is not alongside, or within 500 metres of, a platform of a kind referred to in paragraph (6)(c); or

(b) the conditions referred to in paragraphs (7)(a), (b) and (d) are satisfied.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(8A) Without limiting the generality of subsection (5), subsection (3) does not apply to the disposal of garbage, being food wastes, from a ship into the sea in the Antarctic Area if:

(a) the garbage has been passed through a comminuter or grinder so that it is capable of passing through a screen with no opening wider than 25 millimetres; and

(b) the disposal occurs when the ship is as far as practicable from, and is at a distance of not less than 12 nautical miles from, the nearest land or ice shelf.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(9) Where garbage escapes from a ship into the sea because of damage to the ship or its equipment, subsection (3) does not apply to the disposal of the garbage if all reasonable precautions were taken before and after the occurrence of the damage for the purpose of preventing or minimising the escape of the garbage.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(9A) For the purposes of subsection (9), ***damage*** to a ship or to its equipment does not include:

(a) deterioration resulting from failure to maintain the ship or equipment; or

(b) defects that develop during the normal operation of the ship or equipment.

(10) Where a synthetic fishing net, or synthetic material used in the repair of such a net, on a ship is accidently lost at sea, subsection (3) does not apply to the disposal of the net or material if all reasonable precautions were taken to prevent the loss.

Note: The defendant bears an evidential burden of proof of the matters mentioned in this subsection.

(11) Without limiting the generality of subsection (5), where:

(a) garbage is mixed with matter the discharge or disposal of which from a ship into the sea is prohibited under another Part unless certain conditions are complied with; and

(b) the conditions referred to in paragraph (a) are more stringent than the conditions referred to in subsections (6) to (10) (inclusive);

subsection (3):

(c) apply to the disposal of the garbage from a ship notwithstanding that the conditions referred to in subsection (6), (7), (8), (9) or (10) are complied with; but

(d) do not apply to the disposal of the garbage from a ship if those more stringent requirements are complied with.

(13) In this section ***plastics*** includes synthetic ropes, synthetic fishing nets, plastic garbage bags and incinerator ashes from plastic products that may contain toxic or heavy metal residues.

##### 26FA Garbage record book

(1) This section applies to an Australian ship that:

(a) has a gross tonnage of 400 or more; or

(b) is certified to carry 15 persons or more and is engaged on an overseas voyage.

(2) Every ship to which this section applies must carry a garbage record book as required by the regulations.

(3) A garbage record book must be in accordance with the appropriate prescribed form with provision made for a signature, in accordance with subsection (8), in relation to each entry made in it and for a signature, in accordance with subsection (7), in relation to each page of it.

(4) If a ship does not carry a garbage record book as required by this section, the master and the owner of the ship each commit an offence punishable, upon conviction, by a fine of not more than 50 penalty units.

(5) An offence against subsection (4) is an offence of strict liability.

(6) If a prescribed operation or prescribed occurrence is carried out or occurs in, or in relation to, a ship, the master of the ship must make, without delay, appropriate entries in accordance with subsection (8) in the ship’s garbage record book, or cause appropriate entries in accordance with that subsection to be made, as soon as is practicable in the circumstances, in that book.

Penalty: 200 penalty units.

(7) If a page of a ship’s garbage record book is completed, the master of the ship must, as soon as is practicable in the circumstances, sign the page.

Penalty: 50 penalty units.

(8) An entry in a ship’s garbage record book:

(a) must be made in the English language; and

(b) must be signed by the master of the ship and, if the entry is made in relation to a prescribed operation, by the officer or other person in charge of the operation.

##### 26FB Garbage record book to be retained

(1) A garbage record book of a ship to which section 26FA applies must be retained in the ship until the end of one year after the day on which the last entry was made in the book and must be readily accessible for inspection at all reasonable times.

(2) If a garbage record book is not retained in a ship, or is not readily accessible, in accordance with subsection (1), the master and the owner of the ship are each guilty of an offence punishable, upon conviction, by a fine of not more than 50 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

(4) The owner of a ship to which section 26FA applies must cause the ship’s garbage record book to be retained:

(a) in the ship; or

(b) at the owner’s registered office;

until the end of 2 years after the end of the period during which the book is required to be retained in the ship under subsection (1) and must be readily accessible for inspection at all reasonable times.

Penalty: 50 penalty units.

(5) The owner of a ship to which section 26FA applies who resides in Australia, or has an office or agent in Australia, may from time to time give to a prescribed officer notice, in writing, of the address of:

(a) the place at which the owner so resides; or

(b) the owner’s office in Australia or, if the owner has more than one office in Australia, the owner’s principal office in Australia; or

(c) the office or place of residence of the owner’s agent or, if the owner’s agent has more than one office in Australia, the principal office in Australia of the owner’s agent.

(6) The place or office of which an address is given for the time being under subsection (5) is the registered office of the owner of the ship for the purposes of subsection (4).

(7) If the owner of a ship to which section 26FA applies does not reside in Australia and does not have an office or agent in Australia, the owner may deposit a garbage record book of the ship with a prescribed officer and, while the book is so deposited, the book is taken, for the purposes of subsection (4), to be retained at the registered office of the owner.

##### 26FC Shipboard waste management plan

(1) This section applies to an Australian ship that:

(a) has a gross tonnage of 400 or more; or

(b) is certified to carry 15 persons or more.

(2) There must be kept on board a ship to which this section applies a shipboard waste management plan written in the working language of the master of, and the officers on board, the ship.

(3) A shipboard waste management plan must:

(a) be in accordance with the prescribed form; and

(b) set out the procedures for collecting, storing, processing and disposing of garbage, including the use of the equipment on board the ship for carrying out those procedures; and

(c) designate the person who is in charge of carrying out the plan.

(4) Subsection (3) does not prevent other relevant particulars from being included in the shipboard waste management plan.

(5) If a ship to which this section applies does not have on board a shipboard waste management plan, the master and the owner of the ship each commit an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

(6) An offence against subsection (5) is an offence of strict liability.

##### 26FD Placards relating to requirements for disposal of garbage

(1) There must be displayed, on board a ship of 12 metres or more in length, one or more placards notifying the crew and passengers of the kinds of garbage that may, or may not, be disposed of from the ship, and the conditions to which any such disposal is subject, under section 26F.

(2) If the ship is an Australian ship, the placard or each placard must be written in the English language.

(3) If:

(a) the ship is a foreign ship that is engaged on a voyage to an Australian port or to an Australian offshore terminal; and

(b) the placard or each placard is written in the official language or one of the official languages of the country whose flag the ship is entitled to fly; and

(c) the language in which the placard or each placard is so written is not English, French or Spanish;

the placard or each placard must also be written in English, French or Spanish.

(4) If a placard required under this section to be displayed on a ship is not so displayed, the master and the owner of the ship each commit an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

(5) An offence against subsection (4) is an offence of strict liability.

##### 26FE Power to require discharge of garbage at a reception facility

(1) A prescribed officer may require the owner or master of a ship, by written notice given to the owner or master, as the case may be, to cause a specified quantity of garbage to be disposed of within a specified period from the ship to a specified facility that is suitable to receive that quantity of garbage if the officer has reason to believe that retention of the garbage would create a risk of disposal from the ship into the sea.

(2) The owner or master of a ship to whom a notice is given under subsection (1) must comply with the notice.

Penalty: 500 penalty units.

## Part IV—Miscellaneous

##### 26G Power to require information

(1) If:

(a) a foreign ship is navigating in the territorial sea or the exclusive economic zone; and

(b) there are clear grounds for believing that an act or omission that constitutes a contravention of this Act has occurred in relation to the ship while in the exclusive economic zone;

the Authority may require the master of the ship to give to the Authority such of the information referred to in subsection (2) as the Authority requires.

(2) All or any of the following information may be required:

(a) the ship’s identity;

(b) its port of registry;

(c) its last port of call;

(d) its next port of call;

(e) such other relevant information required to establish whether the contravention occurred.

##### 27 Powers of inspectors

(1) For the purpose of ascertaining:

(a) whether a provision of this Act that is applicable in relation to an Australian ship has been complied with in respect of the ship;

(b) whether there has been a discharge from a ship in contravention of this Act;

(c) whether a provision of the Convention that is applicable in relation to a foreign ship has been complied with in respect of the ship; or

(d) whether a provision of a law of a country other than Australia giving effect to the Convention, being a provision that is applicable in relation to a foreign ship, has been complied with in respect of the ship;

an inspector may:

(e) go on board the ship with such assistants and equipment as he or she considers necessary;

(f) require the master of the ship to take such steps as the inspector directs to facilitate the boarding;

(g) inspect and test any machinery or equipment of the ship;

(h) require the master of the ship to take such steps as the inspector directs to facilitate the inspection or testing of any machinery or equipment of the ship;

(j) open, or require the master of the ship to cause to be opened, any hold, bunker, tank, compartment or receptacle in or on board the ship and inspect the contents of any hold, bunker, tank, compartment or receptacle in or on board the ship;

(k) require the master of the ship to produce a record book required by this Act to be carried in the ship or any other books, documents or records relating to the ship or its cargo that are carried in the ship;

(m) make copies of, or take extracts from, any such books, documents or records;

(n) require the master of the ship to certify that a true copy of an entry in a record book required by this Act to be carried in the ship made by the inspector is a true copy of such an entry;

(p) examine, and take samples of, any substances on board the ship; and

(q) require a person to answer questions.

(1A) This section does not authorise the inspection of a foreign ship navigating in the exclusive economic zone if the inspection is in respect of an act or omission, or possible act or omission, in relation to the ship while in the exclusive economic zone unless:

(a) there are clear grounds for believing that the act or omission was a substantial discharge or disposal causing or threatening to cause significant pollution of the marine environment; and

(b) a requirement for information under section 26G has not been complied with, or information supplied purportedly in compliance with such a requirement is manifestly at variance with the evident factual situation.

(2) A person must not fail to comply with a requirement made of the person by an inspector under subsection (1).

Penalty: 80 penalty units.

(2A) A person must not, in answering a question that the person is required to answer under subsection (1), make a statement that is false or misleading in a material particular.

Penalty: 200 penalty units.

(3) An inspector shall not, in exercising his or her powers under subsection (1), unnecessarily delay a ship from going to sea.

(4) An offence under subsection (2) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(5) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

##### 27A Detention of foreign ships in connection with pollution breaches

(1) The Authority may detain a foreign ship if:

(a) the ship is voluntarily at a port and there are clear grounds for believing that a pollution breach has occurred as a result of acts or omissions in relation to the ship in the territorial sea or the exclusive economic zone; or

(b) the ship is in the territorial sea and there are clear grounds for believing that a pollution breach has occurred as a result of acts or omissions in relation to the ship while navigating in the territorial sea; or

(c) the ship is in the territorial sea or the exclusive economic zone and there is clear objective evidence that:

(i) a pollution breach has occurred as a result of acts or omissions in relation to the ship in the exclusive economic zone; and

(ii) the actions resulted in a discharge from the ship that has caused or threatens to cause major damage to the coastline of Australia, to related interests of Australia or to any resources of the territorial sea or exclusive economic zone.

(2) If the ship is detained under paragraph (1)(b) or (c), the Authority may escort it to a port.

(3) The ship must be immediately released if:

(a) security is provided in accordance with subsection (4); or

(b) all proceedings that have been instituted in respect of the pollution breach have been discontinued; or

(c) all such proceedings have been concluded (whether or not any appeal is pending) without any person being convicted of an offence or being found liable to pay an amount of money; or

(d) all such proceedings have been concluded, and all penalties and/or other amounts of money, and all costs and expenses ordered to be paid, in respect of the pollution breach have been paid; or

(e) the Authority forms the belief that the pollution breach did not occur, or did not occur as a result of actions in relation to the ship; or

(f) the Authority determines for any other reason that the ship should be released.

(4) Security referred to in paragraph (3)(a) must:

(a) be provided in a form acceptable to the Authority; and

(b) be an amount that, in the Authority’s opinion, is equivalent to the maximum amount of all penalties, other amounts of money, costs and expenses that could be payable by the master and owner of the ship in respect of the pollution breach.

(5) The master and owner of the ship are guilty of an offence if:

(a) the ship was detained at a port and leaves the port; or

(b) the ship was detained in the territorial sea and leaves the outer limits of the territorial sea; or

(c) the ship was detained in the exclusive economic zone and leaves the outer limits of the exclusive economic zone;

before it is released from detention.

Penalty: 2,000 penalty units.

(5A) An offence under subsection (5) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(6) In this section:

***Australia*** includes all the external Territories.

***pollution breach*** means a discharge or disposal from a ship:

(a) in contravention of this Act; or

(b) that gives rise to a right of recovery by the Authority under Part IVA of the *Protection of the Sea (Civil Liability) Act 1981*.

***port*** means a port in Australia, and is taken to include an off‑shore installation over which Australia has jurisdiction.

##### 27B Notification of measures taken in relation to foreign ships

The Authority must comply with the requirements of article 231 of the Law of the Sea Convention in relation to any measures taken, under this Act or Part IVA of the *Protection of the Sea (Civil Liability) Act 1981*, in relation to a foreign ship.

##### 27C Failure to comply with requirements for information under foreign laws

(1) The master and owner of an Australian ship are guilty of an offence if:

(a) a requirement to give information is made, in relation to the ship, under a law of a foreign country in circumstances in which paragraph 3 of article 220 of the Law of the Sea Convention permits such a requirement to be made; and

(b) the requirement is not complied with.

Penalty: 500 penalty units.

(2) An offence under subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

##### 28 Prosecution of offences against Act

(1) Subject to subsection (2), an offence against this Act (other than an offence against subsection 27(2) or a provision of the regulations) is an indictable offence.

(2) Notwithstanding that an offence against this Act (other than an offence against subsection 27(2) or a provision of the regulations) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

(3) If, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence against this Act (other than an offence against a section referred to in subsection (4)), the penalty that the court may impose is a fine not exceeding 80 penalty units.

(4) If, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence against section 9, 21, 26AB, 26D or 26F, the penalty that the court may impose is a fine not exceeding 200 penalty units.

(5) Where, in proceedings for an offence against this Act in respect of any conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that a director, servant or agent of the corporation, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(6) Any conduct engaged in on behalf of a corporation:

(a) by a director, servant or agent of the corporation within the scope of his or her actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the corporation, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

shall be deemed, for the purposes of a provision of this Act that creates an offence, to have been engaged in by the corporation.

(7) A reference in subsection (5) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person’s reasons for the intention, opinion, belief or purpose.

##### 29 Time limits for prosecution

(1) Subject to subsection (2), a prosecution for an offence against this Act may be brought at any time.

(2) If the prosecution relates to an act or omission that involves a foreign ship:

(a) the prosecution must not be brought more than 3 years after the act or omission; and

(b) the prosecution must be suspended if under paragraph 1 of article 228 of the Law of the Sea Convention the prosecution is required to be suspended, and must be terminated if under that paragraph the prosecution is required to be terminated.

##### 29A Service on master or owner of ship

(1) A document to be served on the master or owner of a ship in respect of an offence against this Act may be served on the agent of the ship instead.

(2) A document served on the agent of a ship under subsection (1) is taken to have been served on the master or owner of the ship.

##### 29B Certificates by Minister

The Minister may, by writing signed by him or her, certify that a document set out in, or annexed to, the certificate:

(a) sets out the terms of the 1973 Convention; or

(b) sets out the terms of the 1978 Protocol;

and such a certificate is, for all purposes, prima facie evidence of the matters so certified.

##### 30 Evidence

In any proceedings for an offence against a provision of this Act:

(a) any record kept in pursuance of this Act 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 this Act, or purporting to be such a certified copy as referred to in paragraph (b), shall, unless the contrary is proved, be deemed to be such a record or certified copy, as the case may be.

##### 31 Evidence of analyst

(1) The Authority may, in writing, appoint appropriately qualified persons to be analysts 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) when and from whom the substance was received;

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

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

(d) a description of the substance received;

(e) that he or she has analysed or examined the substance;

(f) the date on which the analysis or examination was carried out;

(g) the method used in conducting the analysis or examination;

(h) the results of the analysis or examination;

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

(3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) shall, unless the contrary is proved, be deemed to be such a certificate.

(4) A certificate referred to in subsection (2) shall not be received in evidence in pursuance of that subsection unless the person charged has been given a copy of the certificate together with reasonable notice of the intention of the prosecution to produce the certificate as evidence in the proceedings.

(5) Where, in pursuance of subsection (2), a certificate of an analyst appointed under subsection (1) is admitted in evidence, the person charged may require the analyst to be called as a witness for the prosecution and the analyst may be cross‑examined as if he or she had given evidence of the matters stated in the certificate.

(6) Subsection (5) does not entitle a person to require an analyst to be called as a witness for the prosecution unless:

(a) the prosecutor has been given at least 5 days notice of the person’s intention to require the analyst to be so called; or

(b) the Court, by order, allows the person to require the analyst to be so called.

##### 32 Application of certain provisions to foreign ships

(1) Subject to subsection (2), the regulations may make provision applying, with such modifications or exceptions as may be prescribed, any of the provisions of this Act relating to record books required by this Act to be carried in Australian ships to foreign ships, including foreign ships flying the flag of, or under the authority of, a Party to the Convention, and to prescribed operations or prescribed occurrences carried out or occurring in, or in relation to, such ships at any time when they are in a port in Australia or are in the territorial sea of Australia or in the sea on the landward side of the territorial sea of Australia while on their way to or from a port in Australia.

(1A) Subject to subsection (2), the regulations may provide that any of the provisions of this Act relating to the keeping of a shipboard oil pollution emergency plan on board of Australian ships apply, with any modifications or exceptions that are prescribed, to foreign ships:

(a) in a port in Australia; or

(b) in the territorial sea of Australia; or

(c) in the sea on the landward side of the territorial sea of Australia.

(2) A regulation under this section does not apply to a foreign ship if the ship is in a port in Australia or in the territorial sea of Australia or in the sea on the landward side of the territorial sea of Australia on its way to or from a port in Australia, as the case may be, for the purpose of securing the safety of a ship or of human life.

##### 33 Regulations

(1) The Governor‑General may make regulations, not inconsistent with this Act, prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular:

(c) for and in relation to giving effect to the Convention, other than provisions of the Convention to which effect is given by a provision of this Act;

(e) fixing fees to be paid in respect of any matters under this Act;

(f) prescribing penalties not exceeding 30 penalty units for a contravention of a provision of the regulations or of any of the orders made under section 34; and

(g) exempting, either absolutely or subject to conditions, a prescribed ship, or ships included in a prescribed class of ships, from all or any of the provisions of this Act or of the regulations.

(2) Regulations, and orders made under section 34, giving effect to Annex I or II to the Convention do not apply in relation to a ship as defined by subsection (4) to the extent that a law of a State or a Territory makes provision giving effect to the Annex in relation to that ship.

(2A) Regulations, and orders made under section 34, giving effect to Annex III, IV or V to the Convention do not apply in relation to a ship as defined in subsection (4) to the extent that a law of the Jervis Bay Territory or an external Territory makes provision giving effect to the Annex in relation to the ship.

(3) In proceedings for an offence against a provision of the regulations, a ship shall, unless the contrary is proved, be deemed not to be a ship as defined by subsection (4).

(4) In subsections (2) and (3), a reference to a ship as defined by this subsection shall be construed as a reference to a ship that is:

(a) a trading ship proceeding on a voyage other than an overseas voyage or an inter‑State voyage;

(b) an Australian fishing vessel proceeding on a voyage other than an overseas voyage; or

(c) a pleasure craft.

(5) For the purposes of subsection (4):

(a) ***trading ship***, ***inter‑State voyage***, ***Australian fishing vessel*** and ***pleasure craft*** have the same respective meanings as they have in the *Navigation Act 1912*;

(b) ***overseas voyage*** has the same meaning as it has in the *Navigation Act 1912* except that a voyage of an Australian fishing vessel (being a ship that is regularly engaged in making voyages from a port or ports in Queensland) commencing at a port in that State and ending at the same port or another port in that State shall not be taken to be an overseas voyage by reason only that, as an incidental part of its fishing operations on that voyage, the ship calls at a port or ports in Papua New Guinea; and

(c) a ship shall be deemed to be proceeding on a voyage from the time when it has got under way for the purpose of proceeding on the voyage until the time when it has got under way for the purpose of proceeding on another voyage.

##### 34 Orders

(1) The Authority may make orders with respect to any matter for or in relation to which provision may be made by the regulations, other than matters referred to in paragraph 33(1)(f).

(2) Orders are disallowable instruments for the purposes of section 46A of the *Acts Interpretataion Act 1901*.

(4) Unless the contrary intention appears, expressions used in orders made pursuant to the regulations have the same meanings as in this Act.

(5) Orders made pursuant to the regulations shall be read subject to this Act and the regulations and so as not to exceed the power conferred by this Act and the regulations to the intent that, where such orders would, but for this subsection, have been construed as being in excess of the power conferred by this Act and the regulations, they shall be deemed to be valid orders to the extent to which they are not in excess of that power.

(6) Where a provision of an order made pursuant to the regulations is inconsistent with a provision of this Act or the regulations, the latter shall prevail and the former shall, to the extent of the inconsistency, be of no force or effect.

(7) Section 49A of the *Acts Interpretation Act 1901* applies in relation to the making of orders pursuant to the regulations in like manner as it applies in relation to the making of regulations.

(8) Notwithstanding section 49A of the *Acts Interpretation Act 1901*, the regulations may make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in orders made pursuant to the regulations as existing from time to time.

##### 35 Repeal

(1) The *Protection of the Sea (Discharge of Oil from Ships) Act 1981* is repealed.

(2) Notwithstanding the repeal of the Act referred to in subsection (1) effected by that subsection:

(a) the provisions of that Act continue to apply, after the commencement of this section, in relation to:

(i) any discharge of oil, or of an oily mixture, within the meaning of that Act that occurred or commenced before the commencement of this section;

(ii) any prescribed operation within the meaning of subsection 12(4) of that Act that was carried out or commenced before the commencement of this section; and

(iii) any prescribed occurrence within the meaning of subsection 12(4) of that Act that occurred or commenced before the commencement of this section; and

(b) section 14 of that Act continues to apply, after the commencement of this section, in relation to any oil record book that, in accordance with subsection 12(1) of that Act, was carried in an Australian ship before the commencement of this section;

as if that Act had not been repealed.

Notes to the Protection of the Sea (Prevention of Pollution from Ships) Act 1983

Note 1

The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* as shown in this compilation comprises Act No. 41, 1983 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 1 October 2001 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

| Act | Number  and year | Date  of Assent | Date of commencement | Application, saving or transitional provisions |
| --- | --- | --- | --- | --- |
| Protection of the Sea (Prevention of Pollution from Ships) Act 1983 | 41, 1983 | 20 June 1983 | Ss. 1 and 2: Royal Assent Remainder: 14 Jan 1988 (*see Gazette* 1988, No. S8) |  |
| Statute Law (Miscellaneous Provisions) Act (No. 1) 1984 | 72, 1984 | 25 June 1984 | S. 3: 23 July 1984 *(a)* | S. 5(1) |
| Statute Law (Miscellaneous Provisions) Act (No. 1) 1985 | 65, 1985 | 5 June 1985 | S. 3: *(b)* | — |
| Protection of the Sea (Prevention of Pollution from Ships) Amendment Act 1986 | 81, 1986 | 24 June 1986 | Ss. 1 and 2: Royal Assent Remainder: 23 Sept 1988 (*see Gazette* 1988, No. S291) | — |
| Protection of the Sea Legislation Amendment Act 1986 | 167, 1986 | 18 Dec 1986 | Ss. 16 and 30–32: Royal Assent *(c)* Ss. 17(1), 18, 19, 20(1), 29(1) and 33(1): 14 Jan 1988 (*see Gazette* 1988, No. S8) *(c)* Ss. 17(2), 20(2), 21–25, 29(2), 33(2), 34(1) and (2): 14 Jan 1988 (*see Gazette* 1988, No. S8) *(c)* Ss. 17(3), 28, 29(3) and 34(3): 14 Nov 1990 (*see Gazette* 1990, No. S296) *(c)* Ss. 26 and 27: 10 Jan 1995 (*see Gazette* 1994, No. S462) *(c)* | — |
| as amended by |  |  |  |  |
| Statute Law (Miscellaneous Provisions) Act 1987 | 141, 1987 | 18 Dec 1987 | S. 3: *(d)* | S. 5(1) |
| Transport and Communications Legislation Amendment Act 1990 | 11, 1991 | 21 Jan 1991 | S. 45: *(e)* | — |
| Statute Law (Miscellaneous Provisions) Act 1987 | 141, 1987 | 18 Dec 1987 | S. 3: Royal Assent *(f)* | S. 5(1) |
| Transport Legislation Amendment Act 1988 | 57, 1988 | 15 June 1988 | Ss. 1, 2, 3(3)–(6), 4, 8, 9, 13, 16 and  19–27: Royal Assent Ss. 3(1), (2), 5, 6, 17 and 18: 1 July 1988 (*see Gazette* 1988, No. S193) Ss. 10–12, 14 and 15: 13 June 1986 (*see* s. 2(2) and *Gazette* 1986, No. S269) Remainder: 1 May 1989 (*see Gazette* 1989, No. S150) | — |
| Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988 | 99, 1988 | 2 Dec 1988 | 2 Dec 1988 | — |
| Transport Legislation Amendment Act 1989 | 6, 1989 | 16 Mar 1989 | S. 8: *(g)* | — |
| Transport and Communications Legislation Amendment Act (No. 2) 1989 | 23, 1990 | 17 Jan 1990 | S. 52: Royal Assent *(h)* S. 53: *(h)* | — |
| Australian Maritime Safety Authority Act 1990 | 78, 1990 | 22 Oct 1990 | Ss. 35, 48, 62 and 63: 1 Jan 1991 Remainder: Royal Assent | S. 63 |
| as amended by |  |  |  |  |
| Statute Law Revision Act 1996 | 43, 1996 | 25 Oct 1996 | Schedule 3 (item 4): 22 Oct 1990 *(i)* | — |
| Transport and Communications Legislation Amendment Act 1990 | 11, 1991 | 21 Jan 1991 | Ss. 34 and 35: Royal Assent *(j)* | — |
| Transport Legislation Amendment Act 1991 | 101, 1991 | 27 June 1991 | Ss. 23–27: Royal Assent *(k)* | S. 3 |
| Transport and Communications Legislation Amendment Act (No. 2) 1992 | 71, 1992 | 26 June 1992 | Ss. 29, 30(1), 31 and 44(2): Royal Assent *(l)* Ss. 30(2), 32, 43 and 44(3): 4 Apr 1993 *(l)* Ss. 30(3), 36–42 and 44(4): 29 Dec 2000 *(l)* Ss. 33–35: *(l)* S. 44(1): 1 July 1992 *(l)* | S. 2(6) (am. by 74, 2000, Sch. 1 [item 1]) S. 2(6A) (ad. by 74, 2000, Sch. 1 [item 2]) |
| as amended by |  |  |  |  |
| Transport Legislation Amendment Act 2000 | 74, 2000 | 28 June 2000 | Schedule 1: Royal Assent *(la)* | — |
| Transport and Communications Legislation Amendment Act (No. 3) 1992 | 216, 1992 | 24 Dec 1992 | Part 7 (ss. 26–29): 6 July 1993 (*see Gazette* 1993, No. GN25) *(m)* | — |
| Transport and Communications Legislation Amendment Act (No. 2) 1993 | 5, 1994 | 18 Jan 1994 | Schedule (items 68, 69): Royal Assent *(n)* | — |
| Transport and Communications Legislation Amendment Act 1994 | 64, 1994 | 30 May 1994 | S. 3(1): *(o)* | — |
| Statute Law Revision Act 1996 | 43, 1996 | 25 Oct 1996 | Schedule 5 (items 123, 124): Royal Assent *(p)* | — |
| Transport and Regional Services Legislation Amendment (Application of Criminal Code) Act 2001 | 143, 2001 | 1 Oct 2001 | 2 Oct 2001 | S. 4 [*see* Table A] |
| International Maritime Conventions Legislation Amendment Act 2001 | 149, 2001 | 1 Oct 2001 | Schedule 3 (items 1–91,  106–130): Royal Assent *(q)* Schedule 3 (items 92–105): *(q)* | — |
| Protection of the Sea (Prevention of Pollution from Ships) Amendment Act 2002 | 4, 2002 | 4 Apr 2002 | Schedule 1 (items 1–6, 9, 10): 5 Apr 2002 Schedule 1 (items 7, 8): *(r)* Remainder: Royal Assent | — |
| Maritime Legislation Amendment Act 2003 | 7, 2003 | 19 Mar 2003 | Schedule 1 (items 7–9): 20 Mar 2003 Schedule 3 (items 2–28): Royal Assent | — |
| Maritime Legislation Amendment (Prevention of Pollution from Ships) Act 2003 | 47, 2003 | 26 June 2003 | Schedule 1 (items 23, 24): *(s)* Schedule 1 (items 25–31): *(s)* | — |

*(a)* The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1984*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act shall come into operation on the twenty‑eighth day after the day on which it receives the Royal Assent.

*(b)* The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsections 2(1) and (38) of which provide as follows:

(1) Subject to this section, this Act shall come into operation on the twenty‑eighth day after the day on which it receives the Royal Assent.

(38) The amendments of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (other than the amendments of subsection 34(3) and Schedule 1) made by this Act shall come into operation on a day to be fixed by Proclamation.

The date fixed in pursuance of subsection 2(1) was 3 July 1985.

The date fixed in pursuance of subsection 2(38) was 1 March 1986 (*see Gazette* 1986, No. S81).

*(c)* The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* was amended by sections 16–34 only of the *Protection of the Sea Legislation Amendment Act 1986*, subsections 2(1)–(4) of which provide as follows:

(1) Sections 1, 2, 3, 13, 16, 30, 31 and 32 and Part V shall come into operation on the day on which this Act receives the Royal Assent.

(2) Sections 5, 6 and 7, subsections 12(1), 15(1) and 17(1), sections 18 and 19 and subsections 20(1), 29(1) and 33(1) shall come into operation on the day on which Part II of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* comes into operation.

(3) Sections 8, 9 and 10, subsections 12(2), 15(2), 17(2) and 20(2), sections 21, 22, 23, 24 and 25 and subsections 29(2), 33(2) and 34(1) and (2) shall come into operation on the day on which Part III of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* comes into operation.

(4) The remaining provisions of this Act shall come into operation on such respective days as are fixed by Proclamation.

*(d)* The *Protection of the Sea Legislation Amendment Act 1986* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1987*, subsection 2(26) of which provides as follows:

(26) The amendments of paragraph 20(2)(b) of, and Schedules 1, 2 and 8 to, the *Protection of the Sea Legislation Amendment Act 1986* made by this Act shall respectively come into operation or be deemed to have come into operation, as the case requires, on the commencement of subsection 20(2), subsection 15(1), subsection 15(2) and section 40 of the first‑mentioned Act.

The date fixed in pursuance of subsection 2(26) on the commencement of subsection 20(2) was 14 January 1988 (*see Gazette* 1988, No. S8).

*(e)* The *Protection of the Sea Legislation Amendment Act 1986* was amended by section 45 only of the *Transport and Communications Legislation Amendment Act 1990*, paragraph 2(13)(d) of which provides as follows:

(d) the amendment of the *Protection of the Sea Legislation Amendment Act 1986* is taken to have commenced immediately after the commencement of subsection 20(2) of that Act;

Subsection 20(2) commenced on 14 January 1988 (*see Gazette* 1988, No. S8).

*(f)* The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1987*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

*(g)* The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* was amended by section 8 only of the *Transport Legislation Amendment Act 1989*, subsections 2(1) and   
(5)–(8) of which provide as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(5) The amendments of sections 5 and 26F of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* made by this Act commence immediately after the commencement of section 28 of the *Protection of the Sea Legislation Amendment Act 1986*.

Section 28 commenced on 14 November 1990 (*see Gazette* 1990, No. S296).

(6) The amendments of section 26AB of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* made by this Act commence immediately after the commencement of section 26 of the *Protection of the Sea Legislation Amendment Act 1986*.

Section 26 commenced on 10 January 1995 (*see Gazette* 1994, No. S462).

(7) The amendments of section 26D of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* made by this Act commence immediately after the commencement of Part IIIB of that Act.

Part IIIB commenced on 14 November 1990 (*see Gazette* 1990, No. S296).

(8) The amendment of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* made by this Act that inserts proposed section 26DA commences at the commencement of section 28 of the *Protection of the Sea Legislation Amendment Act 1986*.

Section 28 commenced on 14 November 1990 (*see Gazette* 1990, No. S296).

*(h)* The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* was amended by sections 52 and 53 only of the *Transport and Communications Legislation Amendment Act (No. 2) 1989*, subsections 2(1) and (7) of which provide as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(7) The amendments of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* made by this Act commence immediately after the commencement of Part IIIC of that Act.

Part IIIC commenced on 14 November 1990 (*see Gazette* 1990, No. S296).

*(i)* The *Australian Maritime Safety Authority Act 1990* was amended by Schedule 3 (item 4) only of the *Statute Law Revision Act 1996*, subsection 2(3) of which provides as follows:

(3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.

*(j)* The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* was amended by sections 34 and 35 only of the *Transport and Communications Legislation Amendment Act 1990*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

*(k)* The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* was amended by sections 23–27 only of the *Transport Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

*(l)* The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* was amended by sections 29–44 only of the *Transport and Communications Legislation Amendment Act (No. 2) 1992*, subsections 2(1), (5), (6), (6A), (7) and (8) of which provide as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(5) Subsection 30(2), sections 32 and 43 and subsection 44(3) commence on 4 April 1993.

(6) Subsection 30(3), sections 36 to 42 (inclusive) and subsection 44(4) commence on a day to be fixed by Proclamation.

(6A) If the provisions mentioned in subsection (6) do not commence under that subsection within 6 months after the day on which the *Transport Legislation Amendment Act 2000* receives the Royal Assent, they commence on the first day after the end of that period.

(7) Sections 33, 34 and 35 commence immediately after the commencement of section 26 of the *Protection of the Sea Legislation Amendment Act 1986*.

(8) Subsection 44(1) commences on 1 July 1992.

Section 26 of the *Protection of the Sea Legislation Amendment Act 1986* commenced on 10 January 1995 (*see Gazette* 1994, No. S462).

*(la)* The *Transport and Communications Legislation Amendment Act (No. 2) 1992* was amended by Schedule 1 only of the *Transport Legislation Amendment Act 2000*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

*(m)* The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* was amended by Part 7 (sections 26–29) only of the *Transport and Communications Legislation Amendment Act (No. 3) 1992*, subsection 2(5) of which provides as follows:

(5) Subject to subsection (9), Part 7 commences on a day to be fixed by Proclamation.

*(n)* The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* was amended by the Schedule (items 68 and 69) only of the *Transport and Communications Legislation Amendment Act (No. 2) 1993*, subsection 2(1) of which provides as follows:

(1) Subject to subsections (2) to (10) (inclusive), this Act commences on the day on which it receives the Royal Assent.

*(o)* The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* was amended by subsection 3(1) only of the *Transport and Communications Legislation Amendment Act 1994*, subsections 2(3) and (4) of which provide as follows:

(3) Subject to subsection (4), the amendments of subsections 22(2) and (4) of the *Protection of the Sea (Civil Liability) Act 1981* and the amendments of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* commence:

(a) if this Act receives the Royal Assent before the day on which the *Maritime Legislation Amendment Act 1994* comes into operation—on the day on which that Act comes into operation; or

(b) otherwise—on the day on which this Act receives the Royal Assent.

The date fixed in pursuance of subsection 2(3) was 1 August 1994 (*see Gazette* 1994, No. S289).

(4) The amendment of subsection 26AB(4) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* commences immediately after the commencement of section 26 of the *Protection of the Sea Legislation Amendment Act 1986*.

Section 26 commenced on 10 January 1995 (*see Gazette* 1994, No. S462).

*(p)* The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* was amended by Schedule 5 (items 123 and 124) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:

(1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

*(q)* The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* was amended by Schedule 3 only of the *International Maritime Conventions Legislation Amendment Act 2001*, subsections 2(1) and (4) of which provide as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(4) If Division 2 of Part IIIB of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* has not commenced before the day on which this Act receives the Royal Assent, items 92 to 105 of Schedule 3 commence on the day on which that Division commences, immediately after the commencement of that Division.

Division 2 of Part IIIB commenced on 27 May 2004 (*see* *Gazette* 2004, No. GN17).

*(r)* Subsection 2(1) (item 3) of the *Protection of the Sea (Prevention of Pollution from Ships) Amendment Act 2002* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

| **Commencement information** | | |
| --- | --- | --- |
| **Column 1** | **Column 2** | **Column 3** |
| **Provision(s)** | **Commencement** | **Date/Details** |
| 3. Schedule 1, items 7 and 8 | Immediately after item 92 of Schedule 3 to the *International Maritime Conventions Legislation Amendment Act 2001* commences | 27 May 2004 (*see* *Gazette* 2004, No. GN17) |

*(s)* Subsection 2(1) (items 3–5) of the *Maritime Legislation Amendment (Prevention of Pollution from Ships) Act 2003* provide as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

| **Provision(s)** | **Commencement** | **Date/Details** |
| --- | --- | --- |
| 3. Schedule 1, item 23 | Immediately after the commencement of item 7 of Schedule 1 to the *Protection of the Sea (Prevention of Pollution from Ships) Amendment Act 2002* | 27 May 2004 (*see* *Gazette* 2004, No. GN17) |
| 4. Schedule 1, item 24 | Immediately after the commencement of item 8 of Schedule 1 to the *Protection of the Sea (Prevention of Pollution from Ships) Amendment Act 2002* | 27 May 2004 (*see* *Gazette* 2004, No. GN17) |
| 5. Schedule 1, items 25 to 31 | Immediately after the commencement of Division 2 of Part IIIB of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* | 27 May 2004 (*see* *Gazette* 2004, No. GN17) |

Table of Amendments

| ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted | |
| --- | --- |
| Provision affected | How affected |
| **Part I** |  |
| S. 3 | am. No. 65, 1985; Nos. 81 and 167, 1986; No. 141, 1987; No. 78, 1990 (as am. by No. 43, 1996); No. 101, 1991; Nos. 71 and 216, 1992; No. 64, 1994; No. 149, 2001 |
| S. 4 | am. No. 81, 1986 |
| S. 5 | rs. No. 81, 1986 |
|  | am. No. 6, 1989 |
| S. 6 | am. No. 64, 1994 |
| S. 7 | rep. No. 78, 1990 |
|  | ad. No. 143, 2001 |
| **Part II** |  |
| S. 9 | am. No. 72, 1984; No. 65, 1985; Nos. 81 and 167, 1986; No. 6, 1989; No. 101, 1991; Nos. 71 and 216, 1992; No. 64, 1994; No. 149, 2001; No. 4, 2002 |
| Note to s. 9(2) | ad. No. 149, 2001 |
| Note to s. 9(4) | ad. No. 149, 2001 |
| S. 10 | am. Nos. 81 and 167, 1986; No. 101, 1991 |
|  | rs. No. 149, 2001 |
| S. 11 | rs. No. 65, 1985 |
|  | am. No. 81, 1986; No. 167, 1986 (as am. by No. 141, 1987; No. 11, 1991); No. 141, 1987; No. 57, 1988; No. 101, 1991; No. 64, 1994; Nos. 143 and 149, 2001; No. 7, 2003 |
| Note to s. 11(1A) | ad. No. 149, 2001 |
| Note to s. 11(1B) | ad. No. 149, 2001 |
| S. 11A | ad. No. 71, 1992 |
|  | am. No. 143, 2001; No. 7, 2003 |
| S. 12 | am. No. 65, 1985; No. 167, 1986; No. 101, 1991; Nos. 143 and 149, 2001; No. 7, 2003 |
| S. 13 | am. No. 65, 1985; No. 101, 1991; No. 7, 2003 |
| S. 14 | am. No. 65, 1985; No. 167, 1986; No. 101, 1991; No. 43, 1996; Nos. 143 and 149, 2001; No. 7, 2003 |
| S. 14A | ad. No. 149, 2001 |
| **Part III** |  |
| Ss. 17, 18 | am. No. 149, 2001 |
| S. 19 | am. No. 78, 1990; No. 149, 2001 |
| S. 20 | am. No. 167, 1986; No. 101, 1991; No. 7, 2003 |
| S. 21 | am. Nos. 81 and 167, 1986; No. 101, 1991; No. 64, 1994; No. 149, 2001; No. 4, 2002 |
| Note to s. 21(2) | ad. No. 149, 2001 |
| Note to s. 21(4) | ad. No. 149, 2001 |
| Note to s. 21(5) | ad. No. 149, 2001 |
| Note to s. 21(6) | ad. No. 149, 2001 |
| Note to s. 21(7) | ad. No. 149, 2001 |
| Note to s. 21(8) | ad. No. 149, 2001 |
| Note to s. 21(9) | ad. No. 149, 2001 |
| Note to s. 21(10) | ad. No. 149, 2001 |
| Note to s. 21(11) | ad. No. 149, 2001 |
| Note to s. 21(12) | ad. No. 149, 2001 |
| Note to s. 21(13) | ad. No. 149, 2001 |
| S. 21A | ad. No. 167, 1986 |
| S. 22 | rs. No. 65, 1985 |
|  | am. Nos. 81 and 167, 1986; No. 141, 1987; No. 57, 1988; No. 101, 1991; No. 64, 1994; Nos. 143 and 149, 2001; No. 7, 2003 |
| Note to s. 22(1A) | ad. No. 149, 2001 |
| Note to s. 22(1B) | ad. No. 149, 2001 |
| S. 23 | am. No. 65, 1985; No. 167, 1986; No. 101, 1991; No. 43, 1996; Nos. 143 and 149, 2001; No. 7, 2003 |
| S. 24 | am. No. 65, 1985; No. 101, 1991; No. 7, 2003 |
| S. 25 | am. No. 65, 1985; No. 167, 1986; No. 101, 1991; No. 43, 1996; Nos. 143 and 149, 2001; No. 7, 2003 |
| S. 26AA | ad. No. 149, 2001 |
| **Part IIIA** |  |
| Part IIIA | ad. No. 167, 1986 |
| S. 26A | ad. No. 167, 1986 |
|  | am. No. 71, 1992 |
| S. 26AA | ad. No. 167, 1986 |
|  | rep. No. 71, 1992 |
| S. 26AB | ad. No. 167, 1986 |
|  | am. No. 6, 1989; No. 71, 1992; No. 64, 1994; No. 149, 2001; No. 4, 2002 |
| Note to s. 26AB(5) | ad. No. 149, 2001 |
| Note to s. 26AB(6) | ad. No. 149, 2001 |
| S. 26B | ad. No. 167, 1986 |
|  | am. No. 167, 1986; No. 141, 1987; No. 101, 1991; No. 64, 1994; Nos. 143 and 149, 2001; No. 7, 2003 |
| Note to s. 26B(1) | ad. No. 149, 2001 |
| Note to s. 26B(2) | ad. No. 149, 2001 |
| **Part IIIB** |  |
| Part IIIB | ad. No. 167, 1986 |
| **Division 1** |  |
| Div. 1 of Part IIIB | ad. No. 71, 1992 |
| Ss. 26BA, 26BB | ad. No. 71, 1992 |
| S. 26BC | ad. No. 71, 1992 |
|  | am No. 149, 2001 |
| Note to s. 26BC(3) | ad. No. 149, 2001 |
| Note to s. 26BC(4) | ad. No. 149, 2001 |
| **Division 2** |  |
| Heading to Div. 2  of Part IIIB | ad. No. 71, 1992 |
| S. 26C | ad. No. 167, 1986 |
|  | am. No. 71, 1992 |
| S. 26CA | ad. No. 71, 1992 |
| S. 26D | ad. No. 167, 1986 |
|  | am. No. 6, 1989; No. 101, 1991; No. 149, 2001; No. 4, 2002; No. 47, 2003 |
| Note to s. 26D(5) | ad. No. 149, 2001 |
| Note to s. 26D(6) | ad. No. 149, 2001 |
| Note to s. 26D(7) | ad. No. 149, 2001 |
| Note to s. 26D(8) | ad. No. 149, 2001 |
| S. 26DAA | ad. No. 149, 2001 |
| S. 26DA | ad. No. 6, 1989 |
|  | am. No. 71, 1992 |
| **Part IIIC** |  |
| Part IIIC | ad. No. 167, 1986 |
| S. 26E | ad. No. 167, 1986 |
|  | am. No. 71, 1992 |
| S. 26EAA | ad. No. 149, 2001 |
| S. 26EA | ad. No. 71, 1992 |
| S. 26F | ad. No. 167, 1986 |
|  | am. No. 6, 1989; No. 23, 1990; No. 101, 1991; No. 71, 1992; No. 64, 1994; No. 149, 2001; No. 4, 2002; No. 7, 2003 |
| Note to s. 26F(5) | ad. No. 149, 2001 |
| Note to s. 26F(6) | ad. No. 149, 2001 |
| Note to s. 26F(7) | ad. No. 149, 2001 |
| Note to s. 26F(8) | ad. No. 149, 2001 |
| Note to s. 26F(8A) | ad. No. 149, 2001 |
| Note to s. 26F(9) | ad. No. 149, 2001 |
| Note to s. 26F(10) | ad. No. 149, 2001 |
| Ss. 26FA–26FC | ad. No. 149, 2001 |
| S. 26FD | ad. No. 149, 2001 |
|  | am. No. 7, 2003 |
| S. 26FE | ad. No. 149, 2001 |
| **Part IV** |  |
| S. 26G | ad. No. 64, 1994 |
| S. 27 | am. No. 101, 1991; No. 64, 1994; No. 43, 1996; No. 143, 2001; No. 7, 2003 |
| S. 27A | ad. No. 64, 1994 |
|  | am. No. 143, 2001 |
| S. 27B | ad. No. 64, 1994 |
| S. 27C | ad. No. 64, 1994 |
|  | am. No. 143, 2001 |
| S. 28 | am. No. 167, 1986; No. 101, 1991; No. 149, 2001 |
| S. 29 | rs. No. 64, 1994 |
| S. 29A | ad. No. 101, 1991 |
| S. 29B | ad. No. 149, 2001 |
| S. 31 | am. No. 78, 1990; No. 11, 1991; No. 43, 1996 |
| S. 32 | am. No. 167, 1986; No. 71, 1992 |
| S. 33 | am. Nos. 81 and 167, 1986; No. 141, 1987; No. 78, 1990; No. 149, 2001 |
| S. 34 | am. No. 65, 1985; No. 167, 1986; No. 141, 1987; No. 99, 1988; No. 78, 1990 |
| Schedule 1 | am. No. 65, 1985; No. 167, 1986; No. 71, 1992 |
|  | rep. No. 149, 2001 |
| Schedule 2 | rep. No. 149, 2001 |
| Schedule 3 | ad. No. 65, 1985 |
|  | rep. No. 149, 2001 |
| Schedules 4, 5 | ad. No. 167, 1986 |
|  | rep. No. 149, 2001 |
| Schedules 6–8 | ad. No. 101, 1991 |
|  | rep. No. 149, 2001 |
| Schedules 9–11 | ad. No. 71, 1992 |
|  | rep. No. 149, 2001 |
| Schedule 12 | ad. No. 71, 1992 |
|  | rep. No. 149, 2001 |
| Schedule 13 | ad. No. 216, 1992 |
|  | am. No. 5, 1994 |
|  | rep. No. 149, 2001 |
| Schedule 14 | ad. No. 216, 1992 |
|  | rep. No. 149, 2001 |

Table A

Application, saving or transitional provisions

Transport and Regional Services Legislation Amendment (Application of Criminal Code) Act 2001 (No. 143, 2001)

##### 4 Application of Amendments

(1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.

(2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.