



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

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About this compilation

This compilation

This is a compilation of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* that shows the text of the law as amended and in force on 6 December 2022 (the *compilation date*).

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

Uncommenced amendments

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

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Modifications

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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

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Compilation No. 43

Compilation date: 06/12/2022

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An Act relating to the prevention of pollution from ships

Part I—Preliminary

1 Short title

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

2 Commencement

- (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:

Annex VI approved equivalent: see section 26FEKA.

Antarctic Area means the sea area south of 60° south latitude.

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

approved form means a form approved by the Authority under section 3A.

areas of ice concentration exceeding 1/10 has the same meaning as in the Polar Code.

Australia includes the external Territories.

Australian ship means:

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- (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*.

category A ship has the same meaning as in the Polar Code.

category B ship has the same meaning as in the Polar Code.

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

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.

fast ice has the same meaning as in the Polar Code.

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

heavy grade oil means:

- (a) crude oil having a density at 15°C higher than 900 kg/m³; or
- (b) oil, other than crude oil, having a density at 15°C higher than 900 kg/m³ or a kinematic viscosity at 50°C higher than 180 mm²/s; or
- (c) bitumen, tar and their emulsions.

ice-shelf has the same meaning as in the Polar Code.

inspector means a person who:

- (a) is an inspector within the meaning of the *Navigation Act 2012*; 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.

Marine Order has the meaning given by section 34.

Marine Safety (Domestic Commercial Vessel) National Law has the meaning given by section 17 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

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

outer territorial sea: see subsection (1D).

overseas voyage: a ship's voyage is an **overseas voyage** if in the course of the voyage the ship is present (except because of stress of weather, saving life at sea or other unavoidable cause) in waters outside the outer limits of the exclusive economic zone of Australia. However, the voyage is not an overseas voyage if:

- (a) the voyage commences from a port in Queensland and ends at the same port or another port in Queensland; and
- (b) as an incidental part of its voyage, the ship is present in waters that are outside the outer limits of the exclusive economic zone of Australia but within the Protected Zone; and
- (c) the ship is not otherwise present in waters that are outside the outer limits of the exclusive economic zone of Australia.

Polar Code means the International Code for Ships Operating in Polar Waters:

- (a) adopted by:
 - (i) the Maritime Safety Committee of the International Maritime Organization on 21 November 2014; and
 - (ii) the Marine Environment Protection Committee of the International Maritime Organization on 15 May 2015; and
- (b) as amended and in force for Australia from time to time.

Note: The Polar Code could in 2016 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

prescribed officer: see subsection (2).

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Protected Zone means the zone that is:

- (a) established under Article 10 of the Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as Torres Strait, and Related Matters, done at Sydney on 18 December 1978, as amended and in force for Australia from time to time; and
- (b) the area bounded by the line described in Annex 9 to that Treaty.

Note: The text of the Treaty is set out in Australian Treaty Series 1985 No. 4 ([1985] ATS 4). In 2012, the text of a Treaty in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

regulated Australian vessel: a ship is a **regulated Australian vessel** if it is a regulated Australian vessel for the purposes of the *Navigation Act 2012*.

sea near:

- (a) for a State—see subsection (1A); or
- (b) for the Jervis Bay Territory—see subsection (1B); or
- (c) for an external Territory—see subsection (1C).

ship with fuel tank protection means either of the following:

- (a) a ship with an aggregate oil fuel capacity of 600 m³ or above which is delivered on or after 1 August 2010 (as defined in regulation 1.28.9 of Annex I to the Convention);
- (b) a category A ship, or category B ship, constructed on or after 1 January 2017 with an aggregate oil fuel capacity of less than 600 m³.

ship without fuel tank protection means a ship other than a ship with fuel tank protection.

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 that has not entered force for 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 that has not entered force for 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 Marine Orders.

this Act includes the regulations and Marine Orders.

Tonnage Measurement Convention means the Tonnage Convention within the meaning of the *Navigation Act 2012*.

- (1A) For the purposes of this Act, the **sea near** a State is:
- (a) the part or parts of the territorial sea that are:
 - (i) within 3 nautical miles of the baseline of the territorial sea; and
 - (ii) adjacent to the State; and
 - (b) the waters of the sea that are on the landward side of that part or those parts of the territorial sea (including any waters of the sea that are within the limits of the State).
- (1B) For the purposes of this Act, the **sea near** the Jervis Bay Territory is the sea in that Territory.
- (1C) For the purposes of this Act, the **sea near** an external Territory is:
- (a) the part or parts of the territorial sea that are:
 - (i) within 3 nautical miles of the baseline of the territorial sea; and

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- (ii) adjacent to the Territory; and
 - (b) the waters of the sea that are on the landward side of that part or those parts of the territorial sea (including waters of the sea that are within the limits of the Territory).
- (1D) For the purposes of this Act, the *outer territorial sea* is the territorial sea other than the part or parts of the territorial sea that are:
 - (a) within 3 nautical miles of the baseline of the territorial sea; and
 - (b) adjacent to a State or an external Territory.
- (1E) For the purposes of this Act, the laws of the Jervis Bay Territory are 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.

3A Authority may approve form

- (1) The Authority may, in writing, approve a form for the purposes of a provision of this Act.
- (2) An approval made under subsection (1) is not a legislative instrument.

4 Act to bind Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.
- (3) Subsection (2) does not affect any liability of any officer, employee 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, 26F, 26FEG, 26FEGA, 26FEL, 26FEN, 26FEO and 26FEP, 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.

6A Act does not apply to certain naval or government ships

- (1) This Act does not apply to, or in relation to, any of the following ships used for the time being only on government non-commercial service:

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- (a) a warship or naval auxiliary;
 - (b) a ship (other than a warship or naval auxiliary) owned or operated by a State other than Australia.
- (2) An expression that is used in subsection (1) of this section and in Article 3(3) of the Convention has, in that subsection, the same meaning as in that Article.

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

(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 4, 15 and 34 of Annex I to the Convention in relation to the area of the sea where the discharge occurs;

(ia) the discharge occurs into the outer territorial 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, the charterer and the owner of the ship each commit an offence punishable, on conviction, by a fine not exceeding 20,000 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:

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- (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: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

- (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, the charterer or the 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, the charterer or the 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 of oil or an oily mixture from a ship that is not within a special area and not in Arctic waters, if the following conditions are satisfied:
 - (i) the ship has a gross tonnage of equal to or greater than 400;
 - (ii) the ship is proceeding en route;
 - (iii) the oily mixture is processed using oil filtering equipment meeting the requirements under regulations made for the purposes of section 130 of the *Navigation Act 2012*;
 - (iv) the oil content of the effluent without dilution does not exceed 15 parts in 1,000,000 parts;
 - (v) if the ship is an oil tanker—the oily mixture does not originate from the cargo pump room bilges of the ship and is not mixed with oil cargo residues; and
- (b) the discharge of oil or an oily mixture from a ship within a special area other than the Antarctic Area, if the following conditions are satisfied:
 - (i) the ship has a gross tonnage of equal to or greater than 400;
 - (ii) the ship is proceeding en route;
 - (iii) the oily mixture is processed using oil filtering equipment meeting the requirements under regulations made for the purposes of section 130 of the *Navigation Act 2012*;
 - (iv) the oil content of the effluent without dilution does not exceed 15 parts per 1,000,000 parts;
 - (v) if the ship is an oil tanker—the oily mixture does not originate from the cargo pump room bilges of the ship and is not mixed with oil cargo residues; and
- (c) the discharge of oil or an oily mixture from a ship that is within an area (other than the Antarctic Area or Arctic waters), if the following conditions are satisfied:
 - (i) the ship has a gross tonnage of less than 400;
 - (ii) the ship is proceeding en route;

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- (iii) the ship has in operation equipment, of a kind that meets the requirements under regulations made for the purposes of section 130 of the *Navigation Act 2012*, that ensures that the oil content of the effluent without dilution does not exceed 15 parts in 1,000,000 parts;
- (iv) if the ship is an oil tanker—the oily mixture does not originate from the cargo pump room bilges of the ship and is not mixed with oil cargo residues; and
- (d) the discharge of oil or an oily mixture (other than washings contaminated with oil) from the cargo area of an oil tanker that is not within a special area and not in Arctic waters, if the following conditions are satisfied:
 - (i) the tanker has a gross tonnage of 150 or more;
 - (ii) the tanker is more than 50 nautical miles from the nearest land;
 - (iii) the tanker is proceeding en route;
 - (iv) the instantaneous rate of discharge of oil content does not exceed 30 litres per nautical mile;
 - (v) if the tanker is delivered on or before 31 December 1979—the total quantity of oil discharged into the sea does not exceed one part in 15,000 parts of the total quantity of the cargo of oil of which oil discharged formed a part;
 - (vi) if the tanker is delivered after 31 December 1979—the total quantity of oil discharged into the sea does not exceed one part in 30,000 parts of the total quantity of the cargo of oil of which oil discharged formed a part;
 - (vii) the tanker has in operation an oil discharge monitoring and control system and a slop tank arrangement as required under regulations made for the purposes of section 130 of the *Navigation Act 2012*; and
- (e) the discharge of washings contaminated with oil from an oil tanker that is not within a special area and not in Arctic waters, if the following conditions are satisfied:
 - (i) the tanker is more than 50 nautical miles from the nearest land;

- (ii) the tanker is proceeding en route;
 - (iii) the instantaneous rate of discharge of oil content does not exceed 30 litres per nautical mile;
 - (iv) if the tanker is delivered on or before 31 December 1979—the total quantity of oil discharged into the sea does not exceed one part in 15,000 parts of the total quantity of the cargo of oil of which oil discharged formed a part;
 - (v) if the tanker is delivered after 31 December 1979—the total quantity of oil discharged into the sea does not exceed one part in 30,000 parts of the total quantity of the cargo of oil of which oil discharged formed a part;
 - (vi) the tanker has in operation an oil discharge monitoring and control system and a slop tank arrangement as required under regulations made for the purposes of section 130 of the *Navigation Act 2012*; and
- (f) the discharge of oil or an oily mixture from the cargo area of an oil tanker, either within or outside a special area, if the discharge is of clean or segregated ballast.
- (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

- (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(1B) or of an offence against a law of a State or Territory;

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the master, the charterer and the owner of the ship each commit an offence punishable, on conviction, by a fine not exceeding 20,000 penalty units.

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

10A Prohibition of carriage or use of heavy grade oil on Australian ships in the Antarctic Area

- (1) A person commits an offence if:
- (a) the person is the master or owner of an Australian ship; and
 - (b) the person engages in conduct; and
 - (c) the conduct results in heavy grade oil:
 - (i) being carried as cargo in bulk; or
 - (ii) being used, or carried for use, as fuel; or
 - (iii) being used as ballast;on the ship in the Antarctic Area.

Penalty: 2,000 penalty units.

- (2) A person commits an offence if:
- (a) the person is the master or owner of an Australian ship; and
 - (b) the person engages in conduct; and
 - (c) the conduct results in heavy grade oil:
 - (i) being carried as cargo in bulk; or
 - (ii) being used, or carried for use, as fuel; or
 - (iii) being used as ballast;on the ship in the Antarctic Area.

Penalty: 500 penalty units.

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

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

- (4) Subsections (1) and (2) do not apply to heavy grade oil that is carried or used as fuel, or used as ballast, on an Australian ship for the purpose of securing the safety of a ship or saving life at sea.

Section 10AA

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

- (5) If, at any time (whether before or after this section commences) before an Australian ship enters the Antarctic Area, heavy grade oil is carried or used as fuel, or used as ballast, on the ship, subsections (1) and (2) do not apply to any residue of the oil that is not cleaned or flushed from a tank or pipeline of the ship.

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

10AA Prohibition of carriage or use of heavy grade oil on Australian ships in Arctic waters

- (1) A person commits an offence if:
- (a) the person is the master or owner of an Australian ship; and
 - (b) the person engages in conduct; and
 - (c) the conduct results in heavy grade oil being used, or carried for use, as fuel on the ship in Arctic waters; and
 - (d) either of the following apply:
 - (i) for a ship without fuel tank protection—the person engages in the conduct on or after 1 July 2024;
 - (ii) for a ship with fuel tank protection—the person engages in the conduct on or after 1 July 2029.

Penalty: 2,000 penalty units.

- (2) A person commits an offence if:
- (a) the person is the master or owner of an Australian ship; and
 - (b) the person engages in conduct; and
 - (c) the conduct results in heavy grade oil being used, or carried for use, as fuel on the ship in Arctic waters; and
 - (d) either of the following apply:
 - (i) for a ship without fuel tank protection—the person engages in the conduct on or after 1 July 2024;
 - (ii) for a ship with fuel tank protection—the person engages in the conduct on or after 1 July 2029.

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Penalty: 500 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) Subsections (1) and (2) do not apply to heavy grade oil that is carried or used as fuel on an Australian ship that is:
 - (a) engaged in securing the safety of a ship; or
 - (b) engaged in a search and rescue operation; or
 - (c) dedicated to oil spill preparedness and response.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the Criminal Code.

- (5) If, at any time (whether before or after this section commences) before an Australian ship enters Arctic waters, heavy grade oil is carried or used as fuel on the ship, subsections (1) and (2) do not apply to any residue of the oil that is not cleaned or flushed from a tank or pipeline of the ship.

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

10B Prohibition of carriage or use of heavy grade oil on foreign ships in the Australian Antarctic Territory

- (1) A person commits an offence if:
 - (a) the person is the master or owner of a foreign ship; and
 - (b) the person engages in conduct; and
 - (c) the conduct results in heavy grade oil:
 - (i) being carried as cargo in bulk; or
 - (ii) being used, or carried for use, as fuel; or
 - (iii) being used as ballast;on the ship in the Australian Antarctic Territory.

Penalty: 2,000 penalty units.

- (2) A person commits an offence if:
 - (a) the person is the master or owner of a foreign ship; and
 - (b) the person engages in conduct; and

- (c) the conduct results in heavy grade oil:
- (i) being carried as cargo in bulk; or
 - (ii) being used, or carried for use, as fuel; or
 - (iii) being used as ballast;
- on the ship in the Australian Antarctic Territory.

Penalty: 500 penalty units.

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

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

- (4) Subsections (1) and (2) do not apply to heavy grade oil that is carried or used as fuel, or used as ballast, on a foreign ship for the purpose of securing the safety of a ship or saving life at sea.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

- (5) If, at any time (whether before or after this section commences) before a foreign ship enters the Australian Antarctic Territory, heavy grade oil is carried or used as fuel, or used as ballast, on the ship, subsections (1) and (2) do not apply to any residue of the oil that is not cleaned or flushed from a tank or pipeline of the ship.

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

11 Duty to report certain incidents involving oil or oily mixture

- (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.

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- (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: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

- (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 commits 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: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

- (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) This section does not apply in relation to a prescribed incident, in relation to a ship, that occurs 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 that prescribed incident.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9): see subsection 13.3(3) of the *Criminal Code*.

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(9A) This section does not apply in relation to a prescribed incident that occurs in relation to a foreign ship if the incident occurs outside the following:

- (a) the sea near a State;
- (b) the sea near the Jervis Bay Territory;
- (c) the sea near an external Territory;
- (d) the outer territorial sea;
- (e) the exclusive economic zone.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9A): see subsection 13.3(3) of the *Criminal Code*.

(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.

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- (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 each commit 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*.

11B Transfer of oil cargo between oil tankers—transfer to be in accordance with ship-to-ship operations plan

- (1) A person commits an offence if:
- (a) the person is the master of an oil tanker (the *subject oil tanker*); and
 - (b) the subject oil tanker has a gross tonnage of 150 or more; and
 - (c) the subject oil tanker is engaged in the transfer of oil cargo with another oil tanker that has a gross tonnage of 150 or more; and
 - (d) one of the following subparagraphs applies:
 - (i) the transfer occurs while the subject oil tanker is in 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 41 of Annex I to the Convention in relation to the area of the sea where the transfer occurs;
 - (ia) the transfer occurs while the subject oil tanker is in the outer territorial sea;
 - (ii) the transfer occurs while the subject oil tanker is in the exclusive economic zone;
 - (iii) the transfer occurs while the subject oil tanker is beyond the exclusive economic zone and the subject oil tanker is an Australian ship; and
 - (e) the transfer is not in accordance with the subject oil tanker's ship-to-ship operations plan.

Penalty: 200 penalty units.

- (2) For the purposes of this section, a *ship-to-ship operations plan* for an oil tanker is:
- (a) if the oil tanker is an Australian ship—a plan:
 - (i) that is in accordance with the appropriate prescribed form; and
 - (ii) that is written in the working language of the master of, and the officers on board, the oil tanker; or
 - (b) otherwise—a plan referred to in paragraph 1 of Regulation 41 of Annex I to the Convention.

Exception

- (3) Subsection (1) does not apply if the transfer is described in paragraph 2, 3, 4 or 5 of Regulation 40 of Annex I to the Convention.

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

11C Transfer of oil cargo between oil tankers in Australian waters—qualified person to be in control

- (1) A person commits an offence if:
- (a) an oil tanker (the *subject oil tanker*) has a gross tonnage of 150 or more; and
 - (b) the subject oil tanker is engaged in the transfer of oil cargo with another oil tanker that has a gross tonnage of 150 or more; and
 - (c) one of the following subparagraphs applies:
 - (i) the transfer occurs while the subject oil tanker is in 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 41 of Annex I to the Convention in relation to the area of the sea where the transfer occurs;
 - (ia) the transfer occurs while the subject oil tanker is in the outer territorial sea;

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- (ii) the transfer occurs while the subject oil tanker is in the exclusive economic zone; and
- (d) the person has overall advisory control of the transfer; and
- (e) the person is not the master of either oil tanker; and
- (f) the person does not satisfy the qualification requirements prescribed by the regulations.

Penalty: 60 penalty units.

Strict liability offence

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

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

Exception

- (3) Subsection (1) does not apply if the transfer is described in paragraph 2, 3, 4 or 5 of Regulation 40 of Annex I to the Convention.

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

11D Transfer of oil cargo involving an Australian ship—ship-to-ship operations plan to be carried

- (1) The master and the owner of an oil tanker (the *subject oil tanker*) each commit an offence if:
- (a) the subject oil tanker has a gross tonnage of 150 or more; and
 - (b) the subject oil tanker is an Australian ship; and
 - (c) the subject oil tanker is engaged in the transfer of oil cargo with another oil tanker that has a gross tonnage of 150 or more; and
 - (d) while the transfer occurs, the subject oil tanker does not carry the subject oil tanker's ship-to-ship operations plan.

Penalty: 500 penalty units.

- (2) For the purposes of this section, a ***ship-to-ship operations plan*** for an oil tanker is a plan:
- (a) that is in accordance with the appropriate prescribed form; and
 - (b) that is written in the working language of the master of, and the officers on board, the oil tanker.

Exception

- (3) Subsection (1) does not apply if the transfer is described in paragraph 2, 3, 4 or 5 of Regulation 40 of Annex I to the Convention.

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

11E Transfer of oil cargo involving an Australian ship—making and retaining record of transfer

Offence—failure to make record

- (1) A person commits an offence if:
- (a) the person is the master of an oil tanker (the ***subject oil tanker***); and
 - (b) the subject oil tanker has a gross tonnage of 150 or more; and
 - (c) the subject oil tanker is an Australian ship; and
 - (d) the subject oil tanker is engaged in the transfer of oil cargo with another oil tanker that has a gross tonnage of 150 or more; and
 - (e) the person does not cause a ship-to-ship record to be made of the transfer as soon as is practicable in the circumstances.

Penalty: 200 penalty units.

Offence—failure to retain record etc.

- (2) The master and the owner of an oil tanker (the ***subject oil tanker***) each commit an offence if:
- (a) the subject oil tanker has a gross tonnage of 150 or more; and

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- (b) the subject oil tanker is an Australian ship; and
- (c) the subject oil tanker is engaged in the transfer of oil cargo with another oil tanker that has a gross tonnage of 150 or more; and
- (d) either:
 - (i) a ship-to-ship record of the transfer is not retained in the subject oil tanker until the end of 3 years beginning on the day the record is made; or
 - (ii) a ship-to-ship record of the transfer is not readily available for inspection by an inspector at all reasonable times during that period.

Penalty: 60 penalty units.

Ship-to-ship record

- (3) For the purposes of this section, a ***ship-to-ship record*** is a written record that contains the information prescribed by the regulations for the purposes of this subsection.

Strict liability offence

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

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

Exception

- (5) Subsection (1) or (2) does not apply if the transfer is described in paragraph 2, 3, 4 or 5 of Regulation 40 of Annex I to the Convention.

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

**11F Transfer of oil cargo between oil tankers in Australian waters—
notification of transfer***Main offence*

- (1) A person commits an offence if:
- (a) the person is the master of an oil tanker (the *subject oil tanker*); and
 - (b) the subject oil tanker has a gross tonnage of 150 or more; and
 - (c) the subject oil tanker is engaged in the transfer of oil cargo with another oil tanker that has a gross tonnage of 150 or more; and
 - (d) one of the following subparagraphs applies:
 - (i) the transfer occurs while the subject oil tanker is in 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 42 of Annex I to the Convention in relation to the area of the sea where the transfer occurs;
 - (ia) the transfer occurs while the subject oil tanker is in the outer territorial sea;
 - (ii) the transfer occurs while the subject oil tanker is in the exclusive economic zone; and
 - (e) if the ship-to-ship transfer information was available to the person at least 48 hours before the transfer began—either or both of the following subparagraphs apply:
 - (i) the person did not notify a prescribed officer, in the manner prescribed by the regulations, of the transfer at least 48 hours before the transfer began;
 - (ii) the person did not notify a prescribed officer, in the manner prescribed by the regulations, of that information at least 48 hours before the transfer began; and
 - (f) if the ship-to-ship transfer information was not available to the person at least 48 hours before the transfer began—either or both of the following subparagraphs apply:

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- (i) the person did not notify a prescribed officer, in the manner prescribed by the regulations, of the transfer at least 48 hours before the transfer began;
- (ii) the person did not notify a prescribed officer, in the manner prescribed by the regulations, of that information before the transfer began.

Penalty: 200 penalty units.

Offence—failure to notify change of arrival time

- (2) A person commits an offence if:
 - (a) the person is the master of an oil tanker (the ***subject oil tanker***); and
 - (b) the subject oil tanker has a gross tonnage of 150 or more; and
 - (c) the subject oil tanker is engaged in the transfer of oil cargo with another oil tanker that has a gross tonnage of 150 or more; and
 - (d) one of the following subparagraphs applies:
 - (i) the transfer occurs while the subject oil tanker is in 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 42 of Annex I to the Convention in relation to the area of the sea where the transfer occurs;
 - (ia) the transfer occurs while the subject oil tanker is in the outer territorial sea;
 - (ii) the transfer occurs while the subject oil tanker is in the exclusive economic zone; and
 - (e) the person notified a prescribed officer, in the manner prescribed by the regulations, of the transfer, and of the ship-to-ship transfer information, at least 48 hours before the transfer began; and
 - (f) after the notification referred to in paragraph (e), the estimated time of arrival of the subject oil tanker at the location for the transfer changed by more than 6 hours; and

- (g) the person did not notify a prescribed officer, in the manner prescribed by the regulations, of the new estimated time of arrival within 2 hours of the person becoming aware of the new estimated time of arrival.

Penalty: 60 penalty units.

Ship-to-ship transfer information

- (3) For the purposes of this section, ***ship-to-ship transfer information*** is information prescribed by the regulations for the purposes of this subsection.

Strict liability offence

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

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

Exception

- (5) Subsection (1) or (2) does not apply if the transfer is described in paragraph 2, 3, 4 or 5 of Regulation 40 of Annex I to the Convention.

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

11G Transfer of oil cargo between oil tankers outside Australian waters—notification of transfer

Main offence

- (1) A person commits an offence if:
- (a) the person is the master of an oil tanker (the ***subject oil tanker***); and
 - (b) the subject oil tanker has a gross tonnage of 150 or more; and
 - (c) the subject oil tanker is an Australian ship; and

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- (d) the subject oil tanker is engaged in the transfer of oil cargo with another oil tanker that has a gross tonnage of 150 or more; and
- (e) the transfer occurs while the subject oil tanker is in the territorial sea, or in the exclusive economic zone, of a foreign country that is a party to the Convention; and
- (f) if the ship-to-ship transfer information was available to the person at least 48 hours before the transfer began—either or both of the following subparagraphs apply:
 - (i) the person did not notify the government of that foreign country, in the manner prescribed by the regulations, of the transfer at least 48 hours before the transfer began;
 - (ii) the person did not notify the government of that foreign country, in the manner prescribed by the regulations, of that information at least 48 hours before the transfer began; and
- (g) if the ship-to-ship transfer information was not available to the person at least 48 hours before the transfer began—either or both of the following subparagraphs apply:
 - (i) the person did not notify the government of that foreign country, in the manner prescribed by the regulations, of the transfer at least 48 hours before the transfer began;
 - (ii) the person did not notify the government of that foreign country, in the manner prescribed by the regulations, of that information before the transfer began.

Penalty: 200 penalty units.

Offence—failure to notify change of arrival time

- (2) A person commits an offence if:
 - (a) the person is the master of an oil tanker (the ***subject oil tanker***); and
 - (b) the subject oil tanker has a gross tonnage of 150 or more; and
 - (c) the subject oil tanker is an Australian ship; and

- (d) the subject oil tanker is engaged in the transfer of oil cargo with another oil tanker that has a gross tonnage of 150 or more; and
- (e) the transfer occurs while the subject oil tanker is in the territorial sea, or in the exclusive economic zone, of a foreign country that is a party to the Convention; and
- (f) the person notified the government of that foreign country, in the manner prescribed by the regulations, of the transfer, and of the ship-to-ship transfer information, at least 48 hours before the transfer began; and
- (g) after the notification referred to in paragraph (f), the estimated time of arrival of the subject oil tanker at the location for the transfer changed by more than 6 hours; and
- (h) the person did not notify the government of that foreign country, in the manner prescribed by the regulations, of the new estimated time of arrival within 2 hours of the person becoming aware of the new estimated time of arrival.

Penalty: 60 penalty units.

Ship-to-ship transfer information

- (3) For the purposes of this section, ***ship-to-ship transfer information*** is information prescribed by the regulations for the purposes of this subsection.

Strict liability offence

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

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

Exception

- (5) Subsection (1) or (2) does not apply if the transfer is described in paragraph 2, 3, 4 or 5 of Regulation 40 of Annex I to the Convention.

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

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Definitions

(6) In this section:

exclusive economic zone has the same meaning as in the *Seas and Submerged Lands Act 1973*.

territorial sea has the same meaning as in the *Seas and Submerged Lands Act 1973*.

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 each commit 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 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) must be signed by the officer in charge of the prescribed operation or prescribed occurrence.
- (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 each commit 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

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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.

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- (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.

mixture includes ballast water, tank washings and other residues.

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

Procedures and Arrangements Manual means a manual that:

- (a) contains the matters set out in appendix 4 of Annex II; and
- (b) is in accordance with the approved form.

regulated persistent floater means a persistent floater with:

- (a) a viscosity equal to or greater than 50 mPa·s at 20°C; or
- (b) a melting point equal to or greater than 0°C.

- (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 Prohibition of carriage of substances that have not been categorized or provisionally assessed

- (1) A person commits an offence if:
- (a) the person engages in conduct; and

- (b) the conduct results in a liquid substance, or a mixture containing a liquid substance, being carried as cargo or part cargo in bulk on an Australian ship; and
- (c) the person is negligent as to causing that result; and
- (d) the substance has not been categorized in accordance with regulation 6.1 of Annex II; and
- (e) the substance has not been provisionally assessed in accordance with regulation 6.3 of Annex II; and
- (f) the substance is being carried while one of the following subparagraphs applies:
 - (i) the ship is in 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 13.1.3 of Annex II in relation to the area of the sea where the substance is being carried;
 - (ia) the ship is in the outer territorial sea;
 - (ii) the ship is in the exclusive economic zone;
 - (iii) the ship is beyond the exclusive economic zone.

Penalty: 200 penalty units.

- (2) The master and the owner of an Australian ship each commit an offence if:
 - (a) a liquid substance, or a mixture containing a liquid substance, is carried as cargo or part cargo in bulk on the ship; and
 - (b) the substance has not been categorized in accordance with regulation 6.1 of Annex II; and
 - (c) the substance has not been provisionally assessed in accordance with regulation 6.3 of Annex II; and
 - (d) the substance is carried while one of the following subparagraphs applies:
 - (i) the ship is in 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 13.1.3 of Annex II in relation to the area of the sea where the substance is being carried;

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- (ia) the ship is in the outer territorial sea;
- (ii) the ship is in the exclusive economic zone;
- (iii) the ship is beyond the exclusive economic zone.

Penalty: 60 penalty units.

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

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

21 Prohibition of discharge of substances into the sea

Ordinary offence

- (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, 6 and 13 of Annex II to the Convention in relation to the area of the sea where the discharge occurs;
 - (ia) the discharge occurs into the outer territorial 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.

Strict liability offence

- (1B) Subject to subsections (2) and (4) to (11), 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, 6 and 13 of Annex II to the Convention in relation to the area of the sea where the discharge occurs;
 - (ia) the discharge occurs into the outer territorial 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.

Exception for emergencies

- (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

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- (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: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

- (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.

Substance in Category X

- (4) Subject to subsections (12) and (13), if:
 - (a) the tank of a ship that held a substance in Category X or a mixture containing a substance in Category X has been:
 - (i) emptied to the maximum extent in accordance with procedures in the Procedures and Arrangements Manual; and
 - (ii) washed in accordance with the prewash procedure specified in Appendix VI to Annex II; and
 - (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 13.6.1 of Annex II and until the tank is empty; and

- (c) the residue then remaining in the tank has been subsequently diluted with water;

subsection (1B) does not apply to the discharge from the ship of the water containing that residue if the conditions in subsection (9A) are satisfied.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

High-viscosity or solidifying substance in Category Y

- (5) Subject to subsections (12), (13) and (13A), if:

- (a) the tank of a ship that held:

(i) a high-viscosity or solidifying substance in Category Y; or

(ii) a mixture containing a high-viscosity or solidifying substance in Category Y (except a mixture containing a substance in Category X);

has been:

(iii) emptied to the maximum extent in accordance with procedures in the Procedures and Arrangements Manual; and

(iv) washed in accordance with the prewash procedure specified in Appendix VI to Annex II; and

- (b) the resulting residues in the tank have been discharged to a reception facility until the tank is empty; and

- (c) the residue then remaining in the tank has been subsequently diluted with water;

subsection (1B) does not apply to the discharge into the sea of the water containing that residue if the conditions in subsection (9A) are satisfied.

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

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Regulated persistent floaters in Category Y

- (5A) Subject to subsections (12) and (13), if:
- (a) the tank of a ship that held:
 - (i) a regulated persistent floater in Category Y; or
 - (ii) a mixture containing a regulated persistent floater in Category Y;has been:
 - (iii) emptied to the maximum extent in accordance with procedures in the Procedures and Arrangements Manual; and
 - (iv) washed in accordance with the prewash procedure specified in Appendix VI to Annex II; and
 - (b) the resulting residues in the tank have been discharged to a reception facility at the port of unloading until the tank is empty; and
 - (c) the residue then remaining in the tank has been subsequently diluted with water;

subsection (1B) does not apply to the discharge from the ship of the water containing that residue, into the North West European waters, the Baltic Sea area, the Western European waters or the Norwegian Sea, if the conditions in subsection (9A) are satisfied.

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

Other substances in Category Y

- (6) Subject to subsections (12), (13) and (13A), if the tank of a ship that held:
- (a) a substance in Category Y (except a substance in Category Y referred to in subsection (5)); or
 - (b) a mixture containing a substance in Category Y (except a substance in Category Y referred to in subsection (5)) except a mixture containing a substance in Category X;
- has been emptied to the maximum extent in accordance with the procedures in the Procedures and Arrangements Manual, subsection (1B) does not apply to the discharge into the sea of any

residue of that substance or mixture if the conditions in subsection (9A) are satisfied.

Note: A defendant bears an evidential burden in relation to the matters in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

Substances in Category Z—ship constructed before 1 January 2007

- (7) Subject to subsections (12) and (13), if:
- (a) a ship was constructed before 1 January 2007; and
 - (b) the ship's tank held a substance in Category Z or a mixture containing a substance in Category Z; and
 - (c) the tank has been emptied to the maximum extent in accordance with the procedures in the Procedures and Arrangements Manual;

subsection (1B) does not apply to the discharge into the sea of any residue of that substance or mixture if the following conditions are satisfied:

- (d) the discharge is made when the ship is proceeding en route at a speed of:
 - (i) at least 7 knots, if the ship is self-propelled; or
 - (ii) at least 4 knots, if the ship is not self-propelled;
- (e) the discharge is made when the ship is at least 12 nautical miles from the nearest land and is in water at least 25 metres deep.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

Substances in Category Z—ship constructed on or after 1 January 2007

- (8) Subject to subsections (12) and (13), if:
- (a) a ship is constructed on or after 1 January 2007; and
 - (b) the ship's tank held a substance in Category Z or a mixture containing a substance in Category Z; and
 - (c) the tank has been emptied to the maximum extent in accordance with the procedures in the Procedures and Arrangements Manual;
-

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subsection (1B) does not apply to the discharge into the sea of any residue of that substance or mixture if the conditions in subsection (9A) are satisfied.

Note: A defendant bears an evidential burden in relation to the matters in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

- (9) On application to the Authority in the approved form, the Authority may, in accordance with the regulations, waive the condition in paragraph (9A)(c) in relation to the discharge into the sea of residue referred to in subsection (8). The Authority must give written notice of a waiver to the applicant. The notice must specify the particular ship, substance in Category Z, and prescribed voyage, for which the condition is waived.

Conditions for the discharge of residue into the sea

- (9A) For the purposes of subsections (4), (5), (5A), (6) and (8), the following conditions must be satisfied in relation to the discharge of any residue into the sea:
- (a) the discharge is made when the ship is proceeding en route at a speed of:
 - (i) at least 7 knots, if the ship is self-propelled; or
 - (ii) at least 4 knots, if the ship is not self-propelled;
 - (b) the discharge is made below the ship's waterline through the ship's underwater discharge outlets at a rate not exceeding the maximum rate for which each underwater discharge outlet is designed;
 - (c) the discharge is made when the ship is at least 12 nautical miles from the nearest land;
 - (d) the discharge is made when the ship is in water at least 25 metres deep.

Discharge of bilge water etc.

- (10) 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 one or more liquid

substances referred to in regulation 6.1.4 of Annex II but does not contain any other liquid substance.

Note: A defendant bears an evidential burden in relation to the matters in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

Discharge of clean ballast or segregated ballast

- (11) Subsection (1B) does not apply to the discharge from a ship of clean ballast or segregated ballast.

Note: A defendant bears an evidential burden in relation to the matters in subsection (11) (see subsection 13.3(3) of the *Criminal Code*).

Subsections (4) to (9) do not apply to a mixture that contains no noxious liquid substance

- (12) Subsections (4) to (9) 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 regulation 6.1.4 of Annex II.

Subsections (4) to (9) do not apply to discharges in Antarctic Area or Arctic waters

- (13) Subsections (4) to (9) do not apply to the discharge from a ship of noxious liquid substances, or mixtures containing noxious liquid substances, in the Antarctic Area or Arctic waters.

Subsections (5) and (6) do not apply to discharges of regulated persistent floaters in certain waters

- (13A) Subsections (5) and (6) do not apply to the discharge from a ship of water containing residues from tanks that held regulated persistent floaters, or mixtures containing regulated persistent floaters, in the North West European waters, the Baltic Sea area, the Western European waters or the Norwegian Sea.

Section 21A

No limitations on generality of subsections

- (14) Nothing in subsections (2) to (11) limits the generality of any of those subsections.

Inspector

- (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 16 of Annex II.

21A Procedures and Arrangements Manual

- (1) The master and the owner of an Australian ship each commit an offence if:
- (a) a chemical tanker construction certificate under regulations made for the purposes of section 130 of the *Navigation Act 2012* is in force in respect of the ship; and
 - (b) the ship does not have on board a copy of the Procedures and Arrangements Manual written in English.

Penalty: 60 penalty units.

- (2) The master and the owner of a foreign ship each commit an offence if:
- (a) a chemical tanker construction certificate under regulations made for the purposes of section 130 of the *Navigation Act 2012* is in force in respect of the ship; and
 - (b) the ship does not have on board:
 - (i) a copy of the Procedures and Arrangements Manual written in the official language, or one of the official languages, of the country whose flag the ship is entitled to fly; and
 - (ii) if none of those languages is English, Spanish or French—a translation of the Procedures and Arrangements Manual into one of those languages.

Penalty: 60 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

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

22 Duty to report certain incidents involving certain substances

- (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: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

- (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

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(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 commits 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: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

(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).

- (9A) This section does not apply in relation to a prescribed incident, in relation to a ship, that occurs 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 that prescribed incident.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9A): see subsection 13.3(3) of the *Criminal Code*.

- (9B) This section does not apply in relation to a prescribed incident that occurs in relation to a foreign ship if the incident occurs outside the following:

- (a) the sea near a State;
- (b) the sea near the Jervis Bay Territory;
- (c) the sea near an external Territory;
- (d) the outer territorial sea;
- (e) the exclusive economic zone.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9B): see subsection 13.3(3) of the *Criminal Code*.

Section 22A

(10) In this section:

liquid substance does not include a substance referred to in regulation 6.1.4 of 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), (5A), (6), (7), (8), (10) or (11) 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), (5A), (6), (7), (8), (10) or (11) 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.

22A Shipboard marine pollution emergency plan for noxious liquid substances

- (1) This section applies to an Australian ship:
 - (a) that has a gross tonnage of 150 or more; and
 - (b) in respect of which there is in force a chemical tanker construction certificate under regulations made for the purposes of section 130 of the *Navigation Act 2012*.

- (2) There must be kept on board the ship a shipboard marine pollution emergency plan for noxious liquid substances written in the working language of the master of, and the officers on board, the ship.
- (3) A shipboard marine pollution emergency plan for noxious liquid substances must be in accordance with the prescribed form and set out the following particulars:
 - (a) the procedures to be followed by the master of the ship, 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 coordinating with the authorities or persons who have been contacted (whether in Australia or in a country near to the place where the incident occurred);
 - (e) any action to be 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.
- (4) The procedures referred to in paragraph (3)(a) must accord with the regulations prescribing, for the purposes of subsection 22(1), the manner in which a prescribed incident is to be notified.
- (5) Subsection (3) does not prevent other relevant particulars from being included in the shipboard marine pollution emergency plan for noxious liquid substances.
- (6) If the ship does not have on board a shipboard marine pollution emergency plan for noxious liquid substances, the master of the ship and the owner of the ship each commits an offence punishable on conviction by a fine not exceeding 500 penalty units.

Section 23

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

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

- (8) A shipboard marine pollution emergency plan for noxious liquid substances is not a legislative instrument.

- (9) In this section:

prescribed incident, in relation to a ship, has the same meaning as in section 22.

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 each commit 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 each commit 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.

Section 26

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 regulations 13 and 16 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 either:

- (a) is identified as a marine pollutant in the International Maritime Dangerous Goods (IMDG) Code; or
- (b) meets the criteria in the Appendix of Annex III of the Convention.

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 the area of the sea where the jettisoning occurs;

- (ia) the jettisoning occurs into the outer territorial 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.

- (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 the area of the sea where the jettisoning occurs;
 - (ia) the jettisoning occurs into the outer territorial 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: A defendant bears an evidential burden in relation to the matter in subsection (5): see subsection 13.3(3) of the *Criminal Code*.

Section 26B

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (6): see subsection 13.3(3) of the *Criminal Code*.

26B Duty to report certain incidents involving harmful substances

- (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: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

- (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 commits 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: A defendant bears an evidential burden in relation to the matter in subsection (6): see subsection 13.3(3) of the *Criminal Code*.
- (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

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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).

- (10B) This section does not apply in relation to a prescribed incident, in relation to a ship, that occurs 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 that prescribed incident.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10B): see subsection 13.3(3) of the *Criminal Code*.

(10C) This section does not apply in relation to a prescribed incident that occurs in relation to a foreign ship if the incident occurs outside the following:

- (a) the sea near a State;
- (b) the sea near the Jervis Bay Territory;
- (c) the sea near an external Territory;
- (d) the outer territorial sea;
- (e) the exclusive economic zone.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10C): see subsection 13.3(3) of the *Criminal Code*.

(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
- (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
- (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 untreated 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 untreated sewage in the Antarctic Area under Annex IV of the Antarctic Protocol.

26BC Prohibition of discharge of untreated 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:
 - (i) does not occur in the territorial sea adjacent to the Australian Antarctic Territory; and
 - (ii) does not occur in the sea on the landward side of the territorial sea adjacent to 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.

- (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:
 - (i) does not occur in the territorial sea adjacent to the Australian Antarctic Territory; and
 - (ii) does not occur in the sea on the landward side of the territorial sea adjacent to 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 untreated 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: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

- (4) Without limiting the generality of subsection (3), subsection (2A) does not apply to the discharge of untreated sewage from a ship if:
- (a) the untreated sewage was stored in a holding tank; and
 - (b) the untreated 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.

Part IIIB Prevention of pollution by sewage
Division 1 Discharge of untreated sewage in the Antarctic Area

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Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

Division 1A—Discharge of sewage in the Antarctic Area or Arctic waters

26BCA Interpretation

Unless 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 given to it by that Annex) has, in this Division, the same meaning as in that Annex.

26BCB 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 or Arctic waters under Annex IV to the Convention and the Polar Code.

26BCC Prohibition of discharge of sewage

Fault-based offences

- (1) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the person's conduct causes a discharge of sewage from a ship in the Antarctic Area; and
 - (c) the person is reckless or negligent as to causing the discharge by that conduct; and
 - (d) the ship is a ship to which Annex IV to the Convention applies; and
 - (e) if the discharge occurs outside the outer limits of the exclusive economic zone adjacent to the coast of the Australian Antarctic Territory—the ship is an Australian ship.

Penalty: 2,000 penalty units.

- (2) A person commits an offence if:
-

Part IIIB Prevention of pollution by sewage

Division 1A Discharge of sewage in the Antarctic Area or Arctic waters

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- (a) the person engages in conduct; and
- (b) the person's conduct causes a discharge of sewage from a ship in Arctic waters; and
- (c) the person is reckless or negligent as to causing the discharge by that conduct; and
- (d) the ship is a ship to which Annex IV to the Convention applies; and
- (e) the ship is an Australian ship.

Penalty: 2,000 penalty units.

Strict liability offences

- (3) The master and the owner of a ship each commit an offence of strict liability if:
 - (a) sewage is discharged from the ship in the Antarctic Area; and
 - (b) the ship is a ship to which Annex IV to the Convention applies; and
 - (c) if the discharge occurs outside the outer limits of the exclusive economic zone adjacent to the coast of the Australian Antarctic Territory—the ship is an Australian ship.

Penalty: 500 penalty units.

- (4) The master and the owner of a ship each commit an offence of strict liability if:
 - (a) sewage is discharged from the ship in Arctic waters; and
 - (b) the ship is a ship to which Annex IV to the Convention applies; and
 - (c) the ship is an Australian ship.

Penalty: 500 penalty units.

Exception—discharge of sewage for ship's safety etc.

- (5) Subsections (3) and (4) do not apply to the discharge of sewage from a ship if:

- (a) the discharge is necessary for the purpose of:
 - (i) securing the safety of the ship and persons on board the ship; or
 - (ii) saving life at sea; or
- (b) both of the following apply:
 - (i) the discharge results from damage to the ship or its equipment;
 - (ii) all reasonable precautions were taken before and after the occurrence of the damage for the purpose of preventing or minimising the discharge.

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

Exception—discharge of comminuted and disinfected sewage etc.

- (6) Without limiting the generality of subsection (5), subsections (3) and (4) do not apply to the discharge of sewage from a ship if the following conditions are satisfied:
 - (a) the ship is not a category A ship, category B ship or passenger ship constructed on or after 1 January 2017;
 - (b) if the sewage has been comminuted and disinfected using a system approved in accordance with 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:
 - (i) as far as practicable from areas of ice concentration exceeding 1/10; and
 - (ii) at a distance of more than 3 nautical miles from the nearest land, any ice-shelf or fast ice;
 - (c) if the sewage has not been comminuted or disinfected using such a system—the discharge is made when the ship is:
 - (i) as far as practicable from areas of ice concentration exceeding 1/10; and
 - (ii) at a distance of more than 12 nautical miles from the nearest land, any ice-shelf or fast ice;
 - (d) if the sewage has been stored in a holding tank or originates from spaces containing living animals—the sewage is not

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Division 1A Discharge of sewage in the Antarctic Area or Arctic waters

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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: A defendant bears an evidential burden in relation to the matter in subsection (6): see subsection 13.3(3) of the *Criminal Code*.

Exception—discharge of sewage treated in sewage treatment plant

(7) Without limiting the generality of subsection (5), subsections (3) and (4) do 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;
- (b) an inspector has certified that the sewage treatment plant meets the requirements of the regulations giving effect to paragraph 1.1 or 2.1 of Regulation 9 of Annex IV to the Convention;
- (c) the discharge is made when the ship is as far as practicable from the nearest land, any ice-shelf, fast ice or areas of ice concentration exceeding 1/10;
- (d) the effluent does not produce visible floating solids in the Antarctic Area or Arctic waters and does not cause discolouration in the Antarctic Area or Arctic waters.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7): see subsection 13.3(3) of the *Criminal Code*.

(8) Without limiting the generality of subsection (5), subsections (3) and (4) do not apply to the discharge of sewage from a ship if the following conditions are satisfied:

- (a) the ship is a category A ship or category B ship operating in areas of ice concentration exceeding 1/10 for extended periods of time;
- (b) the sewage has been treated in a sewage treatment plant on the ship;
- (c) an inspector has certified that the sewage treatment plant meets the requirements of the regulations giving effect to

paragraph 1.1 or 2.1 of Regulation 9 of Annex IV to the Convention;

- (d) the discharge has been approved in accordance with the regulations.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8): see subsection 13.3(3) of the *Criminal Code*.

Exception—discharge of sewage in territorial waters of foreign country

- (9) Without limiting the generality of subsection (5), subsections (3) and (4) do not apply to the discharge of sewage from a ship if the discharge occurs in the territorial waters of a foreign country in accordance with the law of that country.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9): see subsection 13.3(3) of the *Criminal Code*.

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 Antarctic Area or Arctic waters.

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 when the ship is not within a special area, 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 the area of the sea where the discharge occurs;
 - (ia) the discharge occurs when the ship is within a special area, 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 3 of Regulation 11 of Annex IV to the Convention in relation to the area of the sea where the discharge occurs;

- (ib) the discharge occurs into the outer territorial 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.

- (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 when the ship is not within a special area, 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 the area of the sea where the discharge occurs;
 - (ia) the discharge occurs when the ship is within a special area, 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 3 of Regulation 11 of Annex IV to the Convention in relation to the area of the sea where the discharge occurs;
 - (ib) the discharge occurs into the outer territorial sea;
 - (ii) the discharge occurs into the sea in the exclusive economic zone;

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

(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 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, or originates from spaces containing living animals—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;
- (d) if the ship is a prescribed passenger ship and the discharge occurs when the ship is within a special area—the discharge occurs before a prescribed day.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6): see subsection 13.3(3) of the *Criminal Code*.

- (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 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;
- (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;
- (c) if the ship is a prescribed passenger ship and the discharge occurs when the ship is within a special area—the discharge occurs before a prescribed day.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7): see subsection 13.3(3) of the *Criminal Code*.

- (8) 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 discharge is made into the territorial waters of a foreign country in accordance with the law of that country;

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- (b) if the ship is a prescribed passenger ship and the discharge occurs when the ship is within a special area—the discharge occurs before a prescribed day.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8): see subsection 13.3(3) of the *Criminal Code*.

- (9) 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 ship is a prescribed passenger ship, the discharge occurs when the ship is within a special area and the discharge occurs on or after a prescribed day;
 - (b) the sewage has been treated in a sewage treatment plant on the ship, being a plant that an inspector has certified meets the requirements of the regulations giving effect to paragraph 2.1 of Regulation 9 of Annex IV to the Convention;
 - (c) 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: A defendant bears an evidential burden in relation to the matter in subsection (9): see subsection 13.3(3) of the *Criminal Code*.

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.

Part IIIC—Prevention of pollution by garbage

26E Interpretation

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.

26EA Object of Part

The object of this Part is to give effect to Australia's obligations regarding the prevention of pollution by garbage from ships under Annex V to the Convention and the Polar Code.

26F Prohibition of discharge of garbage into the sea

- (1) If:
- (a) a person engages in conduct that causes a discharge of garbage 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 when the ship is not within a special area, 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 and 7 of Annex V to the Convention in relation to the area of the sea where the discharge occurs;
 - (ia) the discharge occurs when the ship is within a special area, 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, 6 and 7 of Annex V to

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the Convention in relation to the area of the sea where the discharge occurs;

- (ib) the discharge occurs into the outer territorial 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.

Strict liability offence

- (3) Subject to subsections (5) to (11), if:
 - (a) there is a discharge of garbage from a ship into the sea; and
 - (b) one of the following subparagraphs applies:
 - (i) the discharge occurs when the ship is not within a special area, 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 and 7 of Annex V to the Convention in relation to the area of the sea where the discharge occurs;
 - (ia) the discharge occurs when the ship is within a special area, 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, 6 and 7 of Annex V to the Convention in relation to the area of the sea where the discharge occurs;
 - (ib) the discharge occurs into the outer territorial 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.

Exception—discharge of garbage for ship's safety or for saving life

- (5) Subsection (3) does not apply to the discharge 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: A defendant bears an evidential burden in relation to the matter in subsection (5): see subsection 13.3(3) of the *Criminal Code*.

Exception—discharge of fishing gear from a ship

- (5A) Subsection (3) does not apply to the discharge of fishing gear from a ship if the discharge is for the protection of the marine environment or for the safety of the ship or its crew.

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

Exception—discharge of food wastes if health risk

- (5B) Subsection (3) does not apply to the discharge of food wastes from a ship if the retention of those wastes on board the ship presents an imminent health risk to the persons on board the ship.

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

Exception—discharge of food wastes outside a special area or Arctic waters

- (6) Subsection (3) does not apply to the discharge of garbage from a ship if the following conditions are satisfied:
- (a) the discharge occurs when the ship is not within a special area and not in Arctic waters;
 - (b) the discharge occurs when the ship is proceeding en route and is as far as practicable from the nearest land;

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- (c) the garbage is food wastes;
- (d) in the case of food wastes that have been passed through a comminuter or grinder so that the wastes are capable of passing through a screen with no opening greater than 25 millimetres:
 - (i) if the discharge occurs when the ship is not alongside, or within 500 metres of, a fixed or floating platform—the discharge occurs when the ship is at a distance of not less than 3 nautical miles from the nearest land; or
 - (ii) if the discharge occurs when the ship is alongside, or within 500 metres of, a fixed or floating platform—the discharge occurs when the ship is at a distance of not less than 12 nautical miles from the nearest land;
- (e) in the case of all other food wastes:
 - (i) the discharge occurs when the ship is at a distance of not less than 12 nautical miles from the nearest land; and
 - (ii) the discharge occurs when the ship is not alongside, or within 500 metres of, a fixed or floating platform.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6): see subsection 13.3(3) of the *Criminal Code*.

Exception—discharge of cargo residues outside a special area or Arctic waters

- (7) Subsection (3) does not apply to the discharge of garbage from a ship if the following conditions are satisfied:
 - (a) the discharge occurs when the ship is not within a special area and not in Arctic waters;
 - (b) the discharge occurs when the ship is proceeding en route and is as far as practicable from the nearest land;
 - (c) the garbage is cargo residues that cannot be recovered using commonly available methods for unloading;
 - (d) the cargo residues do not contain any prescribed substances;
 - (da) if the cargo residues are residues of solid bulk cargoes (except grain)—the master of the ship has a written declaration made by the shipper stating that:

- (i) the solid bulk cargoes have been classified in accordance with the criteria mentioned in Appendix I of Annex V to the Convention; and
- (ii) the solid bulk cargoes are not harmful to the marine environment;
- (e) the discharge occurs when the ship is at a distance of not less than 12 nautical miles from the nearest land;
- (f) the discharge occurs when the ship is not alongside, or within 500 metres of, a fixed or floating platform.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7): see subsection 13.3(3) of the *Criminal Code*.

Exception—discharge of animal carcasses outside a special area or Arctic waters

- (8) Subsection (3) does not apply to the discharge of garbage from a ship if the following conditions are satisfied:
 - (a) the discharge occurs when the ship is not within a special area and not in Arctic waters;
 - (b) the discharge occurs when the ship is proceeding en route and is as far as practicable from the nearest land;
 - (c) the garbage is animal carcasses;
 - (d) the prescribed requirements are satisfied;
 - (e) the discharge occurs when the ship is not alongside, or within 500 metres of, a fixed or floating platform.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8): see subsection 13.3(3) of the *Criminal Code*.

Exception—discharge of cleaning agents or additives outside a special area or Arctic waters

- (8A) Subsection (3) does not apply to the discharge of garbage from a ship if the following conditions are satisfied:
 - (a) the discharge occurs when the ship is not within a special area and not in Arctic waters;
 - (b) the garbage is cleaning agents or additives contained in deck wash water or other external surfaces wash water;

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- (c) the cleaning agents or additives are not prescribed cleaning agents or additives;
- (d) the discharge occurs when the ship is not alongside, or within 500 metres of, a fixed or floating platform.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8A): see subsection 13.3(3) of the *Criminal Code*.

Exception—discharge of food wastes in a special area or Arctic waters

- (8B) Subsection (3) does not apply to the discharge of garbage from a ship if the following conditions are satisfied:
- (a) the discharge occurs when the ship is within a special area or in Arctic waters;
 - (b) the discharge occurs when the ship is proceeding en route;
 - (c) the garbage is food wastes;
 - (d) the food wastes have been passed through a comminuter or grinder so that the wastes are capable of passing through a screen with no opening greater than 25 millimetres;
 - (e) the food wastes have not been contaminated by any other kind of garbage;
 - (f) if the discharge occurs when the ship is within a special area other than the Antarctic Area—the discharge 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 nearest ice-shelf;
 - (fa) if the discharge occurs when the ship is in the Antarctic Area or Arctic waters—the discharge occurs when the ship is:
 - (i) as far as practicable from the nearest land or areas of ice concentration exceeding 1/10; and
 - (ii) at a distance of not less than 12 nautical miles from the nearest land, nearest ice-shelf or nearest fast ice;
 - (fb) if the discharge occurs when the ship is in the Antarctic Area or Arctic waters—the food wastes are not discharged onto ice;

- (g) if the discharge is of introduced avian products (including poultry and poultry parts) in the Antarctic Area—those products have been treated to be made sterile.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8B): see subsection 13.3(3) of the *Criminal Code*.

Exceptions—discharge of cargo residues, cleaning agents or additives in a special area or Arctic waters

- (8C) Subsection (3) does not apply to the discharge of garbage from a ship if the following conditions are satisfied:
- (a) the discharge occurs when the ship is within a special area or in Arctic waters;
 - (b) the discharge occurs when the ship is proceeding en route;
 - (c) either:
 - (i) the garbage is cargo residues that are contained in cargo hold wash water, that cannot be recovered using commonly available methods for unloading and that do not contain any prescribed substances; or
 - (ii) the garbage is cleaning agents or additives contained in cargo hold wash water and the cleaning agents or additives are not prescribed cleaning agents or additives;
 - (ca) if the garbage is cargo residues that are contained in cargo hold wash water and that are residues of solid bulk cargoes (except grain)—the master of the ship has a written declaration made by the shipper stating that:
 - (i) the solid bulk cargoes have been classified in accordance with the criteria mentioned in Appendix I of Annex V to the Convention; and
 - (ii) the solid bulk cargoes are not harmful to the marine environment;
 - (d) both the port of departure and the next port of destination are either within the special area or in Arctic waters;
 - (e) the ship's voyage plan (however described), as in force immediately before the start of the ship's voyage, does not show the ship transiting outside the special area or Arctic

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waters (as the case may be) between the port of departure and the next port of destination;

- (f) if both the port of departure and the next port of destination are within the special area—there are no reception facilities at those ports that comply with guidelines (as in force from time to time) developed by the International Maritime Organization for the purposes of subparagraph 1.2.5 of Regulation 6 of Annex V to the Convention;
- (g) if both the port of departure and the next port of destination are in Arctic waters—there are no reception facilities at those ports that comply with guidelines (as in force from time to time) developed by the International Maritime Organization for the purposes of subparagraph 5.2.1.5.3 of Chapter 5 of Part II-A of the Polar Code;
- (ga) if the discharge occurs when the ship is within a special area other than the Antarctic Area—the discharge 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 nearest ice-shelf;
- (gb) if the discharge occurs when the ship is in the Antarctic Area or Arctic waters—the discharge occurs when the ship is:
 - (i) as far as practicable from the nearest land or areas of ice concentration exceeding 1/10; and
 - (ii) at a distance of not less than 12 nautical miles from the nearest land, nearest ice-shelf or nearest fast ice;
- (h) the discharge occurs when the ship is not alongside, or within 500 metres of, a fixed or floating platform.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (8C): see subsection 13.3(3) of the *Criminal Code*.

Note 2: The guidelines mentioned in paragraphs (8C)(f) and (g) could in 2016 be viewed on the International Maritime Organization website (<http://www.imo.org>).

- (8D) Subsection (3) does not apply to the discharge of garbage from a ship if the following conditions are satisfied:
- (a) the discharge occurs when the ship is within a special area or in Arctic waters;

- (b) the discharge occurs when the ship is proceeding en route;
- (c) the garbage is cleaning agents or additives contained in deck wash water or other external surfaces wash water;
- (d) the cleaning agents or additives are not prescribed cleaning agents or additives;
- (e) the discharge occurs when the ship is not alongside, or within 500 metres of, a fixed or floating platform.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8D): see subsection 13.3(3) of the *Criminal Code*.

Exception—accidental loss of garbage because of damage to a ship or its equipment

- (9) If garbage from a ship is accidentally lost into the sea because of damage to the ship or its equipment, subsection (3) does not apply to the discharge of the garbage if all reasonable precautions were taken before and after the occurrence of the damage to prevent or minimise the loss.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9): see subsection 13.3(3) of the *Criminal Code*.

Meaning of damage to a ship or its equipment

- (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.

Exception—accidental loss of fishing gear

- (10) If fishing gear from a ship is accidentally lost into the sea, subsection (3) does not apply to the discharge of the gear if all reasonable precautions were taken to prevent the loss.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10): see subsection 13.3(3) of the *Criminal Code*.

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Other more stringent requirements

- (11) If:
- (a) garbage is mixed with, or contaminated by, 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) applies to the discharge of the garbage from a ship notwithstanding that the conditions referred to in subsection (6), (7), (8), (8A), (8B), (8C), (8D), (9) or (10) are complied with; but
 - (d) does not apply to the discharge of the garbage from a ship if those more stringent requirements are complied with.

Interpretation

- (12) Subsections (6) to (8D) do not limit the generality of subsections (5) and (5B).
- (12A) Subsection (11) does not limit the generality of subsections (5), (5A) and (5B).
- (13) In this section *plastics* includes synthetic ropes, synthetic fishing nets, plastic garbage bags and incinerator ashes from plastic products.

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) if the entry is made in relation to a prescribed operation— must be signed 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.

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- (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 each commit 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 one year 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 Garbage management plan

- (1) This section applies to an Australian ship that:
 - (a) has a gross tonnage of 100 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 garbage management plan written in the working language of the crew of the ship.
- (3) A garbage management plan must:
 - (a) be in accordance with the prescribed form; and
 - (b) set out the procedures for minimising, collecting, storing, processing and discharging garbage, including the use of the equipment on board the ship for carrying out those procedures; and
 - (c) designate the person or persons who are in charge of carrying out the plan.
- (4) Subsection (3) does not prevent other relevant particulars from being included in the garbage management plan.
- (5) If a ship to which this section applies does not have on board a garbage 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 discharge 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 discharged from the ship, and the conditions to which any such discharge is subject, under section 26F.

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- (2) If the ship is an Australian ship, the placard or each placard must be written in the working language of the crew of the ship.
- (3) If the ship is a foreign ship that is engaged on a voyage to an Australian port or to an Australian offshore terminal:
 - (a) the placard or each placard must be written in the working language of the crew of the ship; and
 - (b) if the working language of the crew of the ship 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 discharged 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 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 IIID—Prevention of air pollution

Division 1—Definitions

26FEF Definitions

- (1) In this Part:

Annex VI means Annex VI to the Convention.

gas fuel includes liquefied natural gas, compressed natural gas and liquefied petroleum gas.

Register of Local Suppliers of Fuel Oil means the register established under section 26FEM.

- (2) An expression that is used in this Part and in Annex VI has, in this Part, the same meaning as in that Annex (whether or not a particular meaning is assigned to it by that Annex).

Division 2—Sulphur content of fuel oil

26FEG Using fuel oil or carrying fuel oil for use—offences

Ordinary offence

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct results in fuel oil with a sulphur content of more than the limit prescribed by the regulations for the purposes of this paragraph being:
 - (i) used on board a ship as fuel; or
 - (ii) carried on board a ship for use on board the ship as fuel; and
 - (c) the person is reckless or negligent as to causing the result mentioned in paragraph (b); and
 - (d) the result mentioned in paragraph (b) occurs in one of the following circumstances:
 - (i) the ship is in the sea near a State, the Jervis Bay Territory or an external Territory and no law of that State or Territory gives effect to paragraph 1 of Regulation 14 of Annex VI in relation to the area of the sea where the result occurs;
 - (ii) the ship is in the outer territorial sea;
 - (iii) the ship is in the exclusive economic zone;
 - (iv) the ship is an Australian ship that is beyond the exclusive economic zone, but not within an emission control area.

Penalty: 2,000 penalty units.

Strict liability offence

- (2) The master and the owner of a ship each commit an offence if:
- (a) fuel oil with a sulphur content of more than the limit prescribed for the purposes of paragraph (1)(b) is:

- (i) used on board the ship as fuel; or
 - (ii) carried on board the ship for use on board the ship as fuel; and
- (b) one of the following applies:
- (i) the ship is in the sea near a State, the Jervis Bay Territory or an external Territory and no law of that State or Territory gives effect to paragraph 1 of Regulation 14 of Annex VI in relation to the area of the sea where the fuel oil is used or carried as mentioned in paragraph (a);
 - (ii) the ship is in the outer territorial sea;
 - (iii) the ship is in the exclusive economic zone;
 - (iv) the ship is an Australian ship that is beyond the exclusive economic zone, but not within an emission control area.

Penalty: 500 penalty units.

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

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

Presumptions

- (4) For the purposes of this section and section 26FEGA, fuel oil carried on board a ship is presumed to be carried for use on board the ship as fuel unless the contrary is proved.

Note: A defendant bears a legal burden in relation to proving the contrary: see section 13.4 of the *Criminal Code*.

- (5) For the purposes of subsection (1) of this section, the result mentioned in paragraph (1)(b) is presumed to occur in one of the circumstances mentioned in paragraph (1)(d) unless it is proved that the result did not occur in any of those circumstances.

Note: A defendant bears a legal burden in relation to proving that the result did not occur in any of those circumstances: see section 13.4 of the *Criminal Code*.

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- (6) For the purposes of subsection (2) of this section, each subparagraph in paragraph (2)(b) is presumed to apply unless it is proved that the subparagraph does not apply.

Note: A defendant bears a legal burden in relation to proving that the subparagraph does not apply: see section 13.4 of the *Criminal Code*.

26FEGA Using fuel oil or carrying fuel oil for use—exceptions

Exception for ships with Annex VI approved equivalents

- (1) Subsection 26FEG(1) or (2) does not apply to using fuel oil on board a ship as fuel if the following requirements are satisfied:
- (a) the fuel oil is used while an Annex VI approved equivalent is operating on the ship;
 - (b) if the regulations prescribe, for the purposes of this paragraph, requirements in relation to the operation of the Annex VI approved equivalent—the Annex VI approved equivalent is operating in accordance with those requirements;
 - (c) if the regulations prescribe, for the purposes of this paragraph, requirements in relation to the discharge of waste streams arising from the operation of the Annex VI approved equivalent—the waste streams are discharged in accordance with those requirements.

Note: For *Annex VI approved equivalent*, see section 26FEKA.

- (2) Subsection 26FEG(1) or (2) does not apply to carrying fuel oil on board a ship if an Annex VI approved equivalent is installed on the ship.

Exceptions for emergencies

- (3) Subsection 26FEG(2) does not apply if:
- (a) the matters mentioned in that subsection occur as a result of securing the safety of a ship or saving life at sea; or
 - (b) the requirements of subsection (1), (2) or (7) of this section are not satisfied, but it is likely that those requirements would

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have been satisfied were it not for conduct engaged in for the purpose of securing the safety of a ship or saving life at sea.

- (4) Subsection 26FEG(2) does not apply in relation to a ship if:
- (a) either:
 - (i) the matters mentioned in that subsection occur as a result of unintentional damage to the ship or its equipment; or
 - (ii) the requirements of subsection (1) or (2) of this section are not satisfied, but it is likely that those requirements would have been satisfied were it not for unintentional damage to the ship or its equipment; and
 - (b) if the regulations prescribe, for the purposes of this paragraph, a level of total emission of sulphur oxides:
 - (i) after the occurrence of the unintentional damage, the total emission of sulphur oxides from the ship does not exceed that level; or
 - (ii) after the occurrence of the unintentional damage, all reasonable precautions are taken to prevent the total emission of sulphur oxides from exceeding that level, or to minimise the total emission of sulphur oxides; or
 - (iii) if the discovery that the total emission exceeds that limit occurs before the discovery of the unintentional damage—after the discovery of that total emission, all reasonable precautions are taken to prevent the total emission of sulphur oxides from exceeding that level, or to minimise the total emission of sulphur oxides.
- (5) For the purposes of subsection (4), damage to a ship or to its equipment is not unintentional if the damage arose:
- (a) 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) as a result of the negligence of the master or owner of the ship.

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- (6) 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.

Exception for the unavailability of fuel oil with a sulphur content of not more than the prescribed limit

- (7) Subsection 26FEG(1) or (2) does not apply to using or carrying fuel oil (the **high-sulphur fuel oil**) on board a ship if the following requirements are satisfied:
- (a) the person responsible for obtaining fuel oil for use on board the ship took all reasonable steps to obtain fuel oil with a sulphur content of not more than the limit prescribed for the purposes of paragraph 26FEG(1)(b);
 - (b) a prescribed officer is notified (in accordance with any requirements prescribed by the regulations for the purposes of this paragraph) that fuel oil with a sulphur content of not more than that limit was not able to be obtained for the ship;
 - (c) if the ship's next port of destination after the high-sulphur fuel oil was supplied to the ship is a port in a foreign country—the government of that foreign country is notified (in accordance with any requirements prescribed by the regulations for the purposes of this paragraph) that fuel oil with a sulphur content of not more than that limit was not able to be obtained for the ship.

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

26FEH Australian ship in emission control area—offences

Ordinary offence

- (1) A person commits an offence if:
- (a) the person:

- (i) takes an Australian ship into an emission control area;
or
- (ii) permits an Australian ship to be taken into an emission control area; and
- (b) the person is the master or owner of the ship; and
- (c) the ship does not meet the requirements of subsections (4) and (5) while the ship is within that area.

Penalty: 2,000 penalty units.

Strict liability offence

- (2) A person commits an offence if:
 - (a) the person:
 - (i) takes an Australian ship into an emission control area;
or
 - (ii) permits an Australian ship to be taken into an emission control area; and
 - (b) the person is the master or owner of the ship; and
 - (c) the ship does not meet the requirements of subsections (4) and (5) while the ship is within that area.

Penalty: 500 penalty units.

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

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

SOx emission control conditions—using fuel oil

- (4) A ship meets the requirements of this subsection while the ship is in an emission control area if:
 - (a) the sulphur content of the fuel oil used on board the ship as fuel does not exceed the limit prescribed by the regulations for the purposes of this paragraph; or
 - (b) all of the following requirements are satisfied:
 - (i) an Annex VI approved equivalent is operating on the ship;

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- (ii) if the regulations prescribe, for the purposes of this subparagraph, requirements in relation to the operation of the Annex VI approved equivalent—the Annex VI approved equivalent is operating in accordance with those requirements;
- (iii) if the regulations prescribe, for the purposes of this subparagraph, requirements in relation to discharging waste streams arising from the operation of the Annex VI approved equivalent—the waste streams are discharged in accordance with those requirements.

Note: For *Annex VI approved equivalent*, see section 26FEKA.

SOx emission control conditions—carrying fuel oil for use

- (5) A ship meets the requirements of this subsection while the ship is in an emission control area if:
 - (a) the sulphur content of the fuel oil carried on board the ship for use on board the ship as fuel does not exceed the limit prescribed for the purposes of paragraph 26FEG(1)(b); or
 - (b) an Annex VI approved equivalent is installed on the ship.

Presumption

- (6) For the purposes of this section and section 26FEHA, fuel oil carried on board a ship is presumed to be carried for use on board the ship as fuel unless the contrary is proved.

Note: A defendant bears a legal burden in relation to proving the contrary: see section 13.4 of the *Criminal Code*.

26FEHA Australian ship in emission control area—exceptions

Exceptions for emergencies

- (1) Subsection 26FEH(2) does not apply:
 - (a) if the matters mentioned in that subsection occur as a result of securing the safety of a ship or saving life at sea; or
 - (b) to using fuel oil on board a ship as fuel if:

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- (i) the requirements of subsection (5) of this section are not satisfied; and
 - (ii) it is likely that those requirements would have been satisfied were it not for conduct engaged in for the purpose of securing the safety of a ship or saving life at sea; or
- (c) to carrying fuel oil on board a ship if:
- (i) the requirements of subsection (6) of this section are not satisfied; and
 - (ii) it is likely that those requirements would have been satisfied were it not for conduct engaged in for the purpose of securing the safety of a ship or saving life at sea.
- (2) Subsection 26FEH(2) does not apply in relation to a ship if:
- (a) the matters mentioned in that subsection occur as a result of unintentional damage to the ship or its equipment; and
 - (b) if the regulations prescribe, for the purposes of this paragraph, a level of total emission of sulphur oxides:
 - (i) after the occurrence of the unintentional damage, the total emission of sulphur oxides from the ship does not exceed that level; or
 - (ii) after the occurrence of the unintentional damage, all reasonable precautions are taken to prevent the total emission of sulphur oxides from exceeding that level, or to minimise the total emission of sulphur oxides; or
 - (iii) if the discovery that the total emission exceeds that limit occurs before the discovery of the unintentional damage—after the discovery of that total emission, all reasonable precautions are taken to prevent the total emission of sulphur oxides from exceeding that level, or to minimise the total emission of sulphur oxides.
- (3) For the purposes of subsection (2), damage to a ship or to its equipment is not unintentional if the damage arose:
- (a) in circumstances where the master or owner of the ship:
 - (i) acted with intent to cause the damage; or

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- (ii) acted recklessly and with knowledge that the damage would probably result; or
 - (b) as a result of the negligence of the master or owner of the ship.
- (4) 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.

Exceptions for the unavailability of fuel oil with a sulphur content of not more than the prescribed limit

- (5) Subsection 26FEH(1) or (2) does not apply to using fuel oil (the **high-sulphur fuel oil**) on board a ship as fuel if the following requirements are satisfied:
 - (a) the person responsible for obtaining fuel oil for use on board the ship took all reasonable steps to obtain fuel oil with a sulphur content of not more than the limit prescribed for the purposes of paragraph 26FEH(4)(a);
 - (b) a prescribed officer is notified (in accordance with any requirements prescribed by the regulations for the purposes of this paragraph) that fuel oil with a sulphur content of not more than that limit was not able to be obtained for the ship;
 - (c) if the ship's next port of destination after the high-sulphur fuel oil was supplied to the ship is a port in a foreign country—the government of that foreign country is notified (in accordance with any requirements prescribed by the regulations for the purposes of this paragraph) that fuel oil with a sulphur content of not more than that limit was not able to be obtained for the ship.
- (6) Subsection 26FEH(1) or (2) does not apply to carrying fuel oil (the **high-sulphur fuel oil**) on board a ship for use on board the ship as fuel if the following requirements are satisfied:

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- (a) the person responsible for obtaining fuel oil for use on board the ship took all reasonable steps to obtain fuel oil with a sulphur content of not more than the limit prescribed for the purposes of paragraph 26FEG(1)(b);
- (b) a prescribed officer is notified (in accordance with any requirements prescribed by the regulations for the purposes of this paragraph) that fuel oil with a sulphur content of not more than that limit was not able to be obtained for the ship;
- (c) if the ship's next port of destination after the high-sulphur fuel oil was supplied to the ship is a port in a foreign country—the government of that foreign country is notified (in accordance with any requirements prescribed by the regulations for the purposes of this paragraph) that fuel oil with a sulphur content of not more than that limit was not able to be obtained for the ship.

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

26FEI Flushing fuel oil service system

- (1) A person commits an offence if:
 - (a) the person is the master of an Australian ship; and
 - (b) the ship enters an emission control area; and
 - (c) separate fuel oils are used on board the ship; and
 - (d) at least one of the fuel oils has a sulphur content of not more than the prescribed limit; and
 - (e) at least one of the fuel oils has a sulphur content of more than that limit; and
 - (f) insufficient time is allowed for the ship's fuel oil service system to be fully flushed of fuel oil with a sulphur content of more than that limit before the ship enters the emission control area.

Penalty: 200 penalty units.

- (2) A person commits an offence if:
 - (a) the person is the master of an Australian ship; and

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- (b) the ship enters an emission control area; and
- (c) separate fuel oils are used on board the ship; and
- (d) at least one of the fuel oils has a sulphur content of not more than the prescribed limit; and
- (e) at least one of the fuel oils has a sulphur content of more than that limit; and
- (f) when the ship enters the emission control area, the ship does not carry a written procedure showing how the ship's fuel oil service system is to be fully flushed of fuel oil with a sulphur content of more than that limit before the ship enters the emission control area.

Penalty: 200 penalty units.

26FEJ Record of prescribed fuel-changeover operation

- (1) The master and the owner of an Australian ship each commit an offence if:
 - (a) an entry in a prescribed record book is not made in accordance with the regulations as soon as practicable after:
 - (i) the completion of the last prescribed fuel-changeover operation on the ship before the ship enters an emission control area; or
 - (ii) the completion of the first prescribed fuel-changeover operation on the ship after the ship leaves an emission control area; or
 - (b) the record book is not:
 - (i) retained on board the ship for the prescribed period; or
 - (ii) readily available for inspection at all reasonable times.

Penalty: 200 penalty units.

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

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

- (3) A person commits an offence if:
 - (a) the person makes an entry in a prescribed record book; and

(b) the entry is false or misleading in a material particular.

Penalty: 200 penalty units.

26FEK New emission control areas

- (1) This section applies if an amendment is made (whether before or after the commencement of this section), in accordance with Annex VI, designating an area as an emission control area.
- (2) Sections 26FEH, 26FEHA, 26FEI and 26FEJ do not apply in relation to the emission control area during the period of 12 months immediately after the amendment concerned enters into force.

26FEKA Annex VI approved equivalents

- (1) An *Annex VI approved equivalent*, in relation to a ship, is:
 - (a) an exhaust gas cleaning system; or
 - (b) another technological method for reducing sulphur oxide emissions;that is approved for use on board the ship:
 - (c) under the regulations made for the purposes of subsection (2); or
 - (d) if the ship is a foreign ship that is registered:
 - (i) by the government of the country in which the ship is registered; and
 - (ii) in accordance with the guidelines mentioned in Regulation 4 of Annex VI.
- (2) For the purposes of paragraph (1)(c), the regulations may make provision for, or in relation to, the approval of:
 - (a) an exhaust gas cleaning system; or
 - (b) another technological method for reducing sulphur oxide emissions;by a prescribed officer for use on board a ship.

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Division 2 Sulphur content of fuel oil

Section 26FEKA

- (3) If an approval given under regulations made for the purposes of subsection (2) is given in writing, the approval is not a legislative instrument.

Division 3—Fuel oil availability and quality requirements

26FEL Local suppliers must be registered

A person commits an offence if:

- (a) the person supplies fuel oil to a ship; and
- (b) the person is not registered on the Register of Local Suppliers of Fuel Oil; and
- (c) the supply happens while the ship is:
 - (i) in the sea near a State, the Jervis Bay Territory or an external Territory and no law of that State or Territory gives effect to subparagraph 9.1 of Regulation 18 of Annex VI in relation to the area of the sea where the supply happens; or
 - (ia) in the outer territorial sea; or
 - (ii) in the exclusive economic zone.

Penalty: 200 penalty units.

26FEM Register of Local Suppliers of Fuel Oil

- (1) The Authority must establish and maintain a register of persons who supply fuel oil to ships.
- (2) The register is to be called the Register of Local Suppliers of Fuel Oil.
- (3) The regulations may:
 - (a) prescribe the way in which the Register must be established or maintained, including the details that the Authority must enter in the Register; and
 - (b) prescribe requirements that must be met by:
 - (i) persons seeking registration on the Register of Local Suppliers of Fuel Oil; and
 - (ii) persons registered on the Register of Local Suppliers of Fuel Oil.

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Division 3 Fuel oil availability and quality requirements

Section 26FEN

- (4) The Register is to be made available for inspection on the internet.
- (5) The Register established under subsection (1) is not a legislative instrument.

26FEN Using fuel oil that does not meet fuel oil quality requirements

- (1) The master and the owner of a ship each commit an offence if:
 - (a) fuel oil is used on board the ship; and
 - (b) the fuel oil does not meet the requirements set out in Annex VI; and
 - (c) one of the following applies:
 - (i) the fuel oil is used while the ship is in the sea near a State, the Jervis Bay Territory or an external Territory and no law of that State or Territory gives effect to paragraph 3 of Regulation 18 of Annex VI in relation to the area of the sea where the fuel oil is used;
 - (ia) the fuel oil is used while the ship is in the outer territorial sea;
 - (ii) the fuel oil is used while the ship is in the exclusive economic zone;
 - (iii) the ship is an Australian ship and the fuel oil is used while the ship is beyond the exclusive economic zone.

Penalty: 500 penalty units.

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

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

Presumption

- (3) It is presumed, unless the contrary is proved, that fuel oil is used as mentioned in paragraph (1)(c).

Note: A defendant bears a legal burden in relation to proving the contrary (see section 13.4 of the *Criminal Code*).

26FEO Bunker delivery note and sample must be provided

- (1) A person commits an offence if:
- (a) the person supplies fuel oil (other than gas fuel) to a ship; and
 - (b) the ship has a gross tonnage of 400 or more; and
 - (c) the supply happens while the ship is:
 - (i) in the sea near a State, the Jervis Bay Territory or an external Territory and no law of that State or Territory gives effect to paragraph 3 of Regulation 18 of Annex VI in relation to the area of the sea where the supply happens; or
 - (ia) in the outer territorial sea; or
 - (ii) in the exclusive economic zone; and
 - (d) the person does not provide to the master of the ship a completed bunker delivery note for the fuel oil supplied that meets the requirements of subsection (1A).

Penalty: 200 penalty units.

- (1A) For the purposes of paragraph (1)(d), the bunker delivery note must:
- (a) be provided in the approved form; and
 - (b) contain a declaration that:
 - (i) certifies that the fuel oil supplied meets the requirements set out in Annex VI; and
 - (ii) is signed by the person responsible for the final blend of the components of the fuel oil supplied, or by that person's representative; and
 - (c) if the regulations prescribe, for the purposes of this paragraph, requirements in relation to providing the bunker delivery note—be provided in accordance with those requirements.
- (2) A person commits an offence if:
- (a) the person supplies fuel oil (other than gas fuel) to a ship; and
 - (b) the ship has a gross tonnage of 400 or more; and
 - (c) the supply happens while the ship is:

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- (i) in the sea near a State, the Jervis Bay Territory or an external Territory and no law of that State or Territory gives effect to paragraph 3 of Regulation 18 of Annex VI in relation to the area of the sea where the supply happens; or
- (ia) in the outer territorial sea; or
- (ii) in the exclusive economic zone; and
- (d) the person does not provide to the master of the ship, in accordance with the regulations, a representative sample of the fuel oil that is sealed and signed in accordance with the regulations.

Penalty: 200 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

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

26FEP Fuel oil supplied must be in accordance with declaration

- (1) A person commits an offence if:
 - (a) fuel oil (other than gas fuel) is supplied to a ship; and
 - (b) the person is responsible for the final blend of the components of the fuel oil supplied; and
 - (c) the ship has a gross tonnage of 400 or more; and
 - (d) the supply happens while the ship is:
 - (i) in the sea near a State, the Jervis Bay Territory or an external Territory and no law of that State or Territory gives effect to subparagraph 9.2 of Regulation 18 of Annex VI in relation to the area of the sea where the supply happens; or
 - (ia) in the outer territorial sea; or
 - (ii) in the exclusive economic zone; and
 - (e) a bunker delivery note is provided for the supply; and
 - (f) the bunker delivery note contains a declaration signed by the person or the person's representative certifying that the fuel oil meets the requirements set out in Annex VI; and

(g) the fuel oil supplied does not meet those requirements.

Penalty: 500 penalty units.

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

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

26FEQ Bunker delivery note must be retained and available for inspection

Local supplier

(1) A person commits an offence if:

- (a) the person supplies fuel oil (other than gas fuel) to a ship; and
- (aa) the ship has a gross tonnage of 400 or more; and
- (b) the person provides a bunker delivery note for the supply; and
- (c) the person does not:
 - (i) retain a copy of the bunker delivery note for at least 3 years after the fuel oil is supplied; and
 - (ii) have that copy readily available for inspection by an inspector at all reasonable times.

Penalty: 200 penalty units.

Master and owner of Australian ship

(2) The master and the owner of an Australian ship each commit an offence if:

- (a) fuel oil (other than gas fuel) is supplied to the ship; and
- (b) the ship has a gross tonnage of 400 or more; and
- (c) a bunker delivery note for the supply of fuel oil to the ship is provided to the master of the ship; and
- (d) the bunker delivery note is not:
 - (i) retained in accordance with subsection (5) for 3 years after the supply; and
 - (ii) readily available for inspection at all reasonable times.

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Penalty: 200 penalty units.

Master and owner of foreign ship

- (3) The master and the owner of a foreign ship each commit an offence if:
- (a) fuel oil (other than gas fuel) is supplied to the ship; and
 - (b) the ship has a gross tonnage of 400 or more; and
 - (c) a bunker delivery note for the supply of fuel oil to the ship is provided to the master of the ship; and
 - (d) the bunker delivery note is not:
 - (i) retained in the ship for 3 years after the supply; and
 - (ii) readily available for inspection at all reasonable times while the ship is in an Australian port or an Australian offshore terminal.

Penalty: 200 penalty units.

Strict liability offences

- (4) An offence against subsection (1), (2) or (3) is an offence of strict liability.

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

Retention requirements for masters and owners of Australian ships

- (5) For the purposes of subparagraph (2)(d)(i), a bunker delivery note must be retained:
- (a) in the ship; or
 - (b) at a place approved under subsection (7).
- (6) The owner of an Australian ship that engages in scheduled services may apply in writing to the Authority for approval to retain bunker delivery notes at a particular place.
- (7) If an application is made to the Authority, the Authority must:
- (a) either approve, or refuse to approve, the place; and

- (b) give the owner of the ship written notice of the decision including, in the case of a refusal, the reasons for the refusal.
- (8) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Authority under subsection (7) to refuse to approve a place.

26FER Sample must be retained

- (1) The master and the owner of a ship each commit an offence if:
 - (a) fuel oil (other than gas fuel) is supplied to the ship; and
 - (b) the ship has a gross tonnage of 400 or more; and
 - (c) a representative sample of fuel oil is provided to the master in connection with the supply of fuel oil to the ship; and
 - (d) the sample is not retained in accordance with the regulations until the later of the following:
 - (i) the time at which the fuel oil supplied is substantially consumed;
 - (ii) the end of 12 months after the day on which the fuel oil is supplied.

Penalty: 200 penalty units.

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

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

26FES Notification of sulphur content of gas fuel

- (1) A person commits an offence if:
 - (a) the person supplies gas fuel to a ship; and
 - (b) the ship has a gross tonnage of 400 or more; and
 - (c) the supply happens while the ship is:
 - (i) in the sea near a State, the Jervis Bay Territory or an external Territory and no law of that State or Territory gives effect to paragraph 3 of Regulation 18 of Annex VI in relation to the area of the sea where the supply happens; or

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- (ia) in the outer territorial sea; or
- (ii) in the exclusive economic zone; and
- (d) the person does not provide to the master of the ship, in connection with that supply, documentation specifying the sulphur content for the gas fuel supplied.

Penalty: 200 penalty units.

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

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

Division 4—Ozone depleting substances record book

26FET Ozone depleting substances record book

- (1) This section applies to an Australian ship that:
 - (a) has a gross tonnage of 400 or more; and
 - (b) has at least one rechargeable system containing ozone depleting substances; and
 - (c) is engaged on an overseas voyage.

Ship to carry ozone depleting substances record book

- (2) The ship must carry an ozone depleting substances record book as required by the regulations.
- (3) An ozone depleting substances record book must:
 - (a) be in accordance with the appropriate prescribed form; and
 - (b) make provision for a signature, in accordance with subsection (7), in relation to each page of it; and
 - (c) make provision for a signature, in accordance with subsection (8), in relation to each entry made in it.
- (4) The master and the owner of the ship each commit an offence if the ship does not carry an ozone depleting substances record book as required by this section.

Penalty: 200 penalty units.

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

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

Recording prescribed operations or prescribed occurrences in ozone depleting substances record book

- (6) The master of the ship commits an offence if:
 - (a) a prescribed operation or prescribed occurrence is carried out or occurs in, or in relation to, the ship; and

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- (b) neither of the following subparagraphs applies:
 - (i) the master of the ship makes, without delay, appropriate entries in accordance with subsection (8) in the ship's ozone depleting substances record book;
 - (ii) the master of the ship causes appropriate entries in accordance with that subsection to be made in that book as soon as is practicable in the circumstances.

Penalty: 200 penalty units.

Signing of pages of ozone depleting substances record book

- (7) The master of the ship commits an offence if:
 - (a) a page of the ship's ozone depleting substances record book is completed; and
 - (b) the master of the ship does not, as soon as is practicable in the circumstances, sign the page.

Penalty: 200 penalty units.

Form of entries in ozone depleting substances record book

- (8) An entry in a ship's ozone depleting substances record book:
 - (a) must be made in the English language; and
 - (b) if the entry is made in relation to a prescribed operation—must be signed by the person in charge of the operation.

26FEU False or misleading entries in ozone depleting substances record book

A person commits an offence if:

- (a) the person makes an entry in an ozone depleting substances record book of a ship; and
- (b) section 26FET applies to the ship; and
- (c) the entry is false or misleading in a material particular.

Penalty: 200 penalty units.

26FEV Ozone depleting substances record book to be retained

Retention etc. of ozone depleting substances record book in ship

- (1) The master and the owner of a ship to which section 26FET applies each commit an offence if:
- (a) the ship's ozone depleting substances record book is not retained in the ship until the end of one year beginning on the day after the day on which the last entry is made in the book; or
 - (b) the ship's ozone depleting substances record book is not readily available for inspection by an inspector at all reasonable times during that period.

Penalty: 200 penalty units.

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

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

Retention etc. of ozone depleting substances record book in ship or at other places

- (3) The owner of a ship to which section 26FET applies commits an offence if:
- (a) none of the following subparagraphs applies in relation to the ship's ozone depleting substances record book:
 - (i) it is retained in the ship until the end of 2 years beginning on the day after the end of the period referred to in paragraph (1)(a);
 - (ii) it is retained at the owner's registered office, or at a place or office whose address is notified under subsection (4), until the end of 2 years beginning on the day after the end of the period referred to in paragraph (1)(a);
 - (iii) it is deposited in accordance with subsection (5) until the end of 2 years beginning on the day after the end of the period referred to in paragraph (1)(a); or

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- (b) the ship's ozone depleting substances record book is not readily available for inspection by an inspector at all reasonable times during the 2-year period mentioned in paragraph (a).

Penalty: 200 penalty units.

Notification of places or offices

- (4) The owner of a ship to which section 26FET applies who resides in Australia, or has an office or agent in Australia, may 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.

Deposit of ozone depleting substances record book

- (5) If the owner of a ship to which section 26FET applies does not reside in Australia and does not have an office or agent in Australia, the owner may deposit the ship's ozone depleting substances record book with a prescribed officer.

Division 5—Ship energy efficiency management plan

26FEW Ship energy efficiency management plan

- (1) This section applies to an Australian ship that:
- (a) has a gross tonnage of 400 or more; and
 - (b) is engaged on an overseas voyage.

Ship to carry ship energy efficiency management plan

- (2) There must be kept on board the ship a ship energy efficiency management plan.
- (3) A ship energy efficiency management plan must contain the information prescribed by the regulations for the purposes of this subsection.

Strict liability offence

- (4) The master and the owner of the ship each commit an offence of strict liability if the ship does not have on board a ship energy efficiency management plan as required by this section.

Penalty for contravention of this subsection: 200 penalty units.

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

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; and
- (f) require the master of the ship to take such steps as the inspector directs to facilitate the boarding; and
- (g) inspect and test any machinery or equipment of the ship; and
- (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; and
- (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; and
- (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; and
- (m) make copies of, or take extracts from, any such books, documents or records; and
- (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; and
- (p) require the master of the ship to produce any substances on board the ship or under the ship's control; and
- (pa) examine, and take samples of, any substances on board the ship or under the ship's control; 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

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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:
-

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- (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 any other member of the crew of the ship and the owner of the ship in respect of the pollution breach.
- (5) The master and owner of the ship commit 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*.

- (5B) While a foreign ship is detained under subsection (1), a person does not have the power of seizure provided for by section 123 of the *Personal Property Securities Act 2009* in relation to the ship.

- (6) In this section:

Australia includes all the external Territories.

pollution breach means:

- (a) a discharge or disposal from a ship that:
 - (i) contravenes this Act; or
 - (ii) gives rise to a right of recovery by the Authority under Part IVA of the *Protection of the Sea (Civil Liability) Act 1981*; or
- (b) an offence against section 26FEG in relation to fuel oil used on board a ship as fuel; or
- (c) an offence against section 26FEN.

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 commit 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.

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- (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, 10, 21, 26AB, 26D, 26F, 26FEG or 26FEH, 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, employee or agent of the corporation, being a director, employee 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, employee 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, employee 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, employee 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 any other member of the crew of a ship, or on the 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 other member of the crew of the ship, or on the owner of the ship, as the case requires.

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;

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- (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

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- (b) in the territorial sea of Australia; or
 - (c) in the sea on the landward side of the territorial sea of Australia.
- (1B) Subject to subsection (2), the regulations may provide that any of the provisions of this Act relating to the keeping of a garbage management plan on board 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, any other Act or any instrument made under any other Act;
 - (e) fixing fees to be paid in respect of any matters under this Act;
 - (f) prescribing penalties not exceeding 50 penalty units for a contravention of a provision of the regulations or of any Marine Order; 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.

- (1A) The limit in paragraph (1)(f) on penalties does not apply to regulations made for the purposes of subsection 32(1), (1A) or (1B).
- (2) Regulations and Marine Orders giving effect to Annex I, II, III, IV, V or VI to the Convention do not apply in relation to a ship that is not a regulated Australian vessel, when the ship is in a particular area, so far as:
- (a) a provision of the Marine Safety (Domestic Commercial Vessel) National Law gives effect to that Annex in relation to that ship when it is in that area; or
 - (b) if paragraph (a) does not apply—a provision of a law of a State or the Northern Territory gives effect to that Annex in relation to that ship when it is in that area.
- (3) In proceedings for an offence against a provision of the regulations, a ship shall, unless the contrary is proved, be deemed to be a regulated Australian vessel.
- (4) Despite section 14 of the *Legislation Act 2003*, the regulations may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other document:
- (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time;
- even if the instrument or other document does not exist when the regulations come into operation.

34 Orders

- (1) The Authority may, by legislative instrument, make orders (***Marine 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).

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Note: Part 4 of Chapter 3 of the *Legislation Act 2003*, which deals with sunseting of legislative instruments, does not apply to an order under this subsection (see regulations made for the purposes of subsection 54(2) of that Act).

- (4) Unless the contrary intention appears, expressions used in orders have the same meanings as in this Act.
- (5) Orders 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 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.
- (8) Despite section 14 of the *Legislation Act 2003*, an order may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other document:
 - (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time;even if the instrument or other document does not exist when the order comes into operation.

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.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

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

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

Editorial changes

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

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

Misdescribed amendments

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

Endnote 1—About the endnotes

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Protection of the Sea (Prevention of Pollution from Ships) Act 1983	41, 1983	20 June 1983	s 1 and 2: 20 June 1983 (s 2(1)) Remainder: 14 Jan 1988 (s 2(2) and gaz 1988, No S8)	
Statute Law (Miscellaneous Provisions) Act (No. 1) 1984	72, 1984	25 June 1984	s 5(1) and Sch: 23 July 1984 (s 2(1))	s 5(1)
Statute Law (Miscellaneous Provisions) Act (No. 1) 1985	65, 1985	5 June 1985	Sch 1 (amdt to s 3(1), (4), 9(4), 11, 12(1)–(5), (7), 13, 14(1), (3), (5), (6), 22, 23(2), (4), (5), (8), 24, 25(1), (3), (5) and (6) Protection of the Sea (Prevention of Pollution from Ships) Act 1983) and Sch 3: 1 Mar 1986 (s 2(38) and gaz 1986, No S81) Sch 1 (amdt to s 34(3) and Sch 1 Protection of the Sea (Prevention of Pollution from Ships) Act 1983): 3 July 1985 (s 2(1))	—
Protection of the Sea (Prevention of Pollution from Ships) Amendment Act 1986	81, 1986	24 June 1986	s 1 and 2: 24 June 1986 (s 2(1)) Remainder: 23 Sept 1988 (s 2(2) and gaz 1988, No S291)	—

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

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Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Protection of the Sea Legislation Amendment Act 1986	167, 1986	18 Dec 1986	s 17(1), (2), 18–25, 29(1), (2) and Sch 3–6: 14 Jan 1988 (s 2(2), (3)) s 17(3), 28, 29(3) and Sch 7: 14 Nov 1990 (s 2(4) and gaz 1990, No S296) s 26 and 27: 10 Jan 1995 (s 2(4) and gaz 1994, No S462) s 30–32: 18 Dec 1986 (s 2(1))	—
as amended by				
Statute Law (Miscellaneous Provisions) Act 1987	141, 1987	18 Dec 1987	s 5(1): 18 Dec 1987 (s 2(1)) Sch 1 (amdt to s 20(2)(b) Protection of the Sea Legislation Amendment Act 1986): 14 Jan 1988 (s 2(26))	s 5(1)
Transport and Communications Legislation Amendment Act 1990	11, 1991	21 Jan 1991	Sch: 14 Jan 1988 (s 2(13)(d))	—
Statute Law (Miscellaneous Provisions) Act 1987	141, 1987	18 Dec 1987	s 5(1) and Sch 1: 18 Dec 1987 (s 2(1))	s 5(1)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
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 (<i>see Gazette</i> 1988, No. S193) ss. 10–12, 14 and 15: 13 June 1986 (<i>see s. 2(2) and Gazette</i> 1986, No. S269) Remainder: 1 May 1989 (<i>see Gazette</i> 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	Sch 2 (amdt to s 5, 26D, 26DA and 26F Protection of the Sea (Prevention of Pollution from Ships) Act 1983): 14 Nov 1990 (s 2(5), (7), (8)) Sch 2 (amdt to s 9 Protection of the Sea (Prevention of Pollution from Ships) Act 1983): 16 Mar 1989 (s 2(1)) Sch 2 (amdt to s 26AB Protection of the Sea (Prevention of Pollution from Ships) Act 1983): 10 Jan 1995 (s 2(6))	—

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

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Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Transport and Communications Legislation Amendment Act (No. 2) 1989	23, 1990	17 Jan 1990	s 53: 14 Nov 1990 (s 2(7))	—
Australian Maritime Safety Authority Act 1990	78, 1990	22 Oct 1990	s 63 and Sch: 1 Jan 1991 (s 2(2))	s 63
as amended by				
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 3 (item 4): 22 Oct 1990 (s 2(3))	—
Transport and Communications Legislation Amendment Act 1990	11, 1991	21 Jan 1991	s 35: 21 Jan 1991 (s 2(1))	—
Transport Legislation Amendment Act 1991	101, 1991	27 June 1991	s 3: 10 Dec 1991 (s 2(3)(a)) s 24, 25, Sch 1 and 2: 27 June 1991 (s 2(1))	s 3
Transport and Communications Legislation Amendment Act (No. 2) 1992	71, 1992	26 June 1992	s 30(1), 31 and Sch 4: 26 June 1992 (s 2(1)) s 30(2), 32, 43 and Sch 5: 4 Apr 1993 (s 2(5)) s 30(3), 36–42 and Sch 6: 29 Dec 2000 (s 2(6A)) s 33–35: 10 Jan 1995 (s 2(7)) Sch 3: 1 July 1992 (s 2(8))	—
as amended by				
Transport Legislation Amendment Act 2000	74, 2000	28 June 2000	Sch 1: 28 June 2000 (s 2(1))	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Transport and Communications Legislation Amendment Act (No. 3) 1992	216, 1992	24 Dec 1992	s 27, 28 and Sch: 6 July 1993 (s 2(5) and gaz 1993, No GN25)	—
Transport and Communications Legislation Amendment Act (No. 2) 1993	5, 1994	18 Jan 1994	Sch (items 68, 69): 18 Jan 1994 (s 2(1))	—
Transport and Communications Legislation Amendment Act 1994	64, 1994	30 May 1994	Sch 1 (amdt to s 3(1), 6, 9(1B), 11(1B), 21(1B), 22(1B), 26B(2), 26F(4), 26G–27C, 29 Protection of the Sea (Prevention of Pollution from Ships) Act 1983): 1 Aug 1994 (s 2(3)(a)) Sch 1 (amdt to s 26AB(4) Protection of the Sea (Prevention of Pollution from Ships) Act 1983): 10 Jan 1995 (s 2(4))	—
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 5 (items 123, 124): 25 Oct 1996 (s 2(1))	—
Transport and Regional Services Legislation Amendment (Application of Criminal Code) Act 2001	143, 2001	1 Oct 2001	s 4 and Sch 3 (items 114–129): 2 Oct 2001 (s 2)	s 4
International Maritime Conventions Legislation Amendment Act 2001	149, 2001	1 Oct 2001	Sch 3 (items 1–91, 106–130): 1 Oct 2001 (s 2(1)) Sch 3 (items 92–105): 27 May 2004 (s 2(4))	—

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Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Protection of the Sea (Prevention of Pollution from Ships) Amendment Act 2002	4, 2002	4 Apr 2002	Sch 1 (items 1–6, 9, 10): 5 Apr 2002 (s 2(1) items 2, 4) Sch 1 (items 7, 8): 27 May 2004 (s 2(1) item 3)	—
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	Sch 1 (items 23–31): 27 May 2004 (s 2(1) items 3–5)	—
Maritime Legislation Amendment Act 2006	24, 2006	6 Apr 2006	Schedule 3: 6 Oct 2006	—
Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Act 2006	109, 2006	27 Sept 2006	Schedule 2 (items 68–71): Royal Assent	—
Maritime Legislation Amendment (Prevention of Pollution from Ships) Act 2006	138, 2006	30 Nov 2006	Schedules 1 and 2: 1 Jan 2007 Remainder: Royal Assent	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Maritime Legislation Amendment (Prevention of Air Pollution from Ships) Act 2007	24, 2007	15 Mar 2007	Schedule 1: 10 Nov 2007 (see F2007L03764) Schedule 2 (items 1–4, 7–12, 15–18): 16 Mar 2007 Schedule 2 (items 5, 6): 1 Aug 2007 Remainder: Royal Assent	Sch. 2 (item 18)
Protection of the Sea Legislation Amendment Act 2008	94, 2008	3 Oct 2008	Schedule 2 (items 2, 5, 6): Royal Assent Schedule 2 (item 3): 1 Jan 2010 Schedule 2 (item 4): 1 Dec 2008	—
Personal Property Securities (Consequential Amendments) Act 2009	131, 2009	14 Dec 2009	Schedule 3 (item 13): 30 Jan 2012 (see F2011L02397)	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 5 (item 137(a)): 1 Mar 2010 (s 2(1) item 38)	—
Protection of the Sea Legislation Amendment Act 2010	116, 2010	9 Nov 2010	Schedule 1: 10 Nov 2010	Sch. 1 (item 37)
Protection of the Sea (Prevention of Pollution from Ships) Amendment (Oil Transfers) Act 2011	90, 2011	4 Aug 2011	5 Aug 2011	Sch. 1 (item 2)
Maritime Legislation Amendment Act 2011	167, 2011	4 Dec 2011	Schedule 1 (items 6–17): 5 Dec 2011	—

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Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Protection of the Sea (Prevention of Pollution from Ships) Amendment (Oils in the Antarctic Area) Act 2011	176, 2011	5 Dec 2011	6 Dec 2011	—
as amended by				
Maritime Legislation Amendment Act 2011	167, 2011	4 Dec 2011	Sch 1 (item 18): 6 Dec 2011 (s 2(1) item 7)	—
Navigation (Consequential Amendments) Act 2012	129, 2012	13 Sept 2012	Schedule 2 (items 55–70): 1 July 2013 (<i>see</i> s. 2(1))	—
Maritime Legislation Amendment Act 2012	140, 2012	25 Sept 2012	Schedule 1 (items 1–63): 1 Jan 2013 Schedule 1 (items 64–132): 26 Sept 2012	Sch. 1 (items 10, 61, 63, 101)
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 3 (items 163, 164): 25 Mar 2015 (s 2(1) item 10)	—
Acts and Instruments (Framework Reform) Act 2015	10, 2015	5 Mar 2015	Sch 1 (items 158–160, 166–179): 5 Mar 2016 (s 2(1) item 2)	Sch 1 (items 166–179)
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 3 (items 1, 6): 5 Mar 2016 (s 2(1) item 8)	Sch 3 (item 6)
Statute Law Revision Act (No. 2) 2015	145, 2015	12 Nov 2015	Sch 3 (item 32): 10 Dec 2015 (s 2(1) item 7)	—
Maritime Legislation Amendment Act 2015	176, 2015	11 Dec 2015	Sch 1 (items 10–12): 8 Jan 2016 (s 2(1) item 2) Sch 2: 1 Mar 2016 (s 2(1) item 3)	Sch 1 (item 12) and Sch 2 (item 5)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 251, 411, 412): 10 Mar 2016 (s 2(1) item 6)	—
Protection of the Sea (Prevention of Pollution from Ships) Amendment (Polar Code) Act 2017	40, 2017	19 May 2017	Sch 1: 16 June 2017 (s 2(1) item 2)	—
Protection of the Sea Legislation Amendment Act 2018	40, 2018	22 May 2018	Sch 1: 23 May 2018 (s 2(1) item 2)	Sch 1 (item 7)
Protection of the Sea (Prevention of Pollution from Ships) Amendment (Air Pollution) Act 2019	123, 2019	12 Dec 2019	Sch 1 (items 1–14): 1 Jan 2020 (s 2(1) item 2) Sch 1 (items 15–33): 1 Mar 2020 (s 2(1) item 3) Sch 2 and 3: 13 Dec 2019 (s 2(1) item 4)	Sch 1 (items 14, 33) and Sch 2 (item 44)
Maritime Legislation Amendment Act 2022	78, 2022	5 Dec 2022	Sch 1 (items 1–21), Sch 2 (items 1, 2), Sch 4 (items 6–14): 6 Dec 2022 (s 2(1) items 2, 3, 5)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Title	rs. No. 24, 2007
Part I	
s 3	am No 65, 1985; No 81, 1986; No 167, 1986; No 141, 1987; No 78, 1990 (as am by No 43, 1996); No 101, 1991; No 71, 1992; No 216, 1992; No 64, 1994; No 149, 2001; No 138, 2006; No 24, 2007; No 176, 2011; No 129, 2012; No 140, 2012; No 176, 2015; No 40, 2017; No 123, 2019; No 78, 2022
s. 3A.....	ad. No. 138, 2006
s 4	am No 81, 1986; No 5, 2015; No 145, 2015
s. 5	rs. No. 81, 1986 am No. 6, 1989; No. 24, 2007; No 123, 2019
s. 6	am. No. 64, 1994
s 6A.....	ad No 123, 2019
s. 7	rep. No. 78, 1990 ad. No. 143, 2001
Part II	
s 9	am No 72, 1984; No 65, 1985; No 81, 1986; No 167, 1986; No 6, 1989; No 101, 1991; No 71, 1992; No 216, 1992; No 64, 1994; No 149, 2001; No 4, 2002; No 138, 2006; No 24, 2007; No 94, 2008; No 167, 2011; No 129, 2012; No 140, 2012; No 40, 2017 ed C38
s. 10	am. Nos. 81 and 167, 1986; No. 101, 1991 rs. No. 149, 2001 am. No. 167, 2011
s 10A.....	ad No 176, 2011 am No 176, 2015
s 10AA.....	ad No 78, 2022
s 10B.....	ad No 176, 2011 am No 176, 2015
s. 11	rs. No. 65, 1985

Endnote 4—Amendment history

Provision affected	How affected
	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; No. 143, 2001; No. 149, 2001; No. 7, 2003; No. 167, 2011; No. 140, 2012; No. 4, 2016
s. 11A.....	ad. No. 71, 1992
	am. No. 143, 2001; No. 7, 2003; No. 4, 2016
s. 11B.....	ad. No. 90, 2011
	am. No. 140, 2012
s. 11C.....	ad. No. 90, 2011
	am. No. 140, 2012
s. 11D.....	ad. No. 90, 2011
s. 11E.....	ad. No. 90, 2011
s. 11F.....	ad. No. 90, 2011
	am. No. 140, 2012
s. 11G.....	ad. No. 90, 2011
s. 12.....	am. No. 65, 1985; No. 167, 1986; No. 101, 1991; Nos. 143 and 149, 2001; No. 7, 2003; No. 138, 2006; No. 4, 2016
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; No. 4, 2016
s. 14A.....	ad. No. 149, 2001
Part III	
s. 15.....	am. No. 138, 2006; No. 78, 2022
s. 17.....	am. No. 149, 2001
	rs. No. 138, 2006
	am. No. 176, 2011; No. 140, 2012
s. 18.....	am. No. 149, 2001
	rep. No. 138, 2006
s. 19.....	am. No. 78, 1990; No. 149, 2001
	rep. No. 138, 2006
s. 20.....	am. No. 167, 1986; No. 101, 1991; No. 7, 2003
	rep. No. 138, 2006

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 21	am No 81, 1986; No 167, 1986; No 101, 1991; No 64, 1994; No 149, 2001; No 4, 2002; No 138, 2006; No 176, 2011; No 140, 2012; No 40, 2017; No 78, 2022
s. 21A.....	ad. No. 167, 1986 rs. No. 138, 2006 am. No. 129, 2012
s 22	rs No 65, 1985 am No 81, 1986; No 167, 1986; No 141, 1987; No 57, 1988; No 101, 1991; No 64, 1994; No 143, 2001; No 149, 2001; No 7, 2003; No 138, 2006; No 140, 2012; No 4, 2016; No 78, 2022
s 22A.....	ad No 24, 2006 am No 129, 2012; No 10, 2015
s. 23	am. No. 65, 1985; No. 167, 1986; No. 101, 1991; No. 43, 1996; Nos. 143 and 149, 2001; No. 7, 2003; No 4, 2016
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; No 4, 2016
s. 26	am. No. 138, 2006
s. 26AA.....	ad. No. 149, 2001
Part IIIA	
Part IIIA.....	ad. No. 167, 1986
s. 26A.....	ad. No. 167, 1986 am. No. 71, 1992; No. 94, 2008
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; No 176, 2011; No 140, 2012; No 78, 2022
s 26B.....	ad No 167, 1986 am No 167, 1986; No 141, 1987; No 101, 1991; No 64, 1994; No 143, 2001; No 149, 2001; No 7, 2003; No 140, 2012; No 4, 2016; No 78, 2022

Endnote 4—Amendment history

Provision affected	How affected
Part IIIB	
Part IIIB	ad. No. 167, 1986
Division 1	
Division 1 heading	rs No 40, 2017
Division 1	ad No 71, 1992
s 26BA	ad No 71, 1992
s 26BB	ad No 71, 1992
	am No 40, 2017
s 26BC	ad No 71, 1992
	am No 149, 2001; No 176, 2011; No 140, 2012; No 40, 2017
Division 1A	
Division 1A	ad No 40, 2017
s 26BCA	ad No 40, 2017
s 26BCB	ad No 40, 2017
s 26BCC	ad No 40, 2017
	am No 78, 2022
Division 2	
Division 2 heading	ad. No. 71, 1992
s 26C	ad No 167, 1986
	am No 71, 1992; No 40, 2017
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; No 94, 2008; No 176, 2011; No 140, 2012
	ed C38
	am No 78, 2022
s. 26DAA	ad. No. 149, 2001
s. 26DA	ad. No. 6, 1989
	am. No. 71, 1992
	rep. No. 140, 2012

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Part IIIC	
Part IIIC	ad. No. 167, 1986
s. 26E	ad. No. 167, 1986 am. No. 71, 1992; No. 140, 2012
s. 26EAA	ad. No. 149, 2001 rep. No. 129, 2012
s. 26EA	ad. No. 71, 1992 rs. No. 140, 2012 am. No. 40, 2017
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; No. 176, 2011; No. 140, 2012; No. 40, 2017; No. 40, 2018
s. 26FA	ad. No. 149, 2001 am. No. 94, 2008
s. 26FB	ad. No. 149, 2001 am. No. 140, 2012; No. 4, 2016
s. 26FC	ad. No. 149, 2001 am. No. 140, 2012
s. 26FD	ad. No. 149, 2001 am. No. 7, 2003; No. 140, 2012
s. 26FE	ad. No. 149, 2001 am. No. 140, 2012
Part IIID	
Part IIID	ad. No. 24, 2007
Division 1	
s. 26FEF	ad. No. 24, 2007 am. No. 116, 2010; No. 176, 2011; No. 123, 2019
Division 2	
Heading to s. 26FEG	am. No. 116, 2010
s. 26FEG	ad. No. 24, 2007

Endnote 4—Amendment history

Provision affected	How affected
	am No. 116, 2010; No. 140, 2012; No 123, 2019
s 26FEGA	ad No 123, 2019
	am No 123, 2019
s 26FEH	ad No. 24, 2007
	am No. 116, 2010; No 123, 2019
s 26FEHA	ad No 123, 2019
	am No 123, 2019
ss. 26FEI–26FEJ	ad. No. 24, 2007
	am. No. 116, 2010
Heading to s. 26FEK	am. No. 116, 2010
s. 26FEK	ad. No. 24, 2007
	am No. 116, 2010; No 123, 2019
s 26FEKA	ad No 123, 2019
Division 3	
Division 3 heading	rs. No. 116, 2010
s. 26FEL	ad. No. 24, 2007
	am No. 116, 2010; No. 140, 2012; No 123, 2019
s. 26FEM	ad. No. 24, 2007
	am No. 8, 2010; No 123, 2019
s. 26FEN	ad. No. 24, 2007
	am No. 116, 2010; No. 140, 2012; No 123, 2019
s. 26FEO	ad. No. 24, 2007
	am No. 116, 2010; No. 140, 2012; No 123, 2019
s. 26FEP	ad. No. 24, 2007
	am No. 116, 2010; No. 140, 2012; No 123, 2019
s. 26FEQ	ad. No. 24, 2007
	am No. 116, 2010; No 123, 2019
s. 26FER	ad. No. 24, 2007
	am No 123, 2019
s. 26FES	ad. No. 116, 2010
	am No. 140, 2012; No 123, 2019

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Division 4	
Div. 4 of Part IIID	ad. No. 116, 2010
s. 26FET	ad. No. 116, 2010 am. No. 129, 2012
s. 26FEU	ad. No. 116, 2010
s. 26FEV	ad. No. 116, 2010
Division 5	
Div. 5 of Part IIID	ad. No. 140, 2012
s. 26FEW	ad. No. 140, 2012
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; No. 24, 2007
s. 27A.....	ad. No. 64, 1994 am. No. 143, 2001; No. 24, 2006; No. 24, 2007; No. 131, 2009; No 4, 2016; No 123, 2019
s. 27B.....	ad. No. 64, 1994
s. 27C.....	ad. No. 64, 1994 am. No. 143, 2001; No 4, 2016
s. 28	am. No. 167, 1986; No. 101, 1991; No. 149, 2001; No. 24, 2007; No. 167, 2011; No. 5, 2015
s. 29	rs. No. 64, 1994
s. 29A.....	ad. No. 101, 1991 am. No. 24, 2006
s. 29B.....	ad. No. 149, 2001
s. 30	ed C38
s. 31	am. No. 78, 1990; No. 11, 1991; No. 43, 1996 ed C38
s. 32	am. No. 167, 1986; No. 71, 1992; No. 24, 2007; No. 140, 2012
s. 33	am. No. 81, 1986; No. 167, 1986; No. 141, 1987; No. 78, 1990; No. 149, 2001; No. 24, 2007; No. 94, 2008; No. 129, 2012; No. 40, 2018; No. 78, 2022

Endnote 4—Amendment history

Provision affected	How affected
s 34	am No 65, 1985; No 167, 1986; No 141, 1987; No 99, 1988; No 78, 1990; No 109, 2006; No 10, 2015; No 40, 2018; No 78, 2022
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