Protection of the Sea (Harmful Anti-fouling Systems) Act 2006

Act No. 107 of 2006 as amended

This compilation was prepared on 30 January 2012
taking into account amendments up to Act No. 46 of 2011

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

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

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An Act relating to the protection of the sea from the effects of harmful anti-fouling systems

Part 1—Preliminary

1 Short title [*see* Note 1]

This Act may be cited as the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	27 September 2006
2. Sections 3 to 25	A single day to be fixed by Proclamation. A Proclamation must not specify a day that occurs before the day on which the Convention enters into force for Australia. However, if the provision(s) do not commence within the period of 6 months beginning on the day on which the Convention enters into force for Australia, they commence on the first day after the end of that period. If the provision(s) commence in this way, the Minister must announce by notice in the *Gazette* the day on which the provision(s) commenced. The notice is not a legislative instrument.	17 September 2008 (*see* F2008L00369)

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Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Definitions

In this Act:

anti-fouling certificate means a certificate issued under section 10.

Australia includes the external Territories.

Australian law means a law of the Commonwealth or of a State or Territory.

Australian ship means:

(a) a ship registered, or required to be registered, under the *Shipping Registration Act 1981*; or

(b) an unregistered ship that has Australian nationality under the *Shipping Registration Act 1981*.

Australian shipping facility means a shipping facility in Australia or in Australia's exclusive economic zone.

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

complies with the anti-fouling requirements has the meaning given by section 4.

conduct, in relation to an offence, has the same meaning as in the *Criminal Code*.

Convention means the International Convention on the Control of Harmful Anti-fouling Systems on Ships, done at London on 5 October 2001.

Note: In 2006, the text of the Convention was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

designated external surface means any part of the hull or external parts or surfaces. For this purpose, ***hull or external parts or surfaces*** has the same meaning as in the Convention.

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

exempt platform means any of the following (within the meaning of the Convention):

(a) a fixed or floating platform;

(b) a floating storage unit;

(c) a floating production, storage and off-loading unit.

foreign Convention law means a law of a foreign country that gives effect (wholly or partly) to the Convention.

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

gross tonnage has the same meaning as in the Convention.

HAFC (short for harmful anti-fouling compound) means an organotin compound that acts as a biocide in an anti-fouling system. For this purpose, ***organotin compound***, ***biocide*** and ***anti-fouling system*** have the same meaning as in the Convention.

inspector has the meaning given by section 16.

international voyage has the same meaning as in the Convention.

length has the same meaning as in the Convention.

master, in relation to a ship, means the person having command or charge of the ship, but does not include a person exercising powers under an Australian law.

offence against this Act includes:

(a) an offence against the regulations; and

(b) an offence against Chapter 7 of the *Criminal Code* that relates to this Act or the regulations.

orders means orders under section 24.

owner, in relation to a ship that is operated by a person other than the owner, includes the operator.

pre-2003 exempt platform means an exempt platform that was constructed before 1 January 2003 and has not been in dry dock on or after that date.

prescribed means prescribed by the regulations.

regulations includes orders.

ship has the same meaning as in Article 2 of the Convention, but does not include a ship that is being used for non-commercial purposes by:

(a) the Commonwealth, a State or a Territory; or

(b) the government of a foreign country.

shipping facility means:

(a) a port; or

(b) a shipyard; or

(c) an offshore terminal;

within the meaning of the Convention.

survey authority means:

(a) the Authority; or

(b) a body corporate approved by the Authority under section 5.

4 Definition: compliance with anti-fouling requirements

A ship ***complies with the anti-fouling requirements*** if, and only if:

(a) it has no HAFC applied on any designated external surface; or

(b) each HAFC that is applied on any designated external surface has a coating that forms a barrier to the HAFC leaching into the water.

5 Approving a body corporate approved as a survey authority

(1) The Authority may, in writing, approve a body corporate as a survey authority.

(2) An approval made under subsection (1) is not a legislative instrument.

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6 Scope of Act

(1) This Act applies to every external Territory.

(2) This Act extends to acts, omissions, matters and things outside Australia (unless the contrary intention appears).

7 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 employee or agent of the Commonwealth or of a State or Territory to be prosecuted for an offence.

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Part 2—Application or use of harmful anti-fouling systems

8 HAFC not to be applied to a ship

Ordinary offence: applying an HAFC

(1) A person commits an offence if:
  (a) the person engages in conduct; and
  (b) the conduct results in an HAFC being applied or re-applied on a designated external surface of a ship; and
  (c) the person is negligent as to causing that result; and
  (d) either:
    (i) the ship is an Australian ship; or
    (ii) the ship is a foreign ship and the conduct occurred in an Australian shipping facility.

Penalty: 2,000 penalty units.

Strict liability offence: applying an HAFC

(2) A person commits an offence if:
  (a) an HAFC is:
    (i) applied or re-applied on a designated external surface of an Australian ship; or
    (ii) applied or re-applied on a designated external surface of a foreign ship in an Australian shipping facility; and
  (b) the person is the owner or master of the ship.

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*.

No offence if State or Territory law applies

(4) If:
  (a) apart from this subsection, particular conduct would constitute an offence against this section; and

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(b) the conduct constitutes an offence against a law of a State or Territory;

then the conduct does not constitute an offence against this section.

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

9 Non-complying ships not to enter or remain in shipping facilities

Ordinary offence: non-complying Australian ship entering shipping facility

(1) A person commits an offence if:

(a) on or after 1 January 2008, the person:

(i) takes an Australian ship to a shipping facility; or

(ii) permits an Australian ship to be taken to a shipping facility; and

(b) the person is the master or owner of the ship; and

(c) the ship does not comply with the anti-fouling requirements; and

(d) the ship is not a pre-2003 exempt platform.

Penalty: 2,000 penalty units.

Ordinary offence: non-complying Australian ship remaining in shipping facility

(2) If:

(a) on or after 1 January 2008, a person allows an Australian ship to remain in a shipping facility (whether or not it entered before that date); and

(b) the person is the master or owner of the ship; and

(c) the ship does not comply with the anti-fouling requirements; and

(d) the ship is not a pre-2003 exempt platform;

then the person commits an offence for each day on which the ship so remains.

Penalty: 1,000 penalty units.

Ordinary offence: non-complying foreign ship entering Australian shipping facility

(3) A person commits an offence if:

(a) on or after 1 January 2008, the person:

(i) takes a foreign ship to an Australian shipping facility; or

(ii) permits a foreign ship to be taken to an Australian shipping facility; and

(b) the person is the master or owner of the ship; and

(c) the ship does not comply with the anti-fouling requirements; and

(d) the ship is not a pre-2003 exempt platform.

Penalty: 2,000 penalty units.

Ordinary offence: non-complying foreign ship remaining in Australian shipping facility

(4) If:

(a) on or after 1 January 2008, a person allows a foreign ship to remain in an Australian shipping facility (whether or not it entered before that date); and

(b) the person is the master or owner of the ship; and

(c) the ship does not comply with the anti-fouling requirements; and

(d) the ship is not a pre-2003 exempt platform;

then the person commits an offence for each day on which the ship so remains.

Penalty: 1,000 penalty units.

Strict liability offence: non-complying Australian ship entering shipping facility

(5) A person commits an offence if:

(a) on or after 1 January 2008, an Australian ship enters a shipping facility; and

(b) the person is the master or owner of the ship; and

(c) the ship does not comply with the anti-fouling requirements; and

(d) the ship is not a pre-2003 exempt platform.

Penalty: 500 penalty units.

Strict liability offence: non-complying Australian ship remaining in shipping facility

(6) If:

(a) on or after 1 January 2008, an Australian ship remains in a shipping facility (whether or not it entered before that date); and

(b) the ship does not comply with the anti-fouling requirements; and

(c) the ship is not a pre-2003 exempt platform;

then the master and owner each commit an offence for each day on which the ship so remains.

Penalty: 400 penalty units.

Strict liability offence: non-complying foreign ship entering Australian shipping facility

(7) A person commits an offence if:

(a) on or after 1 January 2008, a foreign ship enters an Australian shipping facility; and

(b) the person is the master or owner of the ship; and

(c) the ship does not comply with the anti-fouling requirements; and

(d) the ship is not a pre-2003 exempt platform.

Penalty: 500 penalty units.

Strict liability offence: non-complying foreign ship remaining in Australian shipping facility

(8) If:

(a) on or after 1 January 2008, a foreign ship remains in an Australian shipping facility (whether or not it entered before that date); and

(b) the ship does not comply with the anti-fouling requirements; and

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(c) the ship is not a pre-2003 exempt platform;

then the master and owner each commit an offence for each day on which the ship so remains.

Penalty: 400 penalty units.

(9) An offence against subsection (5), (6), (7) or (8) is an offence of strict liability.

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

Exception for emergencies etc.

(10) Subsections (1) to (8) do not apply if:

(a) the ship enters or remains (as the case may be) for the purpose of securing the safety of the ship or seeking urgent medical attention for a person on board the ship; or

(b) the ship is under the control of a person exercising powers under an Australian law.

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

No offence if State or Territory law applies

(11) If:

(a) apart from this subsection, particular conduct would constitute an offence against this section; and

(b) the conduct constitutes an offence against a law of a State or Territory;

then the conduct does not constitute an offence against this section.

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

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Part 3—Anti-fouling certificates and anti-fouling declarations

10 Issue and endorsement of anti-fouling certificates

Initial certificate

(1) If:

(a) a survey authority surveys an Australian ship with a gross tonnage of 400 or more, for the purpose of determining whether the ship complies with the anti-fouling requirements; and

(b) the ship does not have a current anti-fouling certificate; and

(c) on the basis of the survey, the survey authority is satisfied that the ship complies with the anti-fouling requirements;

then the survey authority must issue an anti-fouling certificate in respect of the ship, in the prescribed form.

Endorsement of existing certificate

(2) If:

(a) a survey authority surveys an Australian ship with a gross tonnage of 400 or more, for the purpose of determining whether the ship complies with the anti-fouling requirements; and

(b) the ship has a current anti-fouling certificate, but needs an endorsement in order for the certificate to continue in effect; and

(c) on the basis of the survey, the survey authority is satisfied that the ship complies with the anti-fouling requirements;

then the survey authority must endorse the anti-fouling certificate in accordance with the regulations.

Status of certificate and endorsement

(3) An anti-fouling certificate issued under subsection (1), or the endorsement of an anti-fouling certificate under subsection (2), is not a legislative instrument.

11 Lapsing of anti-fouling certificates

(1) An anti-fouling certificate ceases to be in force if the ship ceases to be an Australian ship.

(2) An anti-fouling certificate ceases to be in force if:

(a) since the certificate was issued or last endorsed, any coating or treatment is applied to any designated external surface of the ship; and

(b) after the coating or treatment is applied, the ship is taken to sea without the certificate having been endorsed in respect of the coating or treatment.

12 Cancellation of anti-fouling certificates

(1) The Authority may cancel an anti-fouling certificate that is in force in respect of an Australian ship if the Authority has reason to believe that:

(a) the ship does not comply with the anti-fouling requirements; or

(b) the anti-fouling certificate was issued or endorsed upon false or erroneous information.

(2) The Authority may cancel an anti-fouling certificate under subsection (1) whether or not the certificate was issued by the Authority.

Note: Under section 10, an anti-fouling certificate can be issued by the Authority or by another survey authority.

(3) The cancellation takes effect when the Authority gives notice in writing of the cancellation:

(a) addressed to the master, owner or agent of the ship; and

(b) served in accordance with the regulations.

(4) If an anti-fouling certificate in respect of an Australian ship is cancelled under this section, the Authority may:

(a) require the certificate to be given to a specified person; and

(b) detain the ship until the requirement is complied with.

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(5) The requirement under paragraph (4)(a) must be:
  (a) made by notice in writing; and
  (b) addressed to the owner, agent or master of the ship; and
  (c) served in accordance with the regulations.

(6) A requirement made by notice under paragraph (5)(a) is not a legislative instrument.

13 Obligation to carry anti-fouling certificate

Ordinary offence: failing to carry anti-fouling certificate

(1) A person commits an offence if:
  (a) on or after 1 January 2008, the person:
    (i) takes an Australian ship to or from a shipping facility on an international voyage; or
    (ii) permits an Australian ship to be taken to or from a shipping facility on an international voyage; and
  (b) the ship has a gross tonnage of 400 or more; and
  (c) the person is the master or owner of the ship; and
  (d) the ship does not have on board a current anti-fouling certificate for the ship; and
  (e) the ship is not an exempt platform.

Penalty: 1,000 penalty units.

Strict liability offence: failing to carry anti-fouling certificate

(2) A person commits an offence if:
  (a) on or after 1 January 2008, an Australian ship with a gross tonnage of 400 or more enters or leaves a shipping facility on an international voyage; and
  (b) the person is the master or owner of the ship; and
  (c) the ship does not have on board a current anti-fouling certificate for the ship; and
  (d) the ship is not an exempt platform.

Penalty: 400 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*.

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No offence if State or Territory law applies

(4) If:

(a) apart from this subsection, particular conduct would constitute an offence against this section; and

(b) the conduct constitutes an offence against a law of a State or Territory;

then the conduct does not constitute an offence against this section.

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

14 Obligation to report damage etc. to ship

(1) If:

(a) an Australian ship has a current anti-fouling certificate; and

(b) something happens to the ship that affects, or might affect, its compliance with the anti-fouling requirements; and

(c) notice of the happening is not given in accordance with the regulations within 7 days after the happening;

then the master and owner each commit an offence for each subsequent day that passes without the notice having been given.

Penalty: 100 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*.

No offence if State or Territory law applies

(3) If:

(a) apart from this subsection, particular conduct would constitute an offence against this section; and

(b) the conduct constitutes an offence against a law of a State or Territory;

then the conduct does not constitute an offence against this section.

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

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15 Obligation to carry anti-fouling declaration

Ordinary offence: failing to carry anti-fouling declaration

(1) A person commits an offence if:

(a) on or after 1 January 2008, the person:

(i) takes an Australian ship to or from a shipping facility on an international voyage; or

(ii) permits an Australian ship to be taken to or from a shipping facility on an international voyage; and

(b) the person is the master or owner of the ship; and

(c) the ship is at least 24 metres in length and has a gross tonnage of less than 400; and

(d) the ship does not have on board an anti-fouling declaration for the ship; and

(e) the ship is not an exempt platform.

Penalty: 1,000 penalty units.

Strict liability offence: failing to carry anti-fouling declaration

(2) A person commits an offence if:

(a) on or after 1 January 2008 an Australian ship enters or leaves a shipping facility on an international voyage; and

(b) the person is the master or owner of the ship; and

(c) the ship is at least 24 metres in length and has a gross tonnage of less than 400; and

(d) the ship does not have on board an anti-fouling declaration for the ship; and

(e) the ship is not an exempt platform.

Penalty: 400 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*.

No offence if State or Territory law applies

(4) If:

(a) apart from this subsection, particular conduct would constitute an offence against this section; and

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(b) the conduct constitutes an offence against a law of a State or Territory;

then the conduct does not constitute an offence against this section.

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

Definition

(5) In this section:

anti-fouling declaration means a declaration relating to compliance with the anti-fouling requirements, being a declaration in a form prescribed for the purposes of this definition.

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Part 4—Inspection and enforcement powers

16 Inspectors and identity cards

(1) Each of the following persons is an ***inspector*** for the purposes of this Act:

(a) a person appointed by the Authority under subsection (2);

(b) a surveyor for the purposes of the *Navigation Act 1912*;

(c) a member, or special member, of the Australian Federal Police.

(2) The Authority may, in writing, appoint appropriately qualified persons as inspectors.

(3) The Authority must issue an identity card to each inspector appointed under subsection (2). The card must incorporate a photograph of the inspector.

(4) A person commits an offence if:

(a) the person has been issued with an identity card; and

(b) the person ceases to be an inspector; and

(c) the person does not immediately return the identity card to the Authority.

Penalty: 1 penalty unit.

(5) Subsection (4) does not apply if the identity card was lost or destroyed.

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

(6) A person to whom an identity card has been issued under subsection (3) must carry the card at all times when exercising powers or performing functions as an inspector under this Act.

(7) In this section:

appropriately qualified means having such training or experience as may be prescribed for the purposes of this definition.

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17 Inspection of ships

(1) An inspector may exercise the powers under this section in relation to a ship in an Australian shipping facility for the purpose of ascertaining:

(a) whether this Act and the regulations are being complied with in respect of the ship; or

(b) whether the Convention is being complied with in respect of the ship; or

(c) whether a foreign Convention law is being complied with in respect of the ship.

(2) The inspector may do any of the following:

(a) go on board the ship with such assistants and equipment as the inspector considers necessary;

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

(c) examine, and take samples of, any substances on board the ship or on any designated external surface of the ship;

(d) inspect any part of the ship or its machinery or equipment;

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

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

(g) require the master of the ship to produce:

(i) any certificate, declaration, endorsement or record that is required by this Act or the regulations to be carried on the ship; or

(ii) any other documents, records or books relating to the ship or its cargo that are carried on the ship;

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

(i) require the master of the ship to certify that a true copy or extract made by the inspector under paragraph (h) is a true copy of the original;

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(j) take photographs (including video recordings) of the ship or of equipment, or anything else, in or on board the ship;

(k) require a person to answer questions.

(3) This section does not authorise an inspector to exercise powers in a manner inconsistent with the Convention.

(4) A person must not fail to comply with a requirement made of the person by an inspector under this section.

Penalty: 80 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*.

18 Detention of ships

(1) The Authority may detain a ship in an Australian shipping facility if the Authority has reasonable grounds for believing that an offence against this Act has been committed in respect of the ship.

(2) The ship must be released immediately if:

(a) security is provided in accordance with subsection (3); or

(b) all proceedings that have been instituted in respect of the offence 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 other amounts of money, and all costs and expenses ordered to be paid, in respect of the offence have been paid; or

(e) the Authority forms the belief that the offence 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.

(3) Security referred to in subsection (2) must:

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

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

(4) If the ship leaves the shipping facility while it is under detention, then the master and owner each commit an offence.

Penalty: 1,000 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*.

(6) While a 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.

19 Compensation for undue detention or delay

(1) If a ship is unduly detained or delayed under this Act, then the Authority is liable to pay the owner reasonable compensation for any loss or damage suffered by the owner as a result of the undue detention or delay.

(2) If the Authority and the owner are unable to agree on the amount of the compensation, then the owner may institute proceedings in the Federal Court of Australia for such reasonable compensation as the Court determines.

(3) In this section:

unduly detained or delayed has the same meaning as in Article 13 of the Convention.

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Part 5—Miscellaneous

20 Service of documents on master or owner of ship

(1) A document to be served on the master or owner of a ship under this Act, or 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 and owner of the ship.

21 Time limit for prosecution of offences

(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 offence involving a foreign ship:

(a) the prosecution must not be brought more than 3 years after the commission of the offence; and

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

(c) the prosecution must be terminated if, under paragraph 1 of article 228 of the Law of the Sea Convention, it is required to be terminated.

(3) In this section:

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

Note: The text of the Convention is set out in Australian Treaty Series 1994 No. 31. In 2006, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

22 Evidence of terms of the Convention

(1) The Minister may issue a certificate stating that a document set out in, or annexed to, the certificate sets out the terms of the Convention.

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(2) Such a certificate is prima facie evidence of the matters so certified.

23 Evidence of analyst

Authority may appoint analysts

(1) The Authority may, in writing, appoint appropriately qualified persons to be analysts for the purposes of this Act.

Analyst may issue certificate

(2) An analyst appointed under subsection (1) may issue a certificate setting out, in relation to a substance, one or more of the following:

(a) when and from whom the substance was received by the analyst;

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

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

(d) a description of the substance received by the analyst;

(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.

Certificate admissible in proceedings for offence

(3) The certificate is admissible in any proceeding for an offence against this Act as prima facie evidence of:

(a) the matters in the certificate; and

(b) the correctness of the results of the analysis or examination.

Restriction on admissibility of certificate

(4) A certificate must not be admitted in evidence under subsection (3) in proceedings for an offence unless:

(a) the person charged with the offence; or

(b) a barrister or solicitor who has appeared for the person in those proceedings;

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has, at least 14 days before the certificate is sought to be so admitted, been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings.

Document taken to be a certificate unless contrary established

(5) A document purporting to be a certificate referred to in subsection (2) is taken to be such a certificate and to have been duly given unless the contrary is established.

Analyst may be called to give evidence

(6) If the certificate 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.

(7) Subsection (6) 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.

Evidence in support, or rebuttal, of matter in certificate to be considered on its merits

(8) Any evidence given in support, or in rebuttal, of a matter stated in a certificate issued under subsection (2) must be considered on its merits. The credibility and probative value of the evidence is neither increased nor diminished because of this section.

24 Orders

The Authority may, by legislative instrument, make orders on any matter on which regulations may be made. However, orders cannot impose penalties for contraventions of the orders.

25 Regulations

The Governor-General may make regulations 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; and

(d) prescribing penalties not exceeding 30 penalty units for a contravention of the regulations.

Note: The regulations can prescribe penalties for contraventions of the orders: see the definition of ***regulations*** in section 3.

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Notes to the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006*

Note 1

The *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006* as shown in this compilation comprises Act No. 107, 2006 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Protection of the Sea (Harmful Anti-fouling Systems) Act 2006	107, 2006	27 Sept 2006	Ss. 3–25: 17 Sept 2008 (*see* F2008L00369) Remainder: Royal Assent	
Personal Property Securities (Consequential Amendments) Act 2009	131, 2009	14 Dec 2009	Schedule 3 (item 12): 30 Jan 2012 (*see* F2011L02397)	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Schedule 5 (items 80, 81): Royal Assent	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (item 940) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
S. 3.....	am. No. 8, 2010; No. 46, 2011
Part 4	
S. 18.....	am. No. 131, 2009
Part 5	
S. 21.....	am. No. 8, 2010

Table A

Application, saving or transitional provisions

Acts Interpretation Amendment Act 2011 (No. 46, 2011)

Schedule 3

10 Saving—appointments

The amendments made by Schedule 2 do not affect the validity of an appointment that was made under an Act before the commencement of this item and that was in force immediately before that commencement.

11 Transitional regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by Schedules 1 and 2.