



Maritime Legislation Amendment Act 2012

No. 140, 2012

**An Act to amend the *Protection of the Sea
(Prevention of Pollution from Ships) Act 1983* and to
repeal Acts relating to the stevedoring levy, and for
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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[Assented to 25 September 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Maritime Legislation Amendment Act
2012*.

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 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	25 September 2012
2. Schedule 1, Parts 1 to 3	1 January 2013.	1 January 2013
3. Schedule 1, Parts 4 and 5	The day after this Act receives the Royal Assent.	26 September 2012
4. Schedule 2	The day this Act receives the Royal Assent.	25 September 2012

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Prevention of pollution by sewage

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

1 Subparagraph 26D(1)(c)(i)

Before “the discharge” (first occurring), insert “the discharge occurs when the ship is not within a special area,”.

2 After subparagraph 26D(1)(c)(i)

Insert:

- (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;

3 Subparagraph 26D(3)(b)(i)

Before “the discharge” (first occurring), insert “the discharge occurs when the ship is not within a special area,”.

4 After subparagraph 26D(3)(b)(i)

Insert:

- (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;

5 At the end of subsection 26D(6) (before the note)

Add:

- ; (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.

6 Paragraph 26D(7)(a)

Repeal the paragraph, substitute:

- (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;

7 At the end of subsection 26D(7) (before the note)

Add:

- ; (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.

8 Subsection 26D(8)

Repeal the subsection, substitute:

- (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;
 - (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*.

9 Section 26DA

Repeal the section.

10 Application, saving and transitional provisions

- (1) The amendments made by items 1 to 8 apply in relation to the discharge of sewage from a ship that occurs on or after the commencement of those items.
- (2) A certification in force immediately before the commencement of this item for the purposes of subparagraph 26D(7)(a)(i) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* has effect, on and after that commencement, as if it were a certification in force for the purposes of paragraph 26D(7)(a) of that Act (as amended by this Part).
- (3) The repeal of section 26DA of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* made by this Part does not affect the validity of the Proclamation made under that section before the commencement of this Part.

Part 2—Prevention of pollution by garbage

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

11 Subsection 26E(1)

Omit “(1)”.

12 Subsection 26E(2)

Repeal the subsection.

13 Section 26EA

Repeal the section, substitute:

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.

14 Section 26F (heading)

Repeal the heading, substitute:

26F Prohibition of discharge of garbage into the sea

15 Paragraphs 26F(1)(a) and (b)

Omit “disposal”, substitute “discharge”.

16 Subparagraph 26F(1)(c)(i)

Omit “the disposal” (first occurring), substitute “the discharge occurs when the ship is not within a special area, the discharge”.

17 Subparagraph 26F(1)(c)(i)

Omit “Regulations 3, 5 and 6 of Annex V”, substitute “Regulations 3, 4 and 7 of Annex V”.

18 Subparagraph 26F(1)(c)(i)

Omit “where the disposal”, substitute “where the discharge”.

19 After subparagraph 26F(1)(c)(i)

Insert:

- (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;

20 Subparagraphs 26F(1)(c)(ib), (ii) and (iii)

Omit “disposal”, substitute “discharge”.

21 Before subsection 26F(3)

Insert:

Strict liability offence

22 Paragraph 26F(3)(a)

Omit “disposal”, substitute “discharge”.

23 Subparagraph 26F(3)(b)(i)

Omit “the disposal” (first occurring), substitute “the discharge occurs when the ship is not within a special area, the discharge”.

24 Subparagraph 26F(3)(b)(i)

Omit “Regulations 3, 5 and 6 of Annex V”, substitute “Regulations 3, 4 and 7 of Annex V”.

25 Subparagraph 26F(3)(b)(i)

Omit “where the disposal”, substitute “where the discharge”.

26 After subparagraph 26F(3)(b)(i)

Insert:

- (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;

27 Subparagraphs 26F(3)(b)(ib), (ii) and (iii)

Omit “disposal”, substitute “discharge”.

28 Before subsection 26F(5)

Insert:

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

29 Subsection 26F(5)

Omit “disposal”, substitute “discharge”.

30 After subsection 26F(5)

Insert:

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*.

31 Subsections 26F(6) to (8A)

Repeal the subsections, substitute:

Exception—discharge of food wastes outside a special area

- (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;
 - (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 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

- (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;
 - (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;
- (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

- (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;
 - (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

- (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;
 - (b) the garbage is cleaning agents or additives contained in deck wash water or other external surfaces wash water;
 - (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

- (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;
 - (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) 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 iceshelf;
 - (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

- (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;
 - (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;
 - (d) the port of departure and the next port of destination are within the special area;

- (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 between the port of departure and the next port of destination;
- (f) at the port of departure and the next port of destination there are no reception facilities that comply with guidelines (as in force from time to time) developed by the International Maritime Organization for the purposes of subparagraph 1.2.3 of Regulation 6 of Annex V to the Convention;
- (g) 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 iceshelf;
- (h) 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 (8C): see subsection 13.3(3) of the *Criminal Code*.

- (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;
 - (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*.

32 Subsection 26F(9)

Repeal the subsection, substitute:

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*.

33 Before subsection 26F(9A)

Insert:

Meaning of damage to a ship or its equipment

34 Subsection 26F(10)

Repeal the subsection, substitute:

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*.

35 Before subsection 26F(11)

Insert:

Other more stringent requirements

36 Subsection 26F(11)

Omit “Without limiting the generality of subsection (5), where”, substitute “If”.

37 Paragraph 26F(11)(a)

After “mixed with”, insert “, or contaminated by”.

38 Paragraph 26F(11)(c)

Omit “apply to the disposal”, substitute “applies to the discharge”.

39 Paragraph 26F(11)(c)

Omit “subsection (6), (7), (8), (9) or (10)”, substitute “subsection (6), (7), (8), (8A), (8B), (8C), (8D), (9) or (10)”.

40 Paragraph 26F(11)(d)

Omit “do not apply to the disposal”, substitute “does not apply to the discharge”.

41 After subsection 26F(11)

Insert:

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).

42 Subsection 26F(13)

Omit “that may contain toxic or heavy metal residues”.

43 Subsection 26FB(4)

Omit “2 years”, substitute “one year”.

44 Section 26FC (heading)

Repeal the heading, substitute:

26FC Garbage management plan

45 Paragraph 26FC(1)(a)

Omit “400”, substitute “100”.

46 Subsection 26FC(2)

Omit “shipboard waste management plan”, substitute “garbage management plan”.

47 Subsection 26FC(2)

Omit “master of, and the officers on board, the ship”, substitute “crew of the ship”.

48 Subsection 26FC(3)

Omit “shipboard waste management plan”, substitute “garbage management plan”.

49 Paragraph 26FC(3)(b)

After “procedures for”, insert “minimising”.

50 Paragraph 26FC(3)(b)

Omit “disposing of”, substitute “discharging”.

51 Paragraph 26FC(3)(c)

Omit “who is”, substitute “or persons who are”.

52 Subsections 26FC(4) and (5)

Omit “shipboard waste management plan”, substitute “garbage management plan”.

53 Section 26FD (heading)

Repeal the heading, substitute:

26FD Placards relating to requirements for discharge of garbage

54 Subsection 26FD(1)

Omit “disposed of”, substitute “discharged”.

55 Subsection 26FD(1)

Omit “disposal”, substitute “discharge”.

56 Subsection 26FD(2)

Omit “English language”, substitute “working language of the crew of the ship”.

57 Subsection 26FD(3)

Repeal the subsection, substitute:

- (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.

58 Subsection 26FE(1)

Omit “disposed of”, substitute “discharged”.

59 Subsection 26FE(1)

Omit “disposal”, substitute “discharge”.

60 Subsection 32(1B)

Omit “shipboard waste management plan”, substitute “garbage management plan”.

61 Application and saving provisions

- (1) The amendments made by items 14 to 42 apply in relation to the discharge of garbage from a ship that occurs on or after the commencement of those items.
- (2) Despite the amendments made by items 14 to 42, section 26F of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*, as in force immediately before the commencement of those items, continues to apply on and after that commencement in relation to the disposal of garbage from a ship that occurred before that commencement.
- (3) The amendment made by item 43 applies in relation to a garbage record book, where the last entry is made in the book on or after the commencement of that item.
- (4) The amendments made by items 44 to 57 apply in relation to voyages of ships that begin on or after the commencement of those items.
- (5) The amendments made by items 58 and 59 apply in relation to notices given on or after the commencement of those items.

Part 3—Prevention of air pollution

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

62 At the end of Part IIID

Add:

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*.

63 Application provision

The amendment made by item 62 applies in relation to voyages of Australian ships that begin on or after the commencement of that item.

Part 4—Roll-back provisions

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

64 Subsection 3(1)

Insert:

outer territorial sea: see subsection (1D).

65 Subsection 3(1)

Insert:

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).

66 Subsections 3(1A) to (1BA)

Repeal the subsections, substitute:

- (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:
 - (i) on the landward side of the baseline of the territorial sea; and
 - (ii) adjacent to the State and not 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
 - (ii) adjacent to the Territory; and
 - (b) the waters of the sea that are:
 - (i) on the landward side of the baseline of the territorial sea; and
 - (ii) adjacent to 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.

67 After subparagraph 9(1B)(b)(i)

Insert:

- (ia) the discharge occurs into the outer territorial sea;

68 Subsections 11(1A) and (1B)

Repeal the subsections.

69 After subsection 11(8)

Insert:

- (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*.

- (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*.

70 After subparagraph 11B(1)(d)(i)

Insert:

- (ia) the transfer occurs while the subject oil tanker is in the outer territorial sea;

71 Paragraph 11C(1)(c)

Omit “either”, substitute “one”.

72 After subparagraph 11C(1)(c)(i)

Insert:

- (ia) the transfer occurs while the subject oil tanker is in the outer territorial sea;

73 Paragraph 11F(1)(d)

Omit “either”, substitute “one”.

74 After subparagraph 11F(1)(d)(i)

Insert:

- (ia) the transfer occurs while the subject oil tanker is in the outer territorial sea;

75 Paragraph 11F(2)(d)

Omit “either”, substitute “one”.

76 After subparagraph 11F(2)(d)(i)

Insert:

- (ia) the transfer occurs while the subject oil tanker is in the outer territorial sea;

77 After subparagraph 17(1)(f)(i)

Insert:

(ia) the ship is in the outer territorial sea;

78 After subparagraph 17(2)(d)(i)

Insert:

(ia) the ship is in the outer territorial sea;

79 After subparagraph 21(1)(c)(i)

Insert:

(ia) the discharge occurs into the outer territorial sea;

80 After subparagraph 21(1B)(b)(i)

Insert:

(ia) the discharge occurs into the outer territorial sea;

81 Subsections 22(1A) and (1B)

Repeal the subsections.

82 After subsection 22(9)

Insert:

(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*.

83 After subparagraph 26AB(1)(c)(i)

Insert:

- (ia) the jettisoning occurs into the outer territorial sea;

84 After subparagraph 26AB(3)(b)(i)

Insert:

- (ia) the jettisoning occurs into the outer territorial sea;

85 Subsections 26B(1) and (2)

Repeal the subsections.

86 After subsection 26B(10A)

Insert:

- (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*.

87 Paragraph 26BC(1)(c)

Repeal the paragraph, substitute:

- (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;

88 Paragraph 26BC(2A)(b)

Repeal the paragraph, substitute:

- (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;

89 Before subparagraph 26D(1)(c)(ii)

Insert:

- (ib) the discharge occurs into the outer territorial sea;

90 Before subparagraph 26D(3)(b)(ii)

Insert:

- (ib) the discharge occurs into the outer territorial sea;

91 Before subparagraph 26F(1)(c)(ii)

Insert:

- (ib) the disposal occurs into the outer territorial sea;

92 Before subparagraph 26F(3)(b)(ii)

Insert:

- (ib) the disposal occurs into the outer territorial sea;

93 After subparagraph 26FEG(1)(d)(i)

Insert:

- (ia) the fuel oil is used while the ship is in the outer territorial sea;

94 After subparagraph 26FEG(2)(b)(i)

Insert:

- (ia) the fuel oil is used while the ship is in the outer territorial sea;

95 After subparagraph 26FEL(c)(i)

Insert:

- (ia) in the outer territorial sea; or

96 After subparagraph 26FEN(1)(c)(i)

Insert:

- (ia) the fuel oil is used while the ship is in the outer territorial sea;

97 After subparagraph 26FEO(1)(c)(i)

Insert:

- (ia) in the outer territorial sea; or

98 After subparagraph 26FEO(2)(c)(i)

Insert:

- (ia) in the outer territorial sea; or

99 After subparagraph 26FEP(1)(d)(i)

Insert:

- (ia) in the outer territorial sea; or

100 After subparagraph 26FES(1)(c)(i)

Insert:

- (ia) in the outer territorial sea; or

101 Application provisions

- (1) The amendment made by item 67 applies in relation to the discharge of oil or an oily mixture from a ship on or after the commencement of that item.
- (2) The amendments made by items 68, 69, 81, 82, 85 and 86 apply in relation to a prescribed incident, in relation to a ship, that occurs on or after the commencement of those items.
- (3) The amendments made by items 70 to 76 apply in relation to the transfer of oil cargo on or after the commencement of those items.

- (4) The amendments made by items 77 and 78 apply in relation to voyages of Australian ships that begin on or after the commencement of those items.
- (5) The amendments made by items 79 and 80 apply in relation to the discharge of a liquid substance, or of a mixture containing a liquid substance, from a ship on or after the commencement of those items.
- (6) The amendments made by items 83 and 84 apply in relation to the jettisoning of harmful substances from a ship on or after the commencement of those items.
- (7) The amendments made by items 89 and 90 apply in relation to the discharge of sewage from a ship on or after the commencement of those items.
- (8) The amendments made by items 91 and 92 apply in relation to the disposal of garbage from a ship on or after the commencement of those items.
- (9) The amendments made by items 93, 94 and 96 apply in relation to the use of fuel oil on or after the commencement of those items.
- (10) The amendments made by items 95, 97, 98 and 99 apply in relation to deliveries of fuel oil that occur on or after the commencement of those items.
- (11) The amendment made by item 100 applies in relation to deliveries of gas fuel that occur on or after the commencement of that item.

Part 5—Other amendments

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

102 Subparagraph 9(1B)(b)(i)

Omit “that sea”, substitute “the area of the sea where the discharge occurs”.

103 Subsection 9(2) (note)

Repeal the note, substitute:

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

104 Subsection 11(2) (note)

Repeal the note, substitute:

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

105 Subsection 11(4) (note)

Repeal the note, substitute:

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

106 Subparagraph 11B(1)(d)(i)

Omit “that sea”, substitute “the area of the sea where the transfer occurs”.

107 Subparagraph 11C(1)(c)(i)

Omit “that sea”, substitute “the area of the sea where the transfer occurs”.

108 Subparagraphs 11F(1)(d)(i) and (2)(d)(i)

Omit “that sea”, substitute “the area of the sea where the transfer occurs”.

109 Subparagraphs 17(1)(f)(i) and (2)(d)(i)

Omit “that sea”, substitute “the area of the sea where the substance is being carried”.

110 Subparagraphs 21(1)(c)(i) and (1B)(b)(i)

Omit “that sea”, substitute “the area of the sea where the discharge occurs”.

111 Subsection 21(2) (note)

Repeal the note, substitute:

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

112 Subsection 22(2) (note)

Repeal the note, substitute:

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

113 Subsection 22(4) (note)

Repeal the note, substitute:

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

114 Subparagraphs 26AB(1)(c)(i) and (3)(b)(i)

Omit “that sea”, substitute “the area of the sea where the jettisoning occurs”.

115 Subsection 26AB(5) (note)

Repeal the note, substitute:

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

116 Subsection 26AB(6) (note)

Repeal the note, substitute:

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

117 Subsection 26B(4) (note)

Repeal the note, substitute:

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

118 Subsection 26B(6) (note)

Repeal the note, substitute:

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

119 Subsection 26BC(3) (note)

Repeal the note, substitute:

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

120 Subsection 26BC(4) (note)

Repeal the note, substitute:

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

121 Subparagraphs 26D(1)(c)(i) and (3)(b)(i)

Omit “that sea”, substitute “the area of the sea where the discharge occurs”.

122 Subsection 26D(5) (note)

Repeal the note, substitute:

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

123 Subsection 26D(6) (note)

Repeal the note, substitute:

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

124 Subsection 26D(7) (note)

Repeal the note, substitute:

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

125 Subparagraphs 26F(1)(c)(i) and (3)(b)(i)

Omit “that sea”, substitute “the area of the sea where the disposal occurs”.

126 Subsection 26F(5) (note)

Repeal the note, substitute:

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

127 Subparagraphs 26FEG(1)(d)(i) and (2)(b)(i)

Omit “that sea”, substitute “the area of the sea where the fuel oil is used”.

128 Subparagraph 26FEL(c)(i)

Omit “that sea”, substitute “the area of the sea where the delivery happens”.

129 Subparagraph 26FEN(1)(c)(i)

Omit “that sea”, substitute “the area of the sea where the fuel oil is used”.

130 Subparagraphs 26FEO(1)(c)(i) and (2)(c)(i)

Omit “that sea”, substitute “the area of the sea where the delivery happens”.

131 Subparagraph 26FEP(1)(d)(i)

Omit “that sea”, substitute “the area of the sea where the delivery happens”.

132 Subparagraph 26FES(1)(c)(i)

Omit “that sea”, substitute “the area of the sea where the delivery happens”.

Schedule 2—Repeal of Acts

Stevedoring Levy (Collection) Act 1998

1 The whole of the Act

Repeal the Act.

Stevedoring Levy (Imposition) Act 1998

2 The whole of the Act

Repeal the Act.

*[Minister's second reading speech made in—
House of Representatives on 27 June 2012
Senate on 16 August 2012]*

(116/12)

30 *Maritime Legislation Amendment Act 2012* No. 140, 2012