



Maritime Legislation Amendment Act 2022

No. 78, 2022

**An Act to amend the law relating to the protection
of the sea, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	2
Schedule 1—Discharge of persistent floaters		4
	<i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i>	4
Schedule 2—Carriage of heavy grade oil in Arctic waters		8
	<i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i>	8
Schedule 3—Extension of controls on anti-fouling systems		10
	<i>Protection of the Sea (Harmful Anti-fouling Systems) Act 2006</i>	10
Schedule 4—Marine orders		13
	<i>Protection of the Sea (Harmful Anti-fouling Systems) Act 2006</i>	13
	<i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i>	13



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**An Act to amend the law relating to the protection
of the sea, and for related purposes**

[Assented to 5 December 2022]

The Parliament of Australia enacts:

1 Short title

This Act is the *Maritime Legislation Amendment Act 2022*.

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
Provisions	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.	5 December 2022
2. Schedule 1	The day after this Act receives the Royal Assent.	6 December 2022
3. Schedule 2	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 November 2022.	6 December 2022 (paragraph (a) applies)
4. Schedule 3	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 January 2023.	1 January 2023 (paragraph (b) applies)
5. Schedule 4	The day after this Act receives the Royal Assent.	6 December 2022

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation 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—Discharge of persistent floaters

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

1 Subsection 15(1)

Insert:

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 Subsection 21(4)

Omit “subsection (12)”, substitute “subsections (12) and (13)”.

3 Subparagraph 21(4)(a)(ii)

Omit “regulations made for the purposes of section 26”, substitute “the prewash procedure specified in Appendix VI to Annex II”.

4 Subsection 21(4)

Omit “following conditions are satisfied:”, substitute “conditions in subsection (9A) are satisfied.”.

5 Paragraphs 21(4)(d), (e) and (f)

Repeal the paragraphs (not including the note).

6 Subsection 21(5)

Omit “subsection (12)”, substitute “subsections (12), (13) and (13A)”.

7 Subparagraph 21(5)(a)(iv)

Omit “regulations made for the purposes of section 26”, substitute “the prewash procedure specified in Appendix VI to Annex II”.

8 Subsection 21(5)

Omit “following conditions are satisfied:”, substitute “conditions in subsection (9A) are satisfied.”.

9 Paragraphs 21(5)(d), (e) and (f)

Repeal the paragraphs (not including the note).

10 After subsection 21(5)

Insert:

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*).

11 Subsection 21(6)

Omit “subsection (12)”, substitute “subsections (12), (13) and (13A)”.

12 Subsection 21(6)

Omit “following conditions are satisfied:”, substitute “conditions in subsection (9A) are satisfied.”.

13 Paragraphs 21(6)(c), (d) and (e)

Repeal the paragraphs (not including the note).

14 Subsection 21(7)

Omit “subsection (12)”, substitute “subsections (12) and (13)”.

15 Subsection 21(8)

Omit “subsection (12)”, substitute “subsections (12) and (13)”.

16 Subsection 21(8)

Omit “following conditions are satisfied:”, substitute “conditions in subsection (9A) are satisfied.”.

17 Paragraphs 21(8)(d) to (g)

Repeal the paragraphs (not including the note).

18 Subsection 21(9)

Omit “paragraph (8)(f)”, substitute “paragraph (9A)(c) in relation to the discharge into the sea of residue referred to in subsection (8)”.

19 After subsection 21(9)

Insert:

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.

20 After subsection 21(13)

Insert:

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.

21 Subsection 22(10) (paragraphs (a) and (b) of the definition of prescribed incident)

After “(5)”, insert “, (5A)”.

Schedule 2—Carriage of heavy grade oil in Arctic waters

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

1 Subsection 3(1)

Insert:

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.

2 After section 10A

Insert:

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.

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.

Schedule 3—Extension of controls on anti-fouling systems

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

1 Section 3 (definition of HAFC)

After “in an anti-fouling system”, insert “, or cybutryne”.

2 Section 3

Insert:

pre-2023 exempt platform means an exempt platform that was constructed before 1 January 2023 and has not been in dry dock on or after that date.

3 At the end of section 4

Add:

- ; or (c) for a ship that has cybutryne applied on a designated external surface—neither of the following has occurred:
- (i) the first scheduled renewal of the ship’s anti-fouling system after 1 January 2023;
 - (ii) the day that is 60 months after the last application of cybutryne to the ship before 1 January 2023.

4 Paragraph 9(1)(a)

Omit “on or after 1 January 2008,”.

5 After paragraph 9(1)(d)

Insert:

- ; and (e) for a ship that has cybutryne applied to a designated external surface—the ship is not a pre-2023 exempt platform.

6 Paragraph 9(2)(a)

Repeal the paragraph, substitute:

- (a) a person allows an Australian ship to remain in a shipping facility; and

7 After paragraph 9(2)(d)

Insert:

- and (e) for a ship that has cybutryne applied to a designated external surface—the ship is not a pre-2023 exempt platform;

8 Paragraph 9(3)(a)

Omit “on or after 1 January 2008,”.

9 After paragraph 9(3)(d)

Insert:

- ; and (e) for a ship that has cybutryne applied to a designated external surface—the ship is not a pre-2023 exempt platform.

10 Paragraph 9(4)(a)

Repeal the paragraph, substitute:

- (a) a person allows a foreign ship to remain in an Australian shipping facility; and

11 After paragraph 9(4)(d)

Insert:

- and (e) for a ship that has cybutryne applied to a designated external surface—the ship is not a pre-2023 exempt platform;

12 Paragraph 9(5)(a)

Omit “on or after 1 January 2008,”.

13 After paragraph 9(5)(d)

Insert:

- ; and (e) for a ship that has cybutryne applied to a designated external surface—the ship is not a pre-2023 exempt platform.

14 Paragraph 9(6)(a)

Repeal the paragraph, substitute:

- (a) an Australian ship remains in a shipping facility; and

15 After paragraph 9(6)(c)

Insert:

and (d) for a ship that has cybutryne applied to a designated external surface—the ship is not a pre-2023 exempt platform;

16 Paragraph 9(7)(a)

Omit “on or after 1 January 2008,”.

17 After paragraph 9(7)(d)

Insert:

; and (e) for a ship that has cybutryne applied to a designated external surface—the ship is not a pre-2023 exempt platform.

18 Paragraph 9(8)(a)

Repeal the paragraph, substitute:

(a) a foreign ship remains in an Australian shipping facility; and

19 After paragraph 9(8)(c)

Insert:

and (d) for a ship that has cybutryne applied to a designated external surface—the ship is not a pre-2023 exempt platform;

20 Application of amendments

The amendments of subsections 9(2), (4), (6) and (8) of the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006* made by this Schedule apply in relation to a ship whether or not the ship entered the shipping facility before the commencement of this Schedule.

Schedule 4—Marine orders

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

1 Section 3

Insert:

Marine Order has the meaning given by section 24.

2 Section 3 (definition of orders)

Repeal the definition.

3 Section 3 (definition of regulations)

Omit “orders”, substitute “Marine Orders”.

4 Section 24

After “make orders”, insert “(*Marine Orders*)”.

5 Paragraph 25(d) (note)

Omit “the orders”, substitute “Marine Orders”.

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

6 Subsection 3(1)

Insert:

Marine Order has the meaning given by section 34.

7 Subsection 3(1) (definitions of *the regulations* and *this Act*)

Omit “orders made under section 34”, substitute “Marine Orders”.

8 Paragraph 26AB(6)(a)

Omit “regulations or orders made pursuant to regulations”, substitute “the regulations”.

9 Paragraph 26AB(6)(b)

Omit “or orders” (wherever occurring).

10 Subsection 26B(11) (paragraphs (a) and (b) of the definition of *prescribed incident*)

Omit “or orders made under the regulations”.

11 Paragraphs 26BCC(6)(b) and 26D(6)(a)

Omit “, or orders made pursuant to the regulations,”.

12 Paragraph 33(1)(f)

Omit “of the orders made under section 34”, substitute “Marine Order”.

13 Subsection 33(2)

Omit “, and orders made under section 34,”, substitute “and Marine Orders”.

14 Subsection 34(1)

After “orders”, insert “(*Marine Orders*)”.

[*Minister’s second reading speech made in—
Senate on 28 September 2022
House of Representatives on 28 November 2022*]

(92/22)
