



International Maritime Conventions Legislation Amendment Act 2001

No. 149, 2001



International Maritime Conventions Legislation Amendment Act 2001

No. 149, 2001

**An Act to amend various Acts relating to
international maritime conventions, and for related
purposes**

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	2
Schedule 1—Limitation of liability for maritime claims		3
	<i>Admiralty Act 1988</i>	3
	<i>Limitation of Liability for Maritime Claims Act 1989</i>	3
	<i>Navigation Act 1912</i>	13
Schedule 2—Taking of measures to protect the sea from pollution by substances discharged from ships		14
	<i>Protection of the Sea (Powers of Intervention) Act 1981</i>	14
Schedule 3—Prevention of pollution from ships		30
	<i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i>	30
Schedule 4—Protection of submarine cables and pipelines		60
	<i>Submarine Cables and Pipelines Protection Act 1963</i>	60



International Maritime Conventions Legislation Amendment Act 2001

No. 149, 2001

An Act to amend various Acts relating to international maritime conventions, and for related purposes

[Assented to 1 October 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *International Maritime Conventions
Legislation Amendment Act 2001*.

2 Commencement

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

-
- (2) Subject to subsection (3), Schedule 1 commences on a day to be fixed by Proclamation.
 - (3) If Schedule 1 does not commence under subsection (2) within the period of 6 months beginning on the day on which the 1996 Protocol to Amend the Convention on Limitation of Liability for Maritime Claims, 1976 comes into force for Australia, that Schedule commences on the first day after the end of that period.
 - (4) If Division 2 of Part IIIB of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* has not commenced before the day on which this Act receives the Royal Assent, items 92 to 105 of Schedule 3 commence on the day on which that Division commences, immediately after the commencement of that Division.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Limitation of liability for maritime claims

Admiralty Act 1988

1 Subsection 3(1) (definition of *Limitation Convention*)

Repeal the definition, substitute:

Limitation Convention has the meaning given to the expression *Convention* by subsection 3(1) of the *Limitation of Liability for Maritime Claims Act 1989*.

Limitation of Liability for Maritime Claims Act 1989

2 Subsection 3(1) (definition of *Convention*)

Repeal the definition, substitute:

Convention means the Convention on Limitation of Liability for Maritime Claims, 1976 (being the Convention a copy of whose English text is set out in Schedule 1), as affected by the 1996 Protocol to amend that Convention (being the Protocol a copy of whose English text is set out in Schedule 1A).

3 After Schedule 1

Insert:

Schedule 1A—1996 Protocol to amend Convention on Limitation of Liability for Maritime Claims of 19 November 1976

Note: See subsection 3(1).

THE PARTIES TO THE PRESENT PROTOCOL,

CONSIDERING that it is desirable to amend the Convention on Limitation of Liability for Maritime Claims, done at London on 19 November 1976, to

provide for enhanced compensation and to establish a simplified procedure for updating the limitation amounts,

HAVE AGREED as follows:

Article 1

For the purposes of this Protocol:

1. “Convention” means the Convention on Limitation of Liability for Maritime Claims, 1976.
2. “Organization” means the International Maritime Organization.
3. “Secretary-General” means the Secretary-General of the Organization.

Article 2

Article 3, subparagraph (a) of the Convention is replaced by the following text:

- (a) claims for salvage, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average;

Article 3

Article 6, paragraph 1 of the Convention is replaced by the following text:

1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows:
 - (a) in respect of claims for loss of life or personal injury,
 - (i) 2 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,
 - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 800
Units of Account;

for each ton from 30,001 to 70,000 tons, 600
Units of Account; and

for each ton in excess of 70,000 tons, 400 Units
of Account,

(b) in respect of any other claims,

(i) 1 million Units of Account for a ship with a
tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof, the
following amount in addition to that mentioned
in (i):

for each ton from 2,001 to 30,000 tons, 400
Units of Account;

for each ton from 30,001 to 70,000 tons, 300
Units of Account; and

for each ton in excess of 70,000 tons, 200 Units
of Account.

Article 4

Article 7, paragraph 1 of the Convention is replaced by the following text:

1. In respect of claims arising on any distinct occasion for loss of
life or personal injury to passengers of a ship, the limit of liability of the
shipowner thereof shall be an amount of 175,000 Units of Account
multiplied by the number of passengers which the ship is authorized to
carry according to the ship's certificate.

Article 5

Article 8, paragraph 2 of the Convention is replaced by the following text:

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of signature without reservation as to ratification, acceptance or approval or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as follows:

- (a) in respect of Article 6, paragraph 1(a), at an amount of
 - (i) 30 million monetary units for a ship with a tonnage not exceeding 2,000 tons;
 - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):
 - for each ton from 2,001 to 30,000 tons, 12,000 monetary units;
 - for each ton from 30,001 to 70,000 tons, 9,000 monetary units; and
 - for each ton in excess of 70,000 tons, 6,000 monetary units; and
- (b) in respect of Article 6, paragraph 1(b), at an amount of:
 - (i) 15 million monetary units for a ship with a tonnage not exceeding 2,000 tons;
 - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):
 - for each ton from 2,001 to 30,000 tons, 6,000 monetary units;
 - for each ton from 30,001 to 70,000 tons, 4,500 monetary units; and

for each ton in excess of 70,000 tons, 3,000 monetary units; and

- (c) in respect of Article 7, paragraph 1, at an amount of 2,625,000 monetary units multiplied by the number of passengers which the ship is authorized to carry according to its certificate.

Paragraphs 2 and 3 of Article 6 apply correspondingly to subparagraphs (a) and (b) of this paragraph.

Article 6

The following text is added as paragraph 3bis in Article 15 of the Convention:

3bis Notwithstanding the limit of liability prescribed in paragraph 1 of Article 7, a State Party may regulate by specific provisions of national law the system of liability to be applied to claims for loss of life or personal injury to passengers of a ship, provided that the limit of liability is not lower than that prescribed in paragraph 1 of Article 7. A State Party which makes use of the option provided for in this paragraph shall inform the Secretary-General of the limits of liability adopted or of the fact that there are none.

Article 7

Article 18, paragraph 1 of the Convention is replaced by the following text:

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right:
 - (a) to exclude the application of Article 2, paragraphs 1(d) and (e);
 - (b) to exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or protocol thereto.

No other reservations shall be admissible to the substantive provisions of this Convention.

Article 8
Amendment of limits

1. Upon the request of at least one half, but in no case less than six, of the States Parties to this Protocol, any proposal to amend the limits specified in Article 6, paragraph 1, Article 7, paragraph 1 and Article 8, paragraph 2 of the Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.
2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of its circulation.
3. All Contracting States to the Convention as amended by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
4. Amendments shall be adopted by a two-thirds majority of the Contracting States to the Convention as amended by this Protocol present and voting in the Legal Committee expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States to the Convention as amended by this Protocol shall be present at the time of voting.
5. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.
6. (a) No amendment of the limits under this Article may be considered less than five years from the date on which this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this Article.

- (b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol increased by six percent per year calculated on a compound basis from the date on which this Protocol was opened for signature.
- (c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol multiplied by three.

7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period not less than one-fourth of the States that were Contracting States at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with paragraphs 1 and 2 of Article 12 at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10. When an amendment has been adopted but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article 9

1. The Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2. A State which is Party to this Protocol but not a Party to the Convention shall be bound by the provisions of the Convention as amended by this Protocol in relation to other States Parties hereto, but shall not be bound by the provisions of the Convention in relation to States Parties only to the Convention.

3. The Convention as amended by this Protocol shall apply only to claims arising out of occurrences which take place after the entry into force for each State of this Protocol.

4. Nothing in this Protocol shall affect the obligations of a State which is a Party both to the Convention and to this Protocol with respect to a State which is a Party to the Convention but not a Party to this Protocol.

FINAL CLAUSES

Article 10

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at the Headquarters of the Organization from 1 October 1996 to 30 September 1997 by all States.

2. Any State may express its consent to be bound by this Protocol by:

- (a) signature without reservation as to ratification, acceptance or approval; or
- (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
- (c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

Article 11

Entry into force

1. This Protocol shall enter into force ninety days following the date on which ten States have expressed their consent to be bound by it.
2. For any State which expresses its consent to be bound by this Protocol after the conditions in paragraph 1 for entry into force have been met, this Protocol shall enter into force ninety days following the date of expression of such consent.

Article 12
Denunciation

1. This Protocol may be denounced by any State Party at any time after the date on which it enters into force for that State Party.
2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.
3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.
4. As between the States Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 19 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

Article 13
Revision and amendment

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.
2. The Organization shall convene a conference of Contracting States to this Protocol for revising or amending it at the request of not less than one-third of the Contracting States.

Article 14
Depositary

1. This Protocol and any amendments adopted under Article 8 shall be deposited with the Secretary General.
2. The Secretary-General shall:
 - (a) inform all States which have signed or acceded to this Protocol of:
 - (i) each new signature or deposit of an instrument together with the date thereof;
 - (ii) each declaration and communication under Article 8, paragraph 2 of the Convention as amended by this Protocol, and Article 8, paragraph 4 of the Convention;
 - (iii) the date of entry into force of this Protocol;
 - (iv) any proposal to amend limits which has been made in accordance with Article 8, paragraph 1;
 - (v) any amendment which has been adopted in accordance with Article 8, paragraph 4;
 - (vi) any amendment deemed to have been accepted under Article 8, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article;
 - (vii) the deposit of any instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;
 - (b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to this Protocol.
3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 15

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic

DONE at London this second day of May one thousand nine hundred and ninety-six.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

[Signatures not reproduced here.]

Navigation Act 1912

4 Subsection 59B(1) (definition of *Convention*)

Repeal the definition, substitute:

Convention has the same meaning as in the *Limitation of Liability for Maritime Claims Act 1989*.

Schedule 2—Taking of measures to protect the sea from pollution by substances discharged from ships

Protection of the Sea (Powers of Intervention) Act 1981

1 Subsection 3(1) (definition of *Protocol*)

Repeal the definition, substitute:

Protocol means the Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973 (being the Protocol a copy of whose English text is set out in Schedule 2), as affected by the following resolutions of the Marine Environment Protection Committee of the International Maritime Organization revising the list of substances to be annexed to the Protocol:

- (a) the resolution adopted on 4 July 1991 (being the resolution a copy of whose English text is set out in Schedule 3);
- (b) the resolution adopted on 10 July 1996 (being the resolution a copy of whose English text is set out in Schedule 4).

2 At the end of the Act

Add:

Schedule 4—Resolution MEPC. 72(38) by Marine Environment Protection Committee

Note: See subsection 3(1).

REVISION OF THE ANNEX (LIST OF SUBSTANCES) TO THE
PROTOCOL RELATING TO INTERVENTION ON THE HIGH SEAS IN
CASES OF POLLUTION BY SUBSTANCES OTHER THAN OIL OF
2 NOVEMBER 1973

THE MARINE ENVIRONMENT PROTECTION COMMITTEE,

NOTING Resolution 26 of the International Conference on Marine Pollution, 1973 which requested the appropriate body designated by the Organization to establish, not later than 30 November 1974, the list of substances to be annexed to the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil, 1973 (the 1973 Intervention Protocol),

NOTING FURTHER Resolution A.296(VIII) by which the Assembly designated the Committee as the appropriate body referred to in Articles I and III of the above-mentioned Protocol,

RECALLING Resolution MEPC.49(31) by which the Committee adopted on 4 July 1991 an amended list to replace the original list annexed to the Protocol,

RECALLING FURTHER that it had approved, at its thirty-fifth session, the Criteria for the Selection of Substances for Inclusion in the Annex to the 1973 Intervention Protocol,

NOTING ALSO that the 1992 amendments to the IBC Code and Amendment 27 of the IMDG Code had entered into force,

HAVING CONSIDERED the proposed amendments to Appendix 2, noxious liquid substances carried in bulk, and Appendix 3, harmful substances carried in packaged form, prepared by the Secretariat in accordance with the above-mentioned criteria and taking into account the recent amendments to the IBC and IMDG Codes,

1. ADOPTS, by the required two-thirds majority of the Parties to the 1973 Intervention Protocol present and voting in the Committee, the amended list which appears in the Annex to this Resolution;
2. REQUESTS the Secretary-General to communicate the amended list to all Parties to the 1973 Intervention Protocol in accordance with Article III, paragraph 5, for acceptance, and to inform them that the amended list shall be deemed to have been accepted at the end of the period of six months after it has been communicated, unless within that period an objection to these amendments has been communicated to the Organization by not less than one third of the Parties, and that the amended list shall enter into force three months after it has been deemed to have been accepted; and

Schedule 2 Taking of measures to protect the sea from pollution by substances discharged from ships

3. REQUESTS FURTHER the Secretary-General to annex copies thereof to the authentic text of the Protocol in accordance with Article I, paragraph 2(a), once the amended list has been accepted in accordance with Article III, paragraph 6, to replace the existing list.

ANNEX

LIST OF SUBSTANCES

APPENDIX 1

OIL CARRIED IN BULK AS LISTED IN APPENDIX I TO ANNEX I OF
MARPOL 73/78 OTHER THAN THOSE COVERED BY THE 1969
INTERVENTION CONVENTION

Asphalt solutions

Blending stocks
Roofers flux
Straight run residue

Oils

Clarified
Road oil
Transformer oil
Aromatic oil (excluding vegetable oil)
Mineral oil
Motor oil
Penetrating oil
Spindle oil
Turbine oil

Distillates

Straight run
Flashed feed stocks

Gas oil

Cracked

Naphtha

Solvent
Petroleum
Heartcut distillate oil

Gasoline blending stocks

Alkylates - fuel
Reformats
Polymer - fuel

Gasolines

Casinghead (natural)
Automotive
Aviation
Straight run
Fuel oil No. 1 (Kerosene)
Fuel oil No. 1-D
Fuel oil No. 2
Fuel oil No. 2-D

Jet fuels

JP-1 (Kerosene)
JP-3
JP-5 (Kerosene, heavy)
Turbo fuel
Kerosene
Mineral spirit

APPENDIX 2

NOXIOUS LIQUID SUBSTANCES CARRIED IN BULK

Acetone cyanohydrin
Acylonitrile
Alachlor technical (90% or more)
Alcohol (C6-C17) (secondary) poly(3-6) ethoxylates

Schedule 2 Taking of measures to protect the sea from pollution by substances discharged from ships

Alcohol (C12-C15) poly(1-6) ethoxylates
Alcohol (C6-C17) (secondary) poly(7-12) ethoxylates
Alcohol (C12-C15) poly(7-19) ethoxylates
Alkaryl polyethers (C9-C20)
Alkyl (C3-C4) benzenes
Alkyl (C5-C8) benzenes
Alkyl (C7-C9) nitrates
Alkyl acrylate-vinyl pyridine copolymer in toluene
Alkylbenzene, alkylindane, alkylindene mixture (each C12-C17)
Allyl alcohol
Allyl chloride
Ammonium sulphide solution (45% or less)
Aniline
Benzene and mixtures having 10% benzene or more*
Benzyl chloride
Benzyl alcohol
Butene oligomer
Butyl butyrate (all isomers)
Butyl benzyl phthalate
Butyl acrylate (all isomers)
Butylamine (all isomers)
Butyraldehyde (all isomers)
Calcium alkyl (C9) phenol sulphide/Polyolefin phosphorusulphide mixture
Calcium hypochlorite solution (more than 15%)
Calcium long-chain alkyl phenate sulphide (C8-C40)
Camphor oil
Carbolic oil
Carbon disulphide
Carbon tetrachloride
Chlorinated paraffins (C10-C13)
Chloroacetic acid (80% or less)
Chlorobenzene
o-Chloronitrobenzene
Chloroform
Chlorohydrins (crude)
2- or 3-Chloropropionic acid
m-Chlorotoluene
o-Chlorotoluene
p-Chlorotoluene
Chlorotoluenes (mixed isomers)
Coal tar

Coal tar naphtha solvent
Coal tar pitch (molten)
Cobalt naphthenate in solvent naphtha
Creosote (coal tar)
Creosote (wood)
Cresols (all isomers)
Cresylic acid, dephenolized
Cresylic acid, sodium salt solution
Crotonaldehyde
1,5,9-Cyclododecatriene
Cyclohexyl acetate
Cyclohexylamine
1,3-Cyclopentadiene dimer (molten)
Cyclopentene
Decanoic acid
Decene
Decyl acetate
Decyl alcohol (all isomers)
Decyl acrylate
Decyloxytetrahydro-thiophene dioxide
Di-n-hexyl adipate
Di-n-propylamine
Dibutyl phthalate
Dibutyl hydrogen phosphonate
Dibutylamine
Dichlorobenzene (all isomers)
Dichloroethyl ether
1,6-Dichlorohexane
2,4-Dichlorophenol
2,4-Dichlorophenoxyacetic acid, diethanolamine salt solution
2,4-Dichlorophenoxyacetic acid, dimethylamine salt solution (70% or less)
2,4-Dichlorophenoxyacetic acid, triisopropanolamine salt solution
1,2-Dichloropropane
1,3-Dichloropropene
Dichloropropene/Dichloro- propane mixtures
Diethyl sulphate
Diethylamine
Diethylaminoethanol
Diethylbenzene
Diglycidyl ether of bisphenol F
Diglycidyl ether of bisphenol A

Schedule 2 Taking of measures to protect the sea from pollution by substances discharged from ships

Diisobutyl phthalate
Diisobutylamine
Diisobutylene
Diisopropylamine
Diisopropylbenzene (all isomers)
Dimethyl octanoic acid
Dimethyl adipate
Dimethyl hydrogen phosphite
Dimethylamine solution (greater than 55% but not greater than 65%)
Dimethylamine solution (greater than 45% but not greater than 55%)
Dimethylamine solution (45% or less)
N,N-Dimethylcyclohexylamine
Dinitrotoluene (molten)
1,4-Dioxane
Diphenyl
Diphenyl ether
Diphenyl ether/Diphenyl phenyl ether mixture
Diphenyl/Diphenyl ether mixtures
Diphenylamine, reaction product with 2,2,4-Trimethylpentene
Diphenylamines, alkylated
Diphenylmethane diisocyanate
Diphenylol propane
Diphenylol propane- epichlorohydrin resins
Dodecene (all isomers)
Dodecyl alcohol
Dodecyl diphenyl ether disulphonate solution
Dodecyl phenol
Dodecylamine/Tetradecylamine mixture
Dodecyldimethylamine/Tetradecyldimethylamine mixture
Drilling brines (containing Zinc salts)
Epichlorohydrin
Ethyl acrylate
Ethylamine solutions (72% or less)
Ethylamine
Ethylbenzene
N-Ethylbutylamine
Ethylene dichloride
Ethylene dibromide
Ethylene chlorohydrin
Ethylene oxide/Propylene oxide mixture with an Ethylene oxide content of not more than 30% in weight

Ethylene glycol methyl ether acetate
Ethylenediamine
2-Ethylhexyl acrylate
2-Ethylhexylamine
Ethylidene norbornene
o-Ethylphenol
2-Ethyl-3-propylacrolein
Ethyltoluene
Fluorosilicic acid (20-30%) in water solution
Formaldehyde solutions (45% or less)
Fumaric adduct of rosin, water dispersion
Furfural
Glycidyl ester of C10 trialkylacetic acid
Heptyl acetate
Hexamethylenediamine solution
Hexyl acetate
2-Hydroxyethyl acrylate
2-Hydroxy-4-(methylthio) butanoic acid
Isophorone diisocyanate
Isophoronediamine
Lactonitrile solution (80% or less)
Lauric acid
Liquid chemical wastes
Long chain polyetheramine in alkyl (C2-C4) benzenes
Long chain polyetheramine in aromatic solvent
Long chain alkaryl polyether (C11-C20)
Magnesium long chain alkyl salicylate (C11+)
Mercaptobenzothiazol, sodium salt solution
Metam sodium solution
Methacrylic resin in Ethylene dichloride
Methyl acrylate
Methyl butyl ketone
2-Methyl-6-ethyl aniline
Methyl heptyl ketone
Methyl methacrylate
Methylcyclopentadiene dimer
Methyl naphthalene (molten)
3-Methylpyridine
Methyl salicylate
alpha-Methylstyrene
Motor fuel anti-knock compounds (containing lead alkyls)

Schedule 2 Taking of measures to protect the sea from pollution by substances discharged from ships

Naphthalene (molten)
Naphthenic acids
Neodecanoic acid
Nitrating acid (mixture of sulphuric and nitric acids)
Nitrobenzene
o-Nitrophenol (molten)
o- or p-Nitrotoluenes
Nonene (all isomers)
Nonyl phenol
Nonyl phenol poly(4-12) ethoxylates
Noxious liquid, N.F, (1) n.o.s. (trade name ..., contains ...) S.T.1, Cat.A*
Noxious liquid, F, (2) n.o.s. (trade name ..., contains ...) S.T.1, Cat.A*
Noxious liquid, N.F, (3) n.o.s. (trade name ..., contains ...) S.T.2, Cat.A*
Noxious liquid, F, (4) n.o.s. (trade name ..., contains ...) S.T.2, Cat.A*
Noxious liquid, N.F, (5) n.o.s. (trade name ..., contains ...) S.T.2, Cat.B*
Noxious liquid, N.F, (6) n.o.s. (trade name ..., contains ...) S.T.2, Cat.B*, mp
Noxious liquid, F, (7) n.o.s. (trade name ..., contains ...) S.T.2, Cat.B*
Noxious liquid, F, (8) n.o.s. (trade name ..., contains ...) S.T.2, Cat.B*, mp
Noxious liquid, N.F, (9) n.o.s. (trade name ..., contains ...) S.T.3, Cat.A*
Noxious liquid, F, (10) n.o.s. (trade name ..., contains ...) S.T.3, Cat.A*
Noxious liquid, N.F, (11) n.o.s. (trade name ..., contains ...) S.T.3, Cat.B*
Noxious liquid, N.F, (12) n.o.s. (trade name ..., contains ...) S.T.3, Cat.B*, mp
Noxious liquid, F, (13) n.o.s. (trade name ..., contains ...) S.T.3, Cat.B*
Noxious liquid, F, (14) n.o.s. (trade name ..., contains ...) S.T.3, Cat.B*, mp
Octene (all isomers)
Octyl aldehydes
Olefin mixtures (C5-C15)
alpha-Olefins (C6-C18) mixtures
Oleum
Oleylamine
Palm kernel acid oil
Pentachloroethane
Perchloroethylene
Phosphorus, yellow or white
Phthalic anhydride (molten)
alpha-Pinene
beta-Pinene
Poly(2+)cyclic aromatics
Polyethylene polyamines
Polyolefin amide alkeneamine (C28+)
Polyolefin amide alkeneamine borate (C28-C250)

Polyolefin amide alkeneamine polyol
Polyolefinamine in aromatic solvent
Polyolefinamine in alkyl (C2-C4) benzenes
Polyolefin ester (C28-C250)
beta-Propiolactone
Propionitrile
n-Propylamine
Propylbenzene (all isomers)
Propylene trimer
Propylene oxide
Propylene tetramer
Rosin soap (disproportionated) solution
Rosin
Sodium sulphide solution (15% or less)
Sodium dichromate solution (70% or less)
Sodium hydrogen sulphide (6% or less)/Sodium carbonate (3% or less) solution
Sodium hydrosulphide solution (45% or less)
Sodium hydrosulphide/Ammonium sulphide solution
Sodium petroleum sulfonate
Sodium nitrite solution
Sodium thiocyanate solution (56% or less)
Styrene monomer
Sulpho hydrocarbon long chain (C18+) alkylamine mixture
Sulphuric acid
Sulphuric acid, spent
Tall oil (crude and distilled)
Tall oil fatty acid (resin acids less than 20%)
Tall oil soap (disproportionated) solution
Tall oil fatty acid, barium salt
Tetrachloroethane
Tetramethylbenzene (all isomers)
Toluene
Toluene diisocyanate
Toluenediamine
o-Toluidine
Tributyl phosphate
1,2,4-Trichlorobenzene
Trichloroethylene
Tricresyl phosphate (containing 1% or more ortho-isomer)
Tricresyl phosphate (containing less than 1% ortho-isomer)
Triethylamine

Schedule 2 Taking of measures to protect the sea from pollution by substances discharged from ships

Triethylbenzene
Triethylenetetramine
Triethylphosphite
Triisopropylated phenyl phosphates
Trimethylamine solution (30% or less)
Trimethylbenzene (all isomers)
Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4-isomers)
Trixylyl phosphate
Turpentine
Undecanoic acid
1-Undecene
Undecyl alcohol
Vinyl neodecanoate
Vinylidene chloride
Vinyltoluene
White spirit, low (15-20%) aromatic
Xylenes
Xylenol
Zinc alkaryl dithiophosphate (C7-C16)
Zinc alkyl dithiophosphate (C3-C14)

APPENDIX 3

HARMFUL SUBSTANCES IN PACKAGED FORM

Aldrin
Azinphos-ethyl
Azinphos-methyl
gamma-BHC
Binapacryl
Brodifacoum
Bromophos-ethyl
Cadmium compound
Camphechlor
Carbophenothion
Chlordane
Chlorinated paraffin (C10-C13)
Chlorophenolates, liquid
Chlorophenolates, solid
Chlorpyriphos
Chlorthiophos

Copper cyanide
Copper metal powder
Coumaphos
Cresyl diphenylphosphate
Cupric cyanide
Cupric sulphate
1,5,9-Cyclododecatriene
Cyhexatin
Cymenes (ortho-; meta-; para-)
Cymol
Cypermethrin
DDT
Dialifos
Diazinon
Dichlofenthion
Dichlorvos
Dieldrin
Dimethoate
Diphenylaminechloroarsine
Diphenylchloroarsine, liquid
Diphenylchloroarsine, solid
Dodecylphenol
Endosulfan
Endrin
EPN
Esfenvalerate
Ethion
Fenbutatin oxide
Fenitrothion
Fenpropathrin
Fenthion
Fentin acetate
Fentin hydroxide
Fonofos
Heptachlor
Hexachlorobutadiene
Hexachloro-1,3-butadiene
1,3-Hexachlorobutadiene
Isopropyltoluene
Isopropyltoluol
Isoxathion

Schedule 2 Taking of measures to protect the sea from pollution by substances discharged from ships

Lindane
Mercuric acetate
Mercuric ammonium chloride
Mercuric arsenate
Mercuric benzoate
Mercuric bisulphate
Mercuric bromide
Mercuric chloride
Mercuric cyanide
Mercuric gluconate
Mercuric nitrate
Mercuric oleate
Mercuric oxide
Mercuric oxycyanide, desensitized
Mercuric potassium cyanide
Mercuric sulphate
Mercuric thiocyanate
Mercuriol
Mercurous acetate
Mercurous bisulphate
Mercurous bromide
Mercurous chloride
Mercurous nitrate
Mercurous salicylate
Mercurous sulphate
Mercury acetate
Mercury ammonium chloride
Mercury-based pesticide, liquid, flammable, toxic, flashpoint less than 23deg.C c.c.
Mercury-based pesticide, liquid, toxic
Mercury-based pesticide, liquid, toxic, flammable, flashpoint between 23deg.C and 61deg.C c.c.
Mercury-based pesticide, solid, toxic
Mercury benzoate
Mercury bichloride
Mercury bisulphate
Mercury bromides
Mercury compound, liquid, n.o.s.
Mercury compound, solid, n.o.s.
Mercury(ii) (mercuric) compounds or Mercury(i)(mercurous) compounds
Mercury cyanide

Mercury gluconate
Mercury nucleate
Mercury oleate
Mercury oxide
Mercury oxycyanide, desensitized
Mercury potassium cyanide
Mercury potassium iodide
Mercury salicylate
Mercury sulphate
Mercury thiocyanate
Methylpropylbenzenes
Mevinphos
Nickel carbonyl
Nickel cyanide
Nickel tetracarbonyl
Organotin compound, liquid, n.o.s.
Organotin compound, solid, n.o.s.
Organotin compounds
(pesticides)
Organotin pesticide, liquid, flammable, toxic, flashpoint less than 23deg.C c.c.
Organotin pesticide, liquid, toxic
Organotin pesticide, liquid, toxic, flammable, flashpoint between 23deg.C and
61deg.C c.c.
Organotin pesticide, solid, toxic
Osmium tetroxide
Parathion
Parathion-methyl
PCB's
Pentachlorophenol
Phenarsazine chloride
Phenthoate
Phenylmercuric acetate
Phenylmercuric compound, n.o.s.
Phenylmercuric hydroxide
Phenylmercuric nitrate
Phorate
Phosalone
Phosphamidon
Phosphorus, white, dry
Phosphorus, white, molten
Phosphorus, white, under water

Schedule 2 Taking of measures to protect the sea from pollution by substances discharged from ships

Phosphorus, yellow, dry
Phosphorus, yellow, molten
Phosphorus, yellow, under water
Polychlorinated biphenyls
Polyhalogenated biphenyls, liquid
Polyhalogenated biphenyls, solid
Polyhalogenated ter-phenyls, liquid
Polyhalogenated ter-phenyls, solid
Potassium cuprocyanide
Potassium cyanocuprate
Potassium cyanomercurate
Potassium mercuric iodide
Pyrazophos
Quizalofop
Quizalofop-p-ethyl
Sodium copper cyanide, solid
Sodium copper cyanide, solution
Sodium cuprocyanide, solid
Sodium cuprocyanide, solution
Sodium pentachlorophenate
Sulprophos
White phosphorus, dry
White phosphorus, wet
Yellow phosphorus, dry
Yellow phosphorus, wet
Terbufos
Tetrachlorvinphos

APPENDIX 4

RADIOACTIVE MATERIALS

Radioactive materials which are transported in type B package, or as fissile materials, or under special arrangements, as covered by the provisions of schedule 10 to 13 of class 7 of the International Maritime Dangerous Goods Code.

APPENDIX 5

LIQUEFIED GASES CARRIED IN BULK

Acetaldehyde
Anhydrous ammonia
Chlorine
Dimethylamine
Ethyl chloride
Ethylene oxide
Hydrogen chloride, anhydrous
Hydrogen fluoride, anhydrous
Methyl bromide
Methyl chloride
Sulphur dioxide
Vinyl chloride monomer

Schedule 3—Prevention of pollution from ships

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

1 Subsection 3(1) (definition of *Antarctic Protocol* and note)

Repeal the definition and note, substitute:

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

2 Subsection 3(1) (after paragraph (a) of the definition of *inspector*)

Insert:

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

3 Subsection 3(1) (definition of *the 1973 Convention*)

Repeal the definition, substitute:

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

4 Subsection 3(1) (definition of *the 1978 Protocol*)

Repeal the definition, substitute:

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

5 Subsections 9(1), (1A) and (1B)

Repeal the subsections, substitute:

- (1) If:
- (a) a person engages in conduct that causes a discharge of oil or of an oily mixture from a ship into the sea; and
 - (b) the person is reckless or negligent as to causing the discharge by that conduct; and
 - (c) either of the following applies:
 - (i) where the discharge occurs into the sea near a State, the Jervis Bay Territory or an external Territory—there is no law of that State or Territory that makes provision giving effect to Regulations 9 and 11 of Annex I to the Convention in relation to that sea;
 - (ii) where the discharge does not occur into the sea near a State, the Jervis Bay Territory or an external Territory or in the exclusive economic zone—the ship is an Australian ship;
- the person commits an offence punishable, on conviction, by a fine not exceeding 2,000 penalty units.

(1A) In subsection (1):

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

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

- (a) oil or an oily mixture is discharged from a ship into the sea; and
- (b) either of the following applies:
 - (i) where the discharge occurs into the sea near a State, the Jervis Bay Territory or an external Territory—there is no law of that State or Territory that makes provision giving effect to Regulations 9 and 11 of Annex I to the Convention in relation to that sea;
 - (ii) where the discharge does not occur into the sea near a State, the Jervis Bay Territory or an external Territory or in the exclusive economic zone—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.

6 Subsection 9(2)

Omit “Subsection (1)”, substitute “Subsection (1B)”.

7 At the end of paragraph 9(2)(c)

Add “or”.

8 Paragraph 9(2)(d)

Omit “damage, other than intentional damage,”, substitute “non-intentional damage”.

9 At the end of subsection 9(2)

Add:

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

10 Subsection 9(3)

Repeal the subsection, substitute:

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

- (a) arose in circumstances where the master or owner of the ship:
 - (i) acted with intent to cause the damage; or
 - (ii) acted recklessly and with knowledge that the damage would probably result; or
- (b) arose as a result of the negligence of the master or owner of the ship.

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

- (a) deterioration resulting from failure to maintain the ship or equipment; or
- (b) defects that develop during the normal operation of the ship or equipment.

11 Subsection 9(4)

Omit “subsection (1)”, substitute “subsection (1B)”.

12 At the end of subsection 9(4)

Add:

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

13 Paragraph 9(4A)(b)

Omit “and set out in Schedule 13 to this Act”.

14 Subsection 9(6)

Repeal the subsection.

15 Section 10

Repeal the section, substitute:

10 Prohibition of discharge of oil residues into sea

(1) If:

- (a) a person engages in conduct that causes a discharge from an Australian ship of an oil residue into the sea; and
- (b) the person is reckless or negligent as to causing the discharge by that conduct; and
- (c) such a discharge cannot occur without the commission of an offence against subsection 9(1) or (1B) or of an offence against a law of a State or Territory;

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

(2) In subsection (1):

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

(3) If:

- (a) an oil residue is discharged from an Australian ship into the sea; and
- (b) such a discharge cannot occur without the commission of an offence against subsection 9(1) or (1B) or of an offence against a law of a State or Territory;

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

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

16 At the end of subsections 11(1A) and (1B)

Add:

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

17 Subsection 11(2)

Repeal the subsection, substitute:

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

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

18 Paragraph 11(3)(a)

Repeal the paragraph, substitute:

- (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

19 Subsection 11(4)

Repeal the subsection, substitute:

- (4) Subsection (3) does not apply to a person in relation to a prescribed incident in relation to a ship if:
- (a) the person was not aware of the incident; or
 - (b) in the case of a prescribed incident to which paragraph (3)(a) applies—the person neither knew nor suspected that the master of the ship had not complied with subsection (1) in relation to the incident.

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

20 Subsection 11(10)

Repeal the subsection, substitute:

- (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.

21 Subsection 12(7) (penalty)

Repeal the penalty, substitute:

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

22 At the end of subsection 14(3)

Add:

Penalty: 200 penalty units.

23 Subsection 14(4)

Repeal the subsection.

24 At the end of Part II

Add:

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

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

or oily mixture would create a risk of discharge from the ship into the sea.

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

Penalty: 500 penalty units.

25 Subsections 17(1) and (2)

Omit “designated”, substitute “referred to”.

26 Paragraph 17(2)(a)

Omit “column III of that Appendix”, substitute “Regulation 5(1) of Annex II”.

27 Paragraph 17(2)(b)

Omit “column IV of that Appendix”, substitute “Regulation 5(7) of Annex II”.

28 Subsections 17(3) and (4)

Omit “designated” (wherever occurring), substitute “referred to”.

29 Section 18

Omit “listed” (wherever occurring), substitute “referred to”.

30 Paragraph 19(a)

Omit “designated”, substitute “referred to”.

31 Paragraph 19(a)

Omit “listed”, substitute “referred to”.

32 Section 19

Omit “3(4) to Annex II”, substitute “3(4) of Annex II”.

33 Subsections 21(1), (1A) and (1B)

Repeal the subsections, substitute:

- (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) either of the following applies:
 - (i) where the discharge occurs into the sea near a State, the Jervis Bay Territory or an external Territory—there is no law of that State or Territory that makes provision giving effect to Regulations 3, 4, 5 and 6 of Annex II in relation to that sea;
 - (ii) where the discharge does not occur into the sea near a State, the Jervis Bay Territory or an external Territory or in the exclusive economic zone—the ship is an Australian ship;

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

(1A) In subsection (1):

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

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

- (a) a liquid substance, or a mixture containing a liquid substance, being a substance or mixture carried as cargo or part cargo in bulk is discharged from a ship into the sea; and
- (b) either of the following applies:
 - (i) where the discharge occurs into the sea near a State, the Jervis Bay Territory or an external Territory—there is no law of that State or Territory that makes provision giving effect to Regulations 3, 4, 5 and 6 of Annex II in relation to that sea;
 - (ii) where the discharge does not occur into the sea near a State, the Jervis Bay Territory or an external Territory or in the exclusive economic zone—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.

34 Subsection 21(2)

Omit “Subsection (1)”, substitute “Subsection (1B)”.

35 Paragraph 21(2)(d)

Omit “damage, other than intentional damage,”, substitute “non-intentional damage”.

36 At the end of subsection 21(2)

Add:

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

37 Subsection 21(3)

Repeal the subsection, substitute:

- (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.

38 Paragraph 21(4)(b)

Omit “column III of Appendix II to”, substitute “Regulation 5(1) of”.

39 Subsection 21(4)

Omit “subsection (1)”, substitute “subsection “(1B)”.

40 At the end of subsection 21(4)

Add:

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

41 Paragraph 21(5)(b)

Omit “column IV of Appendix II to”, substitute “Regulation 5(7) of”.

42 Subsection 21(5)

Omit “subsection (1)”, substitute “subsection “(1B)”.

43 At the end of subsection 21(5)

Add:

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

44 Subsection 21(6)

Omit “subsection (1)”, substitute “subsection “(1B)”.

45 At the end of subsection 21(6)

Add:

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

46 Subsection 21(7)

Omit “subsection (1)”, substitute “subsection “(1B)”.

47 At the end of subsection 21(7)

Add:

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

48 Subsection 21(8)

Omit “subsection (1)”, substitute “subsection “(1B)”.

49 At the end of subsection 21(8)

Add:

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

50 Subsection 21(9)

Omit “subsection (1)”, substitute “subsection “(1B)”.

51 At the end of subsection 21(9)

Add:

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

52 Subsection 21(10)

Omit “subsection (1)”, substitute “subsection “(1B)”.

53 At the end of subsection 21(10)

Add:

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

54 Subsection 21(11)

Omit “subsection (1)”, substitute “subsection “(1B)”.

55 Subsection 21(11)

Omit “listed”, substitute “referred to”.

56 At the end of subsection 21(11)

Add:

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

57 Subsection 21(12)

Omit “subsection (1)”, substitute “subsection “(1B)”.

58 At the end of subsection 21(12)

Add:

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

59 Subsection 21(13)

Omit “listed”, substitute “referred to”.

60 At the end of subsection 21(13)

Add:

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

61 Subsection 21(14)

Repeal the subsection, substitute:

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

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

62 At the end of subsections 22(1A) and (1B)

Add:

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

63 Subsection 22(2)

Repeal the subsection, substitute:

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

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

64 Paragraph 22(3)(a)

Repeal the paragraph, substitute:

- (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

65 Subsection 22(4)

Repeal the subsection, substitute:

- (4) Subsection (3) does not apply to a person in relation to a prescribed incident in relation to a ship if:
- (a) the person was not aware of the incident; or
 - (b) in the case of a prescribed incident to which paragraph (3)(a) applies—the person neither knew nor suspected that the

master of the ship had not complied with subsection (1) in relation to the incident.

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

66 Subsection 22(10) (definition of *liquid substance*)

Omit “listed”, substitute “referred to”.

67 Subsection 22(10) (definition of *prescribed incident*)

Repeal the definition, substitute:

prescribed incident, in relation to a ship, means:

- (a) an incident involving a discharge from the ship of a liquid substance, or a mixture containing a liquid substance, carried as cargo or as part cargo in bulk, not being a discharge to which subsection 21(4), (5), (6), (7), (8), (9), (10), (11) or (12) applies; or
- (b) an incident involving the probability of a discharge from the ship of a liquid substance, or a mixture containing a liquid substance, carried as cargo or as part cargo in bulk, not being a discharge to which subsection 21(4), (5), (6), (7), (8), (9), (10), (11) or (12) would apply; or
- (c) if the ship is 15 metres or more in length—an incident (including, but not limited to, collision, grounding, fire, explosion, structural failure, flooding and cargo shifting) involving damage, failure or breakdown that affects the safety of the ship; or
- (d) if the ship is 15 metres or more in length—an incident (including, but not limited to, failure or breakdown of steering gear, propulsion plant, electrical generating system and essential shipborne navigational aids) involving damage, failure or breakdown that impairs the safety of navigation of the ship.

68 Subsection 23(8) (penalty)

Repeal the penalty, substitute:

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

69 At the end of subsection 25(3)

Add:

Penalty: 200 penalty units.

70 Subsection 25(4)

Repeal the subsection.

71 At the end of Part III

Add:

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.

72 Subsections 26AB(1), (3) and (4)

Repeal the subsections, substitute:

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

- (ii) where the jettisoning does not occur into the sea near a State, the Jervis Bay Territory or an external Territory or in the exclusive economic zone—the ship is an Australian ship;

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

- (2) In subsection (1):

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

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

- (a) a harmful substance, being a substance carried as cargo in packaged form, is jettisoned from a ship into the sea; and
- (b) either of the following applies:

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

- (ii) where the jettisoning does not occur into the sea near a State, the Jervis Bay Territory or an external Territory or in the exclusive economic zone—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.

73 Subsection 26AB(5)

Omit “Subsection (1) does not apply to the discharge”, substitute “Subsection (3) does not apply to the jettisoning”.

74 At the end of subsection 26AB(5)

Add:

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

75 Subsection 26AB(6)

Omit “subsection (1)” (first occurring), substitute “subsection (3)”.

76 Subsection 26AB(6)

Omit “subsection (1)” (last occurring), substitute “that subsection”.

77 Subsection 26AB(6)

Omit “discharged by jettisoning”, substitute “jettisoned”.

78 At the end of subsection 26AB(6)

Add:

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

79 Subsection 26AB(7)

Repeal the subsection.

80 At the end of subsections 26B(1) and (2)

Add:

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

81 Subsection 26B(4)

Repeal the subsection, substitute:

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

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

82 Paragraph 26B(5)(a)

Repeal the paragraph, substitute:

- (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

83 Subsection 26B(6)

Repeal the subsection, substitute:

- (6) Subsection (5) does not apply to a person in relation to a prescribed incident in relation to a ship if:
- (a) the person was not aware of the incident; or

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

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

84 At the end of subsection 26B(10A)

Add “or (3)”.

85 Subsection 26B(11)

Repeal the subsection, substitute:

(11) In this section:

prescribed incident, in relation to a ship, means:

- (a) an incident involving the discharge from the ship of a harmful substance carried as cargo in packaged form or in a freight container, portable tank, road or rail vehicle or shipborne barge, not being a discharge in accordance with the regulations or orders made under the regulations; or
- (b) an incident involving the probability of the discharge from the ship of a harmful substance carried as cargo in packaged form or in a freight container, portable tank, road or rail vehicle or shipborne barge, not being a discharge in accordance with the regulations or orders made under the regulations; or
- (c) if the ship is 15 metres or more in length—an incident (including, but not limited to, collision, grounding, fire, explosion, structural failure, flooding and cargo shifting) involving damage, failure or breakdown that affects the safety of the ship; or
- (d) if the ship is 15 metres or more in length—an incident (including, but not limited to, failure or breakdown of steering gear, propulsion plant, electrical generating system and essential shipborne navigational aids) involving damage, failure or breakdown that impairs the safety of navigation.

86 Subsections 26BC(1) and (2)

Repeal the subsections, substitute:

(1) If:

- (a) a person engages in conduct that causes a discharge of untreated sewage from a ship (other than a ship certified to carry not more than 10 persons) into the sea in the Antarctic Area; and
- (b) the person is reckless or negligent as to causing the discharge by that conduct; and
- (c) where the discharge does not occur in the sea near the Australian Antarctic Territory—the ship is an Australian ship;

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

(2) In subsection (1):

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

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

- (a) untreated sewage is discharged from a ship (other than a ship certified to carry not more than 10 persons) into the sea in the Antarctic Area; and
- (b) where the discharge does not occur in the sea near the Australian Antarctic Territory—the ship is an Australian ship;

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

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

87 Subsection 26BC(3)

Omit “Subsection (1)”, substitute “Subsection (2A)”.

88 At the end of subsection 26BC(3)

Add:

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

89 Subsection 26BC(4)

Omit “subsection (1)”, substitute “subsection (2A)”.

90 At the end of subsection 26BC(4)

Add:

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

91 Subsection 26BC(5)

Repeal the subsection.

92 Subsections 26D(1), (3) and (4)

Repeal the subsections, substitute:

(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) either of the following applies:
 - (i) where the discharge occurs into the sea near a State, the Jervis Bay Territory or an external Territory—there is no law of that State or Territory that makes provision giving effect to paragraphs (1)(a) and (b) of Regulation 8 and to Regulation 9 of Annex IV to the Convention in relation to that sea;
 - (ii) where the discharge does not occur into the sea near a State, the Jervis Bay Territory or an external Territory or in the exclusive economic zone—the ship is an Australian ship;

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

(2) In subsection (1):

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

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

- (a) sewage is discharged from a ship into the sea; and
- (b) either of the following applies:
 - (i) where the discharge occurs into the sea near a State, the Jervis Bay Territory or an external Territory—there is no law of that State or Territory that makes provision giving effect to paragraphs (1)(a) and (b) of Regulation

8 and to Regulation 9 of Annex IV to the Convention in relation to that sea;

- (ii) where the discharge does not occur into the sea near a State, the Jervis Bay Territory or an external Territory or in the exclusive economic zone—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.

93 Subsection 26D(5)

Omit “Subsection (1)”, substitute “Subsection (3)”.

94 At the end of subsection 26D(5)

Add:

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

94A After subsection 26D(5)

Insert:

- (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.

95 Subsection 26D(6)

Omit “subsection (1)”, substitute “subsection (3)”.

96 At the end of subsection 26D(6)

Add:

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

97 Subsection 26D(7)

Omit “subsection (1)”, substitute “subsection (3)”.

98 At the end of subsection 26D(7)

Add:

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

99 Subsection 26D(8)

Omit “subsection (1)”, substitute “subsection (3)”.

100 At the end of subsection 26D(8)

Add:

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

101 Subsection 26D(9)

Omit “subsection (1)”, substitute “subsection (3)”.

102 Paragraph 26D(9)(c)

Omit “applies”, substitute “apply”.

103 Paragraph 26D(9)(d)

Omit “does not apply”, substitute “do not apply”.

104 Subsection 26D(10)

Repeal the subsection.

105 After section 26D

Insert:

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.

106 After section 26E

Insert:

26EAA Overseas voyages

For the purposes of this Part:

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

107 Subsections 26F(1), (3) and (4)

Repeal the subsections, substitute:

- (1) If:
 - (a) a person engages in conduct that causes a disposal of garbage from a ship into the sea; and
 - (b) the person is reckless or negligent as to causing the disposal by that conduct; and
 - (c) either of the following applies:
 - (i) where the disposal occurs into the sea near a State, the Jervis Bay Territory or an external Territory—there is no law of that State or Territory that makes provision giving effect to Regulations 3, 5 and 6 of Annex V to the Convention in relation to that sea;
 - (ii) where the disposal does not occur into the sea near a State, the Jervis Bay Territory or an external Territory or in the exclusive economic zone—the ship is an Australian ship;
- the person commits an offence punishable, on conviction, by a fine not exceeding 2,000 penalty units.

(2) In subsection (1):

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

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

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

(b) either of the following applies:

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

(ii) where the disposal does not occur into the sea near a State, the Jervis Bay Territory or an external Territory or in the exclusive economic zone—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.

108 Subsection 26F(5)

Omit “Subsection (1)”, substitute “Subsection (3)”.

109 At the end of subsection 26F(5)

Add:

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

110 Subsection 26F(6)

Omit “subsection (1)”, substitute “subsection (3)”.

111 At the end of subsection 26F(6)

Add:

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

112 Subsection 26F(7)

Omit “subsection (1)”, substitute “subsection (3)”.

113 At the end of subsection 26F(7)

Add:

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

114 Subsection 26F(8)

Omit “subsection (1)”, substitute “subsection (3)”.

115 At the end of subsection 26F(8)

Add:

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

116 Subsection 26F(8A)

Omit “subsection (1)”, substitute “subsection (3)”.

117 At the end of subsection 26F(8A)

Add:

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

118 Subsection 26F(9)

Omit “subsection (1)”, substitute “subsection (3)”.

119 At the end of subsection 26F(9)

Add:

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

119A After subsection 26F(9)

Insert:

- (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.

120 Subsection 26F(10)

Omit “subsection (1)”, substitute “subsection (3)”.

121 At the end of subsection 26F(10)

Add:

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

122 Subsection 26F(11)

Omit “subsection (1)”, substitute “subsection (3)”.

123 Paragraph 26F(11)(c)

Omit “applies”, substitute “apply”.

124 Paragraph 26F(11)(d)

Omit “does not apply”, substitute “do not apply”.

125 Subsection 26F(12)

Repeal the subsection.

126 At the end of Part IIIC

Add:

26FA Garbage record book

- (1) This section applies to an Australian ship that:
 - (a) has a gross tonnage of 400 or more; or
 - (b) is certified to carry 15 persons or more and is engaged on an overseas voyage.
- (2) Every ship to which this section applies must carry a garbage record book as required by the regulations.
- (3) A garbage record book must be in accordance with the appropriate prescribed form with provision made for a signature, in accordance with subsection (8), in relation to each entry made in it and for a signature, in accordance with subsection (7), in relation to each page of it.

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

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

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

Penalty: 200 penalty units.

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

Penalty: 50 penalty units.

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

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

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

26FB Garbage record book to be retained

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

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

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

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

- (a) in the ship; or
- (b) at the owner's registered office;

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

Penalty: 50 penalty units.

- (5) The owner of a ship to which section 26FA applies who resides in Australia, or has an office or agent in Australia, may from time to time give to a prescribed officer notice, in writing, of the address of:
 - (a) the place at which the owner so resides; or
 - (b) the owner's office in Australia or, if the owner has more than one office in Australia, the owner's principal office in Australia; or
 - (c) the office or place of residence of the owner's agent or, if the owner's agent has more than one office in Australia, the principal office in Australia of the owner's agent.
- (6) The place or office of which an address is given for the time being under subsection (5) is the registered office of the owner of the ship for the purposes of subsection (4).
- (7) If the owner of a ship to which section 26FA applies does not reside in Australia and does not have an office or agent in Australia, the owner may deposit a garbage record book of the ship with a prescribed officer and, while the book is so deposited, the book is taken, for the purposes of subsection (4), to be retained at the registered office of the owner.

26FC Shipboard waste management plan

- (1) This section applies to an Australian ship that:
 - (a) has a gross tonnage of 400 or more; or
 - (b) is certified to carry 15 persons or more.
- (2) There must be kept on board a ship to which this section applies a shipboard waste management plan written in the working language of the master of, and the officers on board, the ship.
- (3) A shipboard waste management plan must:

- (a) be in accordance with the prescribed form; and
 - (b) set out the procedures for collecting, storing, processing and disposing of garbage, including the use of the equipment on board the ship for carrying out those procedures; and
 - (c) designate the person who is in charge of carrying out the plan.
- (4) Subsection (3) does not prevent other relevant particulars from being included in the shipboard waste management plan.
- (5) If a ship to which this section applies does not have on board a shipboard waste management plan, the master and the owner of the ship each commit an offence punishable, on conviction, by a fine not exceeding 50 penalty units.
- (6) An offence against subsection (5) is an offence of strict liability.

26FD Placards relating to requirements for disposal of garbage

- (1) There must be displayed, on board a ship of 12 metres or more in length, one or more placards notifying the crew and passengers of the kinds of garbage that may, or may not, be disposed of from the ship, and the conditions to which any such disposal is subject, under section 26F.
- (2) If the ship is an Australian ship, the placard or each placard must be written in the English language.
- (3) If:
- (a) the ship is a foreign ship that is engaged on a voyage to an Australian port or to an Australian offshore terminal; and
 - (b) the placard or each placard is written in the official language or one of the official languages of the country whose flag the ship is entitled to fly; and
 - (c) the language in which the placard or each placard is so written is neither English nor French;
- the placard or each placard must also be written in either English or French.
- (4) If a placard required under this section to be displayed on a ship is not so displayed, the master and the owner of the ship each commit an offence punishable, on conviction, by a fine not exceeding 50 penalty units.
-

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

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

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

Penalty: 500 penalty units.

127 Subsections 28(3) and (4)

Repeal the subsections, substitute:

- (3) If, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence against this Act (other than an offence against a section referred to in subsection (4)), the penalty that the court may impose is a fine not exceeding 80 penalty units.
- (4) If, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence against section 9, 21, 26AB, 26D or 26F, the penalty that the court may impose is a fine not exceeding 200 penalty units.

128 After section 29A

Insert:

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.

129 Paragraph 33(1)(f)

Repeal the paragraph, substitute:

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

130 Schedules 1 to 14

Repeal the Schedules.

Schedule 4—Protection of submarine cables and pipelines

Submarine Cables and Pipelines Protection Act 1963

1 Preamble

Repeal the Preamble.

2 Subsection 5(1)

After “high seas” (wherever occurring), insert “or in the exclusive economic zone”.

3 Subsection 5(2)

Repeal the subsection, substitute:

(2) In subsection (1):

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

high seas has the same meaning as in the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982.

[*Minister’s second reading speech made in—
House of Representatives on 4 April 2001
Senate on 21 August 2001*]

(55/01)