



**Maritime Legislation Amendment
(Prevention of Pollution from Ships) Act
2006**

No. 138, 2006

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

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

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

[Assented to 30 November 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Maritime Legislation Amendment
(Prevention of Pollution from Ships) Act 2006*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	30 November 2006
2. Schedules 1 and 2	The later of: (a) 1 January 2007; and (b) the day after this Act receives the Royal Assent.	1 January 2007 (paragraph (a) applies)

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

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments dealing with prevention of pollution by oil

Navigation Act 1912

1 Subsection 266(1) (definition of *ship construction certificate*)

Omit “Regulation 6”, substitute “Regulation 8”.

2 Subsection 267(2)

Omit “Regulations 13 to 19 (inclusive) and 22 to 25 (inclusive)”, substitute “Regulations 12, 13, 14, 16, 18, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34 and 35”.

3 Subsection 267(3)

Omit “subsection 267A(1)”, substitute “section 267A”.

4 Section 267A

Repeal the section, substitute:

267A Regulations to give effect to certain Regulations of Annex I

The regulations may make provision for and in relation to giving effect to Regulations 12, 13, 14, 16, 18, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34 and 35 of Annex I.

5 Transitional provision

If a ship construction certificate issued in respect of an Australian ship was in force under section 267B of the *Navigation Act 1912* immediately before the commencement of this item, the certificate:

- (a) is taken to be a certificate issued in respect of that ship under that section immediately after that commencement; and
- (b) remains in force until it expires, unless it is cancelled or ceases to have effect sooner.

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

6 Subparagraphs 9(1)(c)(i) and (1B)(b)(i)

Omit “Regulations 9 and 11”, substitute “Regulations 4, 15 and 34”.

7 Subsection 12(5)

Omit “make, without delay, appropriate entries in, or cause appropriate entries to be made, without delay, in,”, substitute “cause appropriate entries to be made without delay in”.

8 Paragraph 12(6)(b)

Repeal the paragraph, substitute:

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

Schedule 2—Amendments dealing with prevention of pollution by noxious substances

Navigation Act 1912

1 Subsection 267N(2)

Omit “13”, substitute “11”.

2 Subsection 267N(3)

Omit “subsection 267P(1)”, substitute “section 267P”.

3 Section 267P

Repeal the section, substitute:

267P Regulations to give effect to regulation 11 of Annex II

The regulations may make provision for and in relation to giving effect to regulation 11 of Annex II.

4 Subsection 267V(1)

Omit “substance that, for the purposes of Part III of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*, is a substance in Category A, B, C or D”, substitute “liquid substance”.

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

5 Subsection 3(1)

Insert:

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

6 After section 3

Insert:

3A Authority may approve form

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

7 Subsection 15(1) (definition of *liquid substance*)

Repeal the definition.

8 Subsection 15(1)

Insert:

Procedures and Arrangements Manual means a manual that:

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

9 Sections 17, 18, 19 and 20

Repeal the sections, substitute:

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

- (1) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct results in a liquid substance, or a mixture containing a liquid substance, being carried as cargo or part cargo in bulk on an Australian ship; and
 - (c) the person is negligent as to causing that result; and
 - (d) the substance has not been categorized in accordance with regulation 6.1 of Annex II; and
 - (e) the substance has not been provisionally assessed in accordance with regulation 6.3 of Annex II; and
 - (f) the substance is being carried while one of the following subparagraphs applies:
 - (i) the ship is in the sea near a State, the Jervis Bay Territory or an external Territory and there is no law of that State or Territory that makes provision giving effect to regulation 13.1.3 of Annex II in relation to that sea;

- (ii) the ship is in the exclusive economic zone;
- (iii) the ship is beyond the exclusive economic zone.

Penalty: 200 penalty units.

- (2) The master and the owner of an Australian ship each commit an offence if:
- (a) a liquid substance, or a mixture containing a liquid substance, is carried as cargo or part cargo in bulk on the ship; and
 - (b) the substance has not been categorized in accordance with regulation 6.1 of Annex II; and
 - (c) the substance has not been provisionally assessed in accordance with regulation 6.3 of Annex II; and
 - (d) the substance is carried while one of the following subparagraphs applies:
 - (i) the ship is in the sea near a State, the Jervis Bay Territory or an external Territory and there is no law of that State or Territory that makes provision giving effect to regulation 13.1.3 of Annex II in relation to that sea;
 - (ii) the ship is in the exclusive economic zone;
 - (iii) the ship is beyond the exclusive economic zone.

Penalty: 60 penalty units.

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

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

- (4) In this section:

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

10 Subparagraph 21(1)(c)(i)

Omit “Regulations 3, 4, 5 and 6”, substitute “regulations 3, 6 and 13”.

11 Subsection 21(1B)

Omit “(12)”, substitute “(11)”.

12 Subparagraph 21(1B)(b)(i)

Omit “Regulations 3, 4, 5 and 6”, substitute “regulations 3, 6 and 13”.

13 Subsections 21(4) to (15)

Repeal the subsections, substitute:

Substance in Category X

- (4) Subject to subsection (12), if:
- (a) the tank of a ship that held a substance in Category X or a mixture containing a substance in Category X has been:
 - (i) emptied to the maximum extent in accordance with procedures in the Procedures and Arrangements Manual; and
 - (ii) washed in accordance with regulations made for the purposes of section 26; and
 - (b) the resulting residues in the tank have been discharged to a reception facility until the concentration of that substance in the effluent to that facility is, in the opinion of an inspector, at or below the residual concentration prescribed for that substance in regulation 13.6.1 of Annex II and until the tank is empty; and
 - (c) the residue then remaining in the tank has been subsequently diluted with water;

subsection (1B) does not apply to the discharge from the ship of the water containing that residue if the following conditions are satisfied:

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

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

High-viscosity or solidifying substance in Category Y

- (5) Subject to subsection (12), if:
- (a) the tank of a ship that held:
-

- (i) a high-viscosity or solidifying substance in Category Y;
or
 - (ii) a mixture containing a high-viscosity or solidifying substance in Category Y (except a mixture containing a substance in Category X);
- has been:
- (iii) emptied to the maximum extent in accordance with procedures in the Procedures and Arrangements Manual; and
 - (iv) washed in accordance with regulations made for the purposes of section 26; and
- (b) the resulting residues in the tank have been discharged to a reception facility until the tank is empty; and
 - (c) the residue then remaining in the tank has been subsequently diluted with water;

subsection (1B) does not apply to the discharge into the sea of the water containing that residue if the following conditions are satisfied:

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

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

Other substances in Category Y

- (6) Subject to subsection (12), if the tank of a ship that held:
 - (a) a substance in Category Y (except a substance in Category Y referred to in subsection (5)); or
 - (b) a mixture containing a substance in Category Y (except a substance in Category Y referred to in subsection (5)) except a mixture containing a substance in Category X;

has been emptied to the maximum extent in accordance with the procedures in the Procedures and Arrangements Manual, subsection (1B) does not apply to the discharge into the sea of any residue of that substance or mixture if the following conditions are satisfied:

- (c) 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;
- (d) 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;
- (e) the discharge is made when the ship is at least 12 nautical miles from the nearest land and is in water at least 25 metres deep.

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

Substances in Category Z—ship constructed before 1 January 2007

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

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

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

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

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

- (8) Subject to subsection (12), if:
- (a) a ship is constructed on or after 1 January 2007; and
 - (b) the ship's tank held a substance in Category Z or a mixture containing a substance in Category Z; and
 - (c) the tank has been emptied to the maximum extent in accordance with the procedures in the Procedures and Arrangements Manual;
- subsection (1B) does not apply to the discharge into the sea of any residue of that substance or mixture if the following conditions are satisfied:
- (d) the discharge is made when the ship is proceeding en route at a speed of:
 - (i) at least 7 knots, if the ship is self-propelled; or
 - (ii) at least 4 knots, if the ship is not self-propelled;
 - (e) the discharge is made 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;
 - (f) the discharge is made when the ship is at least 12 nautical miles from the nearest land;
 - (g) the discharge is made when the ship is in water at least 25 metres deep.

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

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

Discharge of bilge water etc.

- (10) Subsection (1B) does not apply to the discharge from a ship of bilge water, or of a mixture resulting from tank cleaning or de-ballasting operations, that contains one or more liquid

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

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

Discharge of clean ballast or segregated ballast

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

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

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

- (12) Subsections (4) to (9) do not apply in relation to a mixture that contains a liquid substance that is neither a noxious liquid substance nor a liquid substance referred to in regulation 6.1.4 of Annex II.

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

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

No limitations on generality of subsections

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

Inspector

- (15) In this section:

inspector includes a surveyor appointed or authorized by the Government of a country that is a Party to the Convention for the purpose of implementing regulation 16 of Annex II.

Note 1: The following heading to subsection 21(1) is inserted “*Ordinary offence*”.

Note 2: The following heading to subsection 21(1B) is inserted “*Strict liability offence*”.

Note 3: The following heading to subsection 21(2) is inserted “*Exception for emergencies*”.

14 Section 21A

Repeal the section, substitute:

21A Procedures and Arrangements Manual

- (1) The master and the owner of an Australian ship each commit an offence if:
- (a) a chemical tanker construction certificate under Division 12A of Part IV of the *Navigation Act 1912* is in force in respect of the ship; and
 - (b) the ship does not have on board a copy of the Procedures and Arrangements Manual written in English.

Penalty: 60 penalty units.

- (2) The master and the owner of a foreign ship each commit an offence if:
- (a) a chemical tanker construction certificate under Division 12A of Part IV of the *Navigation Act 1912* is in force in respect of the ship; and
 - (b) the ship does not have on board:
 - (i) a copy of the Procedures and Arrangements Manual written in the official language, or one of the official languages, of the country whose flag the ship is entitled to fly; and
 - (ii) if none of those languages is English, Spanish or French—a translation of the Procedures and Arrangements Manual into one of those languages.

Penalty: 60 penalty units.

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

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

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

Omit “Appendix III to”, substitute “regulation 6.1.4 of”.

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

Omit “(9), (10), (11) or (12)”, substitute “(10) or (11)”.

17 Section 26

Omit “Regulation 8”, substitute “regulations 13 and 16”.

*[Minister’s second reading speech made in—
House of Representatives on 11 October 2006
Senate on 6 November 2006]*

(147/06)
