



# **Protection of the Sea Legislation Amendment Act 2010**

**No. 116, 2010**

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

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## Contents

1	Short title .....	1
2	Commencement .....	2
3	Schedule(s) .....	2
<b>Schedule 1—Prevention of air pollution</b>		3
	<i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i>	3
<b>Schedule 2—Responder immunity</b>		14
	<i>Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008</i>	14





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## **An Act to amend the law in relation to the protection of the sea, and for related purposes**

[Assented to 9 November 2010]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Protection of the Sea Legislation  
Amendment Act 2010*.

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## **2 Commencement**

This Act commences on the day after this Act receives the Royal Assent.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

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

#### **1 Subsection 26FEF(1) (definition of *fuel oil*)**

Repeal the definition.

#### **2 Subsection 26FEF(1)**

Insert:

*gas fuel* includes liquefied natural gas, compressed natural gas and liquefied petroleum gas.

#### **3 Paragraph 26FEG(1)(b)**

Omit “4.5% m/m”, substitute “the prescribed limit”.

Note: The heading to section 26FEG is altered by omitting “4.5% m/m” and substituting “the prescribed limit”.

#### **4 Subparagraph 26FEG(1)(d)(i)**

Omit “Regulation 14(1)”, substitute “paragraph 1 of Regulation 14”.

#### **5 Subparagraph 26FEG(1)(d)(iii)**

Omit “SOx”.

#### **6 Paragraph 26FEG(2)(a)**

Omit “4.5% m/m”, substitute “the prescribed limit”.

#### **7 Subparagraph 26FEG(2)(b)(i)**

Omit “Regulation 14(1)”, substitute “paragraph 1 of Regulation 14”.

#### **8 Subparagraph 26FEG(2)(b)(iii)**

Omit “SOx”.

#### **9 At the end of section 26FEG**

Add:

*Exceptions*

- (5) Subsection (1) does not apply if:
- (a) the person took all reasonable steps to obtain fuel oil with a sulphur content of not more than the limit prescribed for the purposes of paragraph (1)(b); and
  - (b) the person has, in accordance with the regulations, notified:
    - (i) a prescribed officer; and
    - (ii) if the ship's next port of destination, after the fuel oil is used, is a port in a foreign country—the government of that foreign country;that the person has been unable to obtain fuel oil with a sulphur content of not more than that limit.

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

- (6) Subsection (2) does not apply if:
- (a) the master or owner of the ship took all reasonable steps to obtain fuel oil with a sulphur content of not more than the limit prescribed for the purposes of paragraph (2)(a); and
  - (b) the master or owner of the ship has, in accordance with the regulations, notified:
    - (i) a prescribed officer; and
    - (ii) if the ship's next port of destination, after the fuel oil is used, is a port in a foreign country—the government of that foreign country;that the master or owner has been unable to obtain fuel oil with a sulphur content of not more than that limit.

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

**10 Paragraphs 26FEH(1)(a) and (2)(a)**

Omit “SOx” (wherever occurring).

Note: The heading to section 26FEH is altered by omitting “SOx”.

**11 Subsection 26FEH(4)**

Omit “an SOx”, substitute “an”.

**12 Paragraph 26FEH(4)(a)**

Omit “1.5% m/m”, substitute “the prescribed limit”.

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**13 Paragraph 26FEH(6)(a)**

Omit “an SOx”, substitute “an”.

**14 At the end of section 26FEH**

Add:

*Exception for the unavailability of fuel oil with a sulphur content of not more than the prescribed limit*

- (9) Subsection (1) or (2), to the extent it relates to paragraph (4)(a), does not apply if:
- (a) the master or owner of the ship took all reasonable steps to obtain fuel oil with a sulphur content of not more than the limit prescribed for the purposes of paragraph (4)(a); and
  - (b) the master or owner of the ship has, in accordance with the regulations, notified:
    - (i) a prescribed officer; and
    - (ii) if the ship’s next port of destination, after the fuel oil is used, is a port in a foreign country—the government of that foreign country;
- that the master or owner has been unable to obtain fuel oil with a sulphur content of not more than that limit.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9): see subsection 13.3(3) of the *Criminal Code*.

**15 Section 26FEI**

Before “A person”, insert “(1)”.

**16 Paragraph 26FEI(b)**

Omit “SOx”.

**17 Paragraph 26FEI(d)**

Omit “1.5% m/m or less”, substitute “not more than the prescribed limit”.

**18 Paragraphs 26FEI(e) and (f)**

Omit “1.5% m/m”, substitute “that limit”.

**19 Paragraph 26FEI(f)**

Omit “SOx”.

## **20 At the end of section 26FEI**

Add:

- (2) A person commits an offence if:
- (a) the person is the master of an Australian ship; and
  - (b) the ship enters an emission control area; and
  - (c) separate fuel oils are used on board the ship; and
  - (d) at least one of the fuel oils has a sulphur content of not more than the prescribed limit; and
  - (e) at least one of the fuel oils has a sulphur content of more than that limit; and
  - (f) when the ship enters the emission control area, the ship does not carry a written procedure showing how the ship’s fuel oil service system is to be fully flushed of fuel oil with a sulphur content of more than that limit before the ship enters the emission control area.

Penalty: 200 penalty units.

## **21 Paragraph 26FEJ(1)(a)**

Omit “after a prescribed fuel-changeover operation on the ship occurs when the ship enters an SOx emission control area; or”, substitute:

after:

- (i) the completion of the last prescribed fuel-changeover operation on the ship before the ship enters an emission control area; or
- (ii) the completion of the first prescribed fuel-changeover operation on the ship after the ship leaves an emission control area; or

## **22 Subsections 26FEK(1) and (2)**

Omit “SOx”.

Note: The heading to section 26FEK is altered by omitting “SOx”.

## **23 Division 3 of Part IIID (heading)**

Repeal the heading, substitute:

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**Division 3—Fuel oil availability and quality requirements**

**24 Subparagraph 26FEL(c)(i)**

Omit “Regulation 18(7)(a)”, substitute “subparagraph 9.1 of Regulation 18”.

**25 Paragraph 26FEN(1)(b)**

Omit “Regulation 18(1)”, substitute “paragraph 3 of Regulation 18”.

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

Omit “Regulation 18(1)”, substitute “paragraph 3 of Regulation 18”.

**27 Paragraph 26FEO(1)(a)**

After “fuel oil”, insert “(other than gas fuel)”.

**28 Subparagraph 26FEO(1)(c)(i)**

Omit “Regulation 18(1)”, substitute “paragraph 3 of Regulation 18”.

**29 Paragraph 26FEO(2)(a)**

After “fuel oil”, insert “(other than gas fuel)”.

**30 Subparagraph 26FEO(2)(c)(i)**

Omit “Regulation 18(1)”, substitute “paragraph 3 of Regulation 18”.

**31 Subparagraph 26FEP(1)(d)(i)**

Omit “Regulation 18(7)(b)”, substitute “subparagraph 9.2 of Regulation 18”.

**32 Paragraph 26FEP(1)(f)**

Omit “regulation 18(1)”, substitute “paragraph 3 of Regulation 18”.

**33 Subparagraph 26FEQ(2)(d)(i)**

Omit “the ship”, substitute “accordance with subsection (5)”.

**34 At the end of section 26FEQ**

Add:

*Retention requirements for masters and owners of Australian ships*

- (5) For the purposes of subparagraph (2)(d)(i), a bunker delivery note must be retained:
  - (a) in the ship; or
  - (b) at a place approved under subsection (7).
- (6) The owner of an Australian ship that engages in scheduled services may apply in writing to the Authority for approval to retain bunker delivery notes at a particular place.
- (7) If an application is made to the Authority, the Authority must:
  - (a) either approve, or refuse to approve, the place; and
  - (b) give the owner of the ship written notice of the decision including, in the case of a refusal, the reasons for the refusal.
- (8) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Authority under subsection (7) to refuse to approve a place.

**35 At the end of Division 3 of Part IIID**

Add:

**26FES Notification of sulphur content of gas fuel**

- (1) A person commits an offence if:
  - (a) the person delivers gas fuel to a ship; and
  - (b) the ship has a gross tonnage of 400 or more; and
  - (c) the delivery happens while the ship is:
    - (i) in the sea near a State, the Jervis Bay Territory or an external Territory and no law of that State or Territory gives effect to paragraph 3 of Regulation 18 of Annex VI in relation to that sea; or
    - (ii) in the exclusive economic zone; and
  - (d) the person does not provide to the master of the ship, in connection with that delivery, documentation specifying the sulphur content for the gas fuel delivered.

Penalty: 200 penalty units.

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

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

**36 At the end of Part IIID**

Add:

**Division 4—Ozone depleting substances record book**

**26FET Ozone depleting substances record book**

- (1) This section applies to an Australian ship that:
  - (a) has a gross tonnage of 400 or more; and
  - (b) has at least one rechargeable system containing ozone depleting substances; and
  - (c) is engaged on an overseas voyage.

*Ship to carry ozone depleting substances record book*

- (2) The ship must carry an ozone depleting substances record book as required by the regulations.
- (3) An ozone depleting substances record book must:
  - (a) be in accordance with the appropriate prescribed form; and
  - (b) make provision for a signature, in accordance with subsection (7), in relation to each page of it; and
  - (c) make provision for a signature, in accordance with subsection (8), in relation to each entry made in it.
- (4) The master and the owner of the ship each commit an offence if the ship does not carry an ozone depleting substances record book as required by this section.

Penalty: 200 penalty units.

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

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

*Recording prescribed operations or prescribed occurrences in ozone depleting substances record book*

- (6) The master of the ship commits an offence if:
  - (a) a prescribed operation or prescribed occurrence is carried out or occurs in, or in relation to, the ship; and
  - (b) neither of the following subparagraphs applies:

- (i) the master of the ship makes, without delay, appropriate entries in accordance with subsection (8) in the ship's ozone depleting substances record book;
- (ii) the master of the ship causes appropriate entries in accordance with that subsection to be made in that book as soon as is practicable in the circumstances.

Penalty: 200 penalty units.

*Signing of pages of ozone depleting substances record book*

- (7) The master of the ship commits an offence if:
- (a) a page of the ship's ozone depleting substances record book is completed; and
  - (b) the master of the ship does not, as soon as is practicable in the circumstances, sign the page.

Penalty: 200 penalty units.

*Form of entries in ozone depleting substances record book*

- (8) An entry in a ship's ozone depleting substances record book:
- (a) must be made in the English language; and
  - (b) if the entry is made in relation to a prescribed operation—must be signed by the person in charge of the operation.

*Overseas voyage*

- (9) For the purposes of this section, **overseas voyage** has the same meaning as in the *Navigation Act 1912*. However, if an Australian fishing vessel (within the meaning of that Act) that is regularly engaged in making voyages from a port or ports in Queensland:
- (a) begins a voyage at a port in Queensland; and
  - (b) ends the voyage at the same port or another port in Queensland;
- that voyage is not taken to be an **overseas voyage** merely because, as an incidental part of its fishing operations on that voyage, the vessel calls at a port or ports in Papua New Guinea.

**26FEU False or misleading entries in ozone depleting substances record book**

A person commits an offence if:

- (a) the person makes an entry in an ozone depleting substances record book of a ship; and
- (b) section 26FET applies to the ship; and
- (c) the entry is false or misleading in a material particular.

Penalty: 200 penalty units.

**26FEV Ozone depleting substances record book to be retained**

*Retention etc. of ozone depleting substances record book in ship*

- (1) The master and the owner of a ship to which section 26FET applies each commit an offence if:
  - (a) the ship's ozone depleting substances record book is not retained in the ship until the end of one year beginning on the day after the day on which the last entry is made in the book; or
  - (b) the ship's ozone depleting substances record book is not readily available for inspection by an inspector at all reasonable times during that period.

Penalty: 200 penalty units.

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

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

*Retention etc. of ozone depleting substances record book in ship or at other places*

- (3) The owner of a ship to which section 26FET applies commits an offence if:
  - (a) none of the following subparagraphs applies in relation to the ship's ozone depleting substances record book:
    - (i) it is retained in the ship until the end of 2 years beginning on the day after the end of the period referred to in paragraph (1)(a);
    - (ii) it is retained at the owner's registered office, or at a place or office whose address is notified under

- subsection (4), until the end of 2 years beginning on the day after the end of the period referred to in paragraph (1)(a);
- (iii) it is deposited in accordance with subsection (5) until the end of 2 years beginning on the day after the end of the period referred to in paragraph (1)(a); or
- (b) the ship's ozone depleting substances record book is not readily available for inspection by an inspector at all reasonable times during the 2-year period mentioned in paragraph (a).

Penalty: 200 penalty units.

*Notification of places or offices*

- (4) The owner of a ship to which section 26FET applies who resides in Australia, or has an office or agent in Australia, may 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.

*Deposit of ozone depleting substances record book*

- (5) If the owner of a ship to which section 26FET applies does not reside in Australia and does not have an office or agent in Australia, the owner may deposit the ship's ozone depleting substances record book with a prescribed officer.

### **37 Application and saving**

- (1) The amendment made by item 1 does not affect the continuity of the register established under section 26FEM of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.
- (2) The amendments made by items 3 to 9 apply in relation to the use of fuel oil on or after the commencement of those items.



- (3) The amendments made by items 10 to 20 apply in relation to voyages of Australian ships that begin on or after the commencement of those items.
- (4) The amendment made by item 21 applies in relation to fuel-changeover operations that occur on or after the commencement of that item.
- (5) The amendment made by item 27 applies in relation to deliveries of fuel oil that occur on or after the commencement of that item.
- (6) The amendments made by items 33 and 34 apply in relation to bunker delivery notes that are provided on or after the commencement of those items.
- (7) The amendment made by item 35 applies in relation to deliveries of gas fuel that occur on or after the commencement of that item.
- (8) Section 26FET of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*, as inserted by this Act, applies in relation to overseas voyages of Australian ships that begin on or after the commencement of that section.

## Schedule 2—Responder immunity

### *Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008*

#### 1 Section 3

Insert:

*constitutional corporation* means a corporation to which paragraph 51(xx) of the Constitution applies.

#### 2 Section 3

Insert:

*shipowner* has the same meaning as in the Bunker Oil Convention.

#### 3 Before section 25

Insert:

#### 24A Responder immunity

- (1) Subject to this section, no civil action, suit or proceeding lies against a person in relation to anything done, or omitted to be done, reasonably and in good faith by the person in relation to preventing or minimising pollution damage occurring in Australia or the exclusive economic zone of Australia.

Note: This section also applies in relation to the coastal sea of Australia and an external Territory: see section 15B of the *Acts Interpretation Act 1901*.

##### *Exceptions*

- (2) Subsection (1) does not prevent an action, suit or proceeding from being brought against the shipowner or shipowners concerned (including on the basis of vicarious liability).
- (3) Subsection (1) does not apply in relation to anything done, or omitted to be done:
- (a) with intent to cause damage; or

- (b) recklessly and with knowledge that damage would probably result.

*Scope of section*

- (4) Subsection (1) has effect:
  - (a) in relation to anything done, or omitted to be done, by:
    - (i) a constitutional corporation; or
    - (ii) a director, officer, employee or agent of a constitutional corporation in the capacity of such a director, officer, employee or agent; and
  - (b) in relation to anything done, or omitted to be done, outside Australia; and
  - (c) in relation to anything done, or omitted to be done, in the course of, or in relation to, any of the following:
    - (i) trade or commerce between Australia and places outside Australia;
    - (ii) trade or commerce among the States;
    - (iii) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; and
  - (d) in relation to anything done, or omitted to be done, by the Commonwealth or an authority of the Commonwealth.
- (5) For the purposes of paragraph (4)(b), *outside Australia* means outside the baseline from which the breadth of the territorial sea (within the meaning of the *Seas and Submerged Lands Act 1973*) is measured under section 7 of that Act.

#### **4 Application**

The amendment made by item 3 applies in relation to anything done, or omitted to be done, on or after the commencement of that item.

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*[Minister's second reading speech made in—  
House of Representatives on 30 September 2010  
Senate on 25 October 2010]*

(182/10)

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16      *Protection of the Sea Legislation Amendment Act 2010*      No. 116, 2010