



# **Maritime Legislation Amendment Act 2011**

**No. 167, 2011**

**An Act to amend the law relating to the marine  
environment and to ships, and for related purposes**

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



---

## Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	3
<b>Schedule 1—Amendments</b>		4
	<i>Navigation Act 1912</i>	4
	<i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i>	18
	<i>Protection of the Sea (Prevention of Pollution from Ships) Amendment (Oils in the Antarctic Area) Act 2011</i>	19





# Maritime Legislation Amendment Act 2011

No. 167, 2011

---

---

**An Act to amend the law relating to the marine  
environment and to ships, and for related purposes**

*[Assented to 4 December 2011]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Maritime Legislation Amendment Act 2011*.

---

## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	4 December 2011
2. Schedule 1, items 1 to 6	The day after this Act receives the Royal Assent.	5 December 2011
3. Schedule 1, item 7	The day after this Act receives the Royal Assent.  However, if item 3 of Schedule 1 to the <i>Protection of the Sea (Prevention of Pollution from Ships) Amendment (Oils in the Antarctic Area) Act 2011</i> commences on or before that day the provision does not commence at all.	5 December 2011
4. Schedule 1, items 8 to 11	The day after this Act receives the Royal Assent.	5 December 2011
5. Schedule 1, item 12	The day after this Act receives the Royal Assent.  However, if item 4 of Schedule 1 to the <i>Protection of the Sea (Prevention of Pollution from Ships) Amendment (Oils in the Antarctic Area) Act 2011</i> commences on or before that day the provision does not commence at all.	5 December 2011
6. Schedule 1, items 13 to 17	The day after this Act receives the Royal Assent.	5 December 2011
7. Schedule 1, item 18	Immediately after the commencement of the <i>Protection of the Sea (Prevention of Pollution from Ships) Amendment (Oils in</i>	6 December 2011

---

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
	<i>the Antarctic Area) Act 2011.</i> However, if the <i>Protection of the Sea (Prevention of Pollution from Ships) Amendment (Oils in the Antarctic Area) Act 2011</i> commences on or before this Act receives the Royal Assent, the provision does not commence at all.	

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

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

### **3 Schedule(s)**

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

## Schedule 1—Amendments

### *Navigation Act 1912*

#### 1 Subsection 6(1)

Insert:

*civil penalty order* has the meaning given by subsection 399B(4).

#### 2 Subsection 6(1)

Insert:

*civil penalty provision* has the meaning given by section 399A.

#### 3 After Division 12D of Part IV

Insert:

### **Division 12E—Pollution or damage to the marine environment**

#### **Subdivision A—Preliminary**

#### **267ZZG Interpretation**

In this Division:

*aggravated contravention* has the meaning given by section 267ZZN.

*Australia* includes the external Territories.

*Australian ship* means:

- (a) a ship registered in Australia; or
- (b) an unregistered ship having Australian nationality.

*coastal sea of Australia* means:

- (a) the territorial sea of Australia; and
- (b) the sea on the landward side of the territorial sea of Australia and not within the limits of a State or Territory.



---

*Territory* includes the external Territories.

## **Subdivision B—Ships causing pollution or damage to the Australian marine environment**

### **267ZZH Application**

- (1) Section 2 does not have effect in relation to this Subdivision.
- (2) This Subdivision applies to the operation of a ship in:
  - (a) the coastal sea of Australia; or
  - (b) the exclusive economic zone; or
  - (c) seas that are beyond the territorial sea and the exclusive economic zone of Australia.

Note: However, a master of a ship is only liable for an offence or civil penalty under this Subdivision if pollution or damage to the marine environment that occurs as a result of the master's operation of the ship occurs in the coastal sea of Australia or the exclusive economic zone of Australia (see sections 267ZZI and 267ZZJ).

### **267ZZI Operating a ship in a manner that causes pollution or damage to the Australian marine environment**

- (1) A master of a ship must not operate the ship in a manner that causes:
  - (a) pollution to the marine environment in the coastal sea of Australia or the exclusive economic zone; or
  - (b) damage to the marine environment in the coastal sea of Australia or the exclusive economic zone.

#### *Offence*

- (2) A master commits an offence if the master contravenes subsection (1).

Penalty: 600 penalty units.
- (3) The physical elements of the offence are set out in subsection (1).
- (4) Recklessness or negligence is the fault element for:
  - (a) the operation of the ship in the manner that causes the result mentioned in paragraph (1)(a) or (b); and
  - (b) the result mentioned in paragraph (1)(a) or (b) occurring.

- (5) In determining the standard of care a reasonable person would exercise in operating the ship and whether there was a risk that a result mentioned in paragraph (1)(a) or (b) would happen, the matters to which the Court may have regard include, but are not limited to, the following:
- (a) the characteristics of the ship;
  - (b) the ship's cargo and the risks of pollution or damage to the marine environment if that cargo is released;
  - (c) the amount of bunker oil on board the ship and the risk of pollution or damage to the marine environment if that amount of oil is released;
  - (d) the state of visibility;
  - (e) the state of the wind, sea and current;
  - (f) the presence of other ships in the vicinity;
  - (g) the presence of navigation hazards in the vicinity;
  - (h) the rules under the Prevention of Collisions Convention;
  - (i) operational requirements imposed by law.

*Civil penalty provision*

- (6) A master is liable to a civil penalty if the master contravenes subsection (1).

Civil penalty:

- (a) for an aggravated contravention—6,000 penalty units; or
- (b) in any other case—600 penalty units.

**267ZZJ Failure to ensure ship is operated in a manner that does not cause pollution or damage to the Australian marine environment**

- (1) A master of a ship must ensure that the ship is operated in a manner that does not cause:
- (a) pollution to the marine environment in the coastal sea of Australia or the exclusive economic zone; or
  - (b) damage to the marine environment in the coastal sea of Australia or the exclusive economic zone.

---

*Offence*

- (2) A master commits an offence if the master contravenes subsection (1).

Penalty: 600 penalty units.

- (3) The physical elements for the offence are set out in subsection (1).

- (4) Recklessness or negligence is the fault element for:

- (a) failure to ensure that the ship is operated in a manner that does not cause the result mentioned in paragraph (1)(a) or (b); and
- (b) the result mentioned in paragraph (1)(a) or (b) occurring.

- (5) The matters to which the Court may have regard in determining the following include, but are not limited to, the matters set out in subsection (6):

- (a) the standard of care a reasonable person would exercise in ensuring that the ship is operated in a manner that does not cause the result mentioned in paragraphs (1)(a) and (b);
- (b) whether there was a risk that the result mentioned in paragraph (1)(a) or (b) would happen.

- (6) Those matters are the following:

- (a) the characteristics of the ship;
- (b) the ship's cargo and the risks of pollution or damage to the marine environment if that cargo is released;
- (c) the amount of bunker oil on board the ship and the risk of pollution or damage to the marine environment if that amount of oil is released;
- (d) the state of visibility;
- (e) the state of the wind, sea and current;
- (f) the presence of other ships in the vicinity;
- (g) the presence of navigation hazards in the vicinity;
- (h) the rules under the Prevention of Collisions Convention;
- (i) operational requirements imposed by law.

*Civil penalty provision*

- (7) A master is liable to a civil penalty if the master contravenes subsection (1).
-

Civil penalty:

- (a) for an aggravated contravention—6,000 penalty units; or
- (b) in any other case—600 penalty units.

**Subdivision C—Australian ships causing pollution or damage to the marine environment outside of Australia**

**267ZZK Application**

- (1) Section 2 does not have effect in relation to this Subdivision.
- (2) This Subdivision applies to the operation of a ship in:
  - (a) the coastal sea of Australia; or
  - (b) the exclusive economic zone; or
  - (c) seas that are beyond the territorial sea and the exclusive economic zone of Australia.

**267ZZL Operating a ship in a manner that causes pollution or damage to the marine environment outside of Australia**

- (1) A master of an Australian ship must not operate the ship in a manner that causes:
  - (a) pollution to the marine environment in seas that are beyond the territorial sea and the exclusive economic zone of Australia; or
  - (b) damage to the marine environment in seas that are beyond the territorial sea and the exclusive economic zone of Australia.

*Offence*

- (2) A master commits an offence if the master contravenes subsection (1).

Penalty: 600 penalty units.

- (3) The physical elements of the offence are set out in subsection (1).
- (4) Recklessness or negligence is the fault element for:
  - (a) the operation of the ship in the manner that causes the result mentioned in paragraph (1)(a) or (b); and
  - (b) the result mentioned in paragraph (1)(a) or (b) occurring.

- 
- (5) In determining the standard of care a reasonable person would exercise in operating the ship and whether there was a risk that a result mentioned in paragraph (1)(a) or (b) would happen, the matters to which the Court may have regard include, but are not limited to, the following:
- (a) the characteristics of the ship;
  - (b) the ship's cargo and the risks of pollution or damage to the marine environment if that cargo is released;
  - (c) the amount of bunker oil on board the ship and the risk of pollution or damage to the marine environment if that amount of oil is released;
  - (d) the state of visibility;
  - (e) the state of the wind, sea and current;
  - (f) the presence of other ships in the vicinity;
  - (g) the presence of navigation hazards in the vicinity;
  - (h) the rules under the Prevention of Collisions Convention;
  - (i) operational requirements imposed by law.

*Civil penalty provision*

- (6) A master is liable to a civil penalty if the master contravenes subsection (1).

Civil penalty:

- (a) for an aggravated contravention—6,000 penalty units; or
- (b) in any other case—600 penalty units.

**267ZZM Failure to ensure ship is operated in a manner that does not cause pollution or damage to the marine environment outside of Australia**

- (1) A master of an Australian ship must ensure that the ship is operated in a manner that does not cause:
- (a) pollution to the marine environment in seas that are beyond the territorial sea and the exclusive economic zone of Australia; or
  - (b) damage to the marine environment in seas that are beyond the territorial sea and the exclusive economic zone of Australia.

*Offence*

- (2) A master commits an offence if the master contravenes subsection (1).

Penalty: 600 penalty units.

- (3) The physical elements for the offence are set out in subsection (1).

- (4) Recklessness or negligence is the fault element for:

- (a) failure to ensure that the ship is operated in a manner that does not cause the result mentioned in paragraph (1)(a) or (b); and
- (b) the result mentioned in paragraph (1)(a) or (b) occurring.

- (5) The matters to which the Court may have regard in determining the following include, but are not limited to, the matters set out in subsection (6):

- (a) the standard of care a reasonable person would exercise in ensuring that the ship is operated in a manner that does not cause the result mentioned in paragraphs (1)(a) and (b);
- (b) the risk that the result mentioned in paragraph (1)(a) or (b) would happen.

- (6) Those matters are the following:

- (a) the characteristics of the ship;
- (b) the ship's cargo and the risks of pollution or damage to the marine environment if that cargo is released;
- (c) the amount of bunker oil on board the ship and the risk of pollution or damage to the marine environment if that amount of oil is released;
- (d) the state of visibility;
- (e) the state of the wind, sea and current;
- (f) the presence of other ships in the vicinity;
- (g) the presence of navigation hazards in the vicinity;
- (h) the rules under the Prevention of Collisions Convention;
- (i) operational requirements imposed by law.

*Civil penalty provision*

- (7) A master is liable to a civil penalty if the master contravenes subsection (1).
-

---

Civil penalty:

- (a) for an aggravated contravention—6,000 penalty units; or
- (b) in any other case—600 penalty units.

### **Subdivision D—Aggravated contraventions of civil penalty provisions**

#### **267ZZN Aggravated contraventions of civil penalty provisions**

- (1) A contravention of a civil penalty provision of this Division by a person is an *aggravated contravention* if the conduct the person engaged in that constituted the contravention:
  - (a) resulted in serious harm to the marine environment; or
  - (b) had the potential to cause serious harm to the marine environment.
- (2) In determining whether conduct has resulted in serious harm to the marine environment, the Court may have regard to the following:
  - (a) the harm;
  - (b) the size of the affected environment;
  - (c) the sensitivity of the affected environment;
  - (d) the significance of the affected environment;
  - (e) whether the harm is irreversible;
  - (f) the measures required to remedy the harm.
- (3) In determining whether conduct had the potential to cause serious harm to the marine environment, the Court may have regard to the following:
  - (a) the potential harm;
  - (b) the size of the potentially affected environment;
  - (c) the sensitivity of the potentially affected environment;
  - (d) the significance of the potentially affected environment;
  - (e) whether the harm would have been irreversible, had it occurred;
  - (f) the measures that would have been required to remedy the harm, had it occurred.
- (4) If the Authority intends to prove that the person has committed an aggravated contravention, the Authority's application for a civil

penalty order in relation to the contravention must specify the relevant aggravated contravention.

- (5) If, in proceedings for a civil penalty order in relation to an aggravated contravention of a provision of this Division, the Court:
- (a) is not satisfied that the person has committed an aggravated contravention against that provision; and
  - (b) is satisfied beyond reasonable doubt that the person has contravened that provision;
- the Court may make a civil penalty order against the person not for the aggravated contravention but for the contravention of that provision.

#### **4 At the end of Part IV**

Add:

#### **269E Offence for failure to report in accordance with regulations**

- (1) The master of a ship commits an offence if:
- (a) the master is required to make a report under the regulations made for the purposes of a provision of this Part; and
  - (b) the master does not make the report in accordance with the regulations.

Penalty: 240 penalty units.

- (2) Subsection (1) is an offence of strict liability.

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

#### **5 After Division 3 of Part X**

Insert:

### **Division 3A—Civil penalty provisions**

#### **Subdivision A—Application**

#### **399A *Civil penalty provisions***

A provision of this Act is a *civil penalty provision* if:

- (a) the provision sets out at its foot a pecuniary penalty, or penalties, indicated by the words “Civil penalty”; and



- 
- (b) the provision is a subsection, or a section that is not divided into subsections.

## **Subdivision B—Obtaining a civil penalty order**

### **399B Civil penalty orders**

#### *Application for order*

- (1) The Authority may apply to the Court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.
- (2) The Authority must make the application within 6 years of the alleged contravention.

#### *Court may order person to pay pecuniary penalty*

- (3) If the Court is satisfied that the person has contravened the civil penalty provision, the Court may order the person to pay to the Commonwealth such pecuniary penalty for the contravention as the Court determines to be appropriate.

Note: Subsection (5) sets out the maximum penalty that the Court may order the person to pay.

- (4) An order under subsection (3) is a ***civil penalty order***.

#### *Determining pecuniary penalty*

- (5) The pecuniary penalty must not be more than:
  - (a) if the person is a body corporate—5 times the pecuniary penalty specified for the civil penalty provision; and
  - (b) otherwise—the pecuniary penalty specified for the civil penalty provision.
- (6) In determining the pecuniary penalty, the Court may take into account all relevant matters, including:
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered because of the contravention; and
  - (c) the circumstances in which the contravention took place; and

- (d) whether the person has previously been found by a court to have engaged in any similar conduct.

**399C Civil enforcement of penalty**

- (1) A pecuniary penalty is a debt payable to the Commonwealth.
- (2) The Commonwealth may enforce a civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgement debt.

**399D Conduct contravening more than one civil penalty provision**

- (1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Division against a person in relation to the contravention of any one or more of those provisions.
- (2) However, the person is not liable to more than one pecuniary penalty under this Division in relation to the same conduct.

**399E Multiple contraventions**

- (1) The Court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.

Note: For continuing contraventions of civil penalty provisions, see section 399P.

- (2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

**399F Proceedings may be heard together**

The Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

---

**399G Civil evidence and procedure rules for civil penalty orders**

The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

**399H Contravening a civil penalty provision is not an offence**

A contravention of a civil penalty provision is not an offence.

**Subdivision C—Civil proceedings and criminal proceedings****399J Civil proceedings after criminal proceedings**

The Court may not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

**399K Criminal proceedings during civil proceedings**

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
  - (a) criminal proceedings are commenced or have already been commenced against the person for an offence; and
  - (b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order (the *civil proceedings*) may be resumed if the person is not convicted of the offence. Otherwise:
  - (a) the civil proceedings are dismissed; and
  - (b) costs must not be awarded in relation to the civil proceedings.

**399L Criminal proceedings after civil proceedings**

Criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person in relation to the contravention.

**399M Evidence given in civil proceedings not admissible in criminal proceedings**

- (1) Evidence of information given, or evidence of production of documents by an individual, is not admissible in criminal proceedings against the individual if:
  - (a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and
  - (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

**Subdivision D—Miscellaneous**

**399N Ancillary contravention of civil penalty provisions**

- (1) A person must not:
  - (a) attempt to contravene a civil penalty provision; or
  - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  - (e) conspire with others to effect a contravention of a civil penalty provision.

Note: Section 399R (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to subsection (1) of this section.

*Civil penalty*

- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the provision.

---

**399P Continuing contraventions of civil penalty provisions**

- (1) If an act or thing is required under a civil penalty provision to be done:
  - (a) within a particular period; or
  - (b) before a particular time;then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).
- (2) A person who contravenes a civil penalty provision that requires an act or thing to be done:
  - (a) within a particular period; or
  - (b) before a particular time;commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

**399Q Mistake of fact**

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
  - (a) at or before the time of the conduct constituting the contravention, the person:
    - (i) considered whether or not facts existed; and
    - (ii) was under a mistaken but reasonable belief about those facts; and
  - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
  - (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

**399R State of mind**

- (1) In proceedings for a civil penalty order against a person for a contravention of a civil penalty provision (other than subsection 399N(1)), it is not necessary to prove:
- (a) the person's intention; or
  - (b) the person's knowledge; or
  - (c) the person's recklessness; or
  - (d) the person's negligence; or
  - (e) any other state of mind of the person.
- (2) Subsection (1) does not affect the operation of section 399Q (which is about mistake of fact).

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

**6 Subsection 9(1)**

Repeal the subsection.

**7 Subsection 9(1A)**

Repeal the subsection.

**8 Subsection 9(1B)**

Omit "and the owner of the ship", substitute ", the charterer and the owner of the ship".

**9 Subsection 9(1B)**

Omit "500", substitute "20,000".

**10 Paragraphs 9(3)(a) and (b)**

Omit "or owner of the ship", substitute ", the charterer or the owner of the ship".

**11 Subsection 10(1)**

---

Repeal the subsection.

**12 Subsection 10(2)**

Repeal the subsection.

**13 Paragraph 10(3)(b)**

Omit “9(1) or (1B)” substitute “9(1B)”.

**14 Subsection 10(3)**

Omit “and the owner of the ship”, substitute “, the charterer and the owner of the ship”.

**15 Subsection 10(3)**

Omit “500”, substitute “20,000”.

**16 Subsection 11(9)**

Repeal the subsection.

**17 Subsection 28(4)**

Omit “9”, substitute “9, 10”.

***Protection of the Sea (Prevention of Pollution from Ships)  
Amendment (Oils in the Antarctic Area) Act 2011***

**18 Items 3 and 4 of Schedule 1**

Repeal the items.

---

*[Minister's second reading speech made in—  
House of Representatives on 22 September 2011  
Senate on 13 October 2011]*

(195/11)

---

20      *Maritime Legislation Amendment Act 2011*      *No. 167, 2011*