



Protection of the Sea (Prevention of Pollution from Ships) Amendment (Polar Code) Act 2017

No. 40, 2017

**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 on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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No. 40, 2017

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

[Assented to 19 May 2017]

The Parliament of Australia enacts:

No. 40, 2017 Protection of the Sea (Prevention of Pollution from Ships) Amendment 1
(Polar Code) Act 2017

1 Short title

This Act is the *Protection of the Sea (Prevention of Pollution from Ships) Amendment (Polar Code) Act 2017*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	19 May 2017
2. Schedule 1	The 28th day after this Act receives the Royal Assent.	16 June 2017

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

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

1 Subsection 3(1)

Insert:

areas of ice concentration exceeding 1/10 has the same meaning as in the Polar Code.

category A ship has the same meaning as in the Polar Code.

category B ship has the same meaning as in the Polar Code.

fast ice has the same meaning as in the Polar Code.

ice-shelf has the same meaning as in the Polar Code.

Polar Code means the International Code for Ships Operating in Polar Waters:

(a) adopted by:

- (i) the Maritime Safety Committee of the International Maritime Organization on 21 November 2014; and
- (ii) the Marine Environment Protection Committee of the International Maritime Organization on 15 May 2015; and

(b) as amended and in force for Australia from time to time.

Note: The Polar Code could in 2016 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

2 Paragraph 9(4)(a)

After “area”, insert “and not in Arctic waters”.

3 Paragraph 9(4)(b)

Omit “Antarctic area”, substitute “Antarctic Area”.

13 Subsection 26BC(4)

Before “sewage” (wherever occurring), insert “untreated”.

14 After Division 1 of Part IIIB

Insert:

Division 1A—Discharge of sewage in the Antarctic Area or Arctic waters**26BCA Interpretation**

Unless the contrary intention appears, an expression that is used in this Division and in Annex IV to the Convention (whether or not a particular meaning is given to it by that Annex) has, in this Division, the same meaning as in that Annex.

26BCB Object of Division

The object of this Division is to give effect to Australia’s obligations regarding the discharge of sewage in the Antarctic Area or Arctic waters under Annex IV to the Convention and the Polar Code.

26BCC Prohibition of discharge of sewage*Fault-based offences*

- (1) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the person’s conduct causes a discharge of sewage from a ship in the Antarctic Area; and
 - (c) the person is reckless or negligent as to causing the discharge by that conduct; and
 - (d) the ship is a ship to which Annex IV to the Convention applies; and
 - (e) if the discharge occurs outside the outer limits of the exclusive economic zone adjacent to the coast of the Australian Antarctic Territory—the ship is an Australian ship.

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- (a) the discharge is necessary for the purpose of:
 - (i) securing the safety of the ship and persons on board the ship; or
 - (ii) saving life at sea; or
 - (b) both of the following apply:
 - (i) the discharge results from damage to the ship or its equipment;
 - (ii) all reasonable precautions were taken before and after the occurrence of the damage for the purpose of preventing or minimising the discharge.

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

Exception—discharge of comminuted and disinfected sewage etc.

- (6) Without limiting the generality of subsection (5), subsections (3) and (4) do not apply to the discharge of sewage from a ship if the following conditions are satisfied:
 - (a) the ship is not a category A ship, category B ship or passenger ship constructed on or after 1 January 2017;
 - (b) if the sewage has been comminuted and disinfected using a system approved in accordance with the regulations, or orders made pursuant to the regulations, giving effect to paragraph 1.2 of Regulation 9 of Annex IV to the Convention—the discharge is made when the ship is:
 - (i) as far as practicable from areas of ice concentration exceeding 1/10; and
 - (ii) at a distance of more than 3 nautical miles from the nearest land, any ice-shelf or fast ice;
 - (c) if the sewage has not been comminuted or disinfected using such a system—the discharge is made when the ship is:
 - (i) as far as practicable from areas of ice concentration exceeding 1/10; and
 - (ii) at a distance of more than 12 nautical miles from the nearest land, any ice-shelf or fast ice;
 - (d) if the sewage has been stored in a holding tank or originates from spaces containing living animals—the sewage is not discharged instantaneously but is discharged at a prescribed

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

Exception—discharge of sewage in territorial waters of foreign country

- (9) Without limiting the generality of subsection (5), subsections (3) and (4) do not apply to the discharge of sewage from a ship if the discharge occurs in the territorial waters of a foreign country in accordance with the law of that country.

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 Subsection 26C(2)

Repeal the subsection, substitute:

- (2) In this Division:

sea does not include the Antarctic Area or Arctic waters.

16 At the end of section 26EA

Add “and the Polar Code”.

17 Subsection 26F(6) (heading)

Repeal the heading, substitute:

Exception—discharge of food wastes outside a special area or Arctic waters

18 At the end of paragraph 26F(6)(a)

Add “and not in Arctic waters”.

19 Subsection 26F(7) (heading)

Repeal the heading, substitute:

Exception—discharge of cargo residues outside a special area or Arctic waters

20 At the end of paragraph 26F(7)(a)

Add “and not in Arctic waters”.

21 Subsection 26F(8) (heading)

Repeal the heading, substitute:

Exception—discharge of animal carcasses outside a special area or Arctic waters

22 At the end of paragraph 26F(8)(a)

Add “and not in Arctic waters”.

23 Subsection 26F(8A) (heading)

Repeal the heading, substitute:

Exception—discharge of cleaning agents or additives outside a special area or Arctic waters

24 At the end of paragraph 26F(8A)(a)

Add “and not in Arctic waters”.

25 Subsection 26F(8B) (heading)

Repeal the heading, substitute:

Exception—discharge of food wastes in a special area or Arctic waters

26 At the end of paragraph 26F(8B)(a)

Add “or in Arctic waters”.

27 Paragraph 26F(8B)(f)

Repeal the paragraph, substitute:

- (f) if the discharge occurs when the ship is within a special area other than the Antarctic Area—the discharge occurs when the ship is as far as practicable from, and is at a distance of not less than 12 nautical miles from, the nearest land or nearest ice-shelf;
- (fa) if the discharge occurs when the ship is in the Antarctic Area or Arctic waters—the discharge occurs when the ship is:
 - (i) as far as practicable from the nearest land or areas of ice concentration exceeding 1/10; and

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- (ii) at a distance of not less than 12 nautical miles from the nearest land, nearest ice-shelf or nearest fast ice;
 - (fb) if the discharge occurs when the ship is in the Antarctic Area or Arctic waters—the food wastes are not discharged onto ice;

28 Paragraph 26F(8B)(g)

Omit “area”, substitute “Area”.

29 Subsection 26F(8C) (heading)

Repeal the heading, substitute:

Exceptions—discharge of cargo residues, cleaning agents or additives in a special area or Arctic waters

30 At the end of paragraph 26F(8C)(a)

Add “or in Arctic waters”.

31 Paragraph 26F(8C)(d)

Repeal the paragraph, substitute:

- (d) both the port of departure and the next port of destination are either within the special area or in Arctic waters;

32 Paragraph 26F(8C)(e)

After “area”, insert “or Arctic waters (as the case may be)”.

33 Paragraphs 26F(8C)(f) and (g)

Repeal the paragraphs, substitute:

- (f) if both the port of departure and the next port of destination are within the special area—there are no reception facilities at those ports that comply with guidelines (as in force from time to time) developed by the International Maritime Organization for the purposes of subparagraph 1.2.3 of Regulation 6 of Annex V to the Convention;
- (g) if both the port of departure and the next port of destination are in Arctic waters—there are no reception facilities at those ports that comply with guidelines (as in force from time to time) developed by the International Maritime Organization

