



# **Environment Protection (Sea Dumping) Amendment (Using New Technologies to Fight Climate Change) Act 2023**

**No. 99, 2023**

**An Act to amend the *Environment Protection (Sea Dumping) Act 1981*, 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. 99, 2023**

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**An Act to amend the *Environment Protection (Sea Dumping) Act 1981*, and for related purposes**

[Assented to 27 November 2023]

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Environment Protection (Sea Dumping) Amendment (Using New Technologies to Fight Climate Change) Act 2023*.

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No. 99, 2023

*Environment Protection (Sea Dumping) Amendment (Using New  
Technologies to Fight Climate Change) Act 2023*

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## 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>Provisions</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.	27 November 2023
2. Schedule 1, Part 1	<p>The later of:</p> <p>(a) the day after this Act receives the Royal Assent; and</p> <p>(b) the day on which Australia deposits a declaration on provisional application of the 2009 amendment to Article 6 of the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, in accordance with Resolution LP.5(14) adopted on 11 October 2019 by the Contracting Parties to the Protocol.</p> <p>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister must announce, by notifiable instrument, the day on which Australia deposits a declaration on provisional application of that amendment.</p>	
3. Schedule 1, Part 2	<p>The later of:</p> <p>(a) the day after this Act receives the Royal Assent; and</p> <p>(b) the day on which the amendments to the 1996 Protocol to the Convention on the</p>	

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	<p>Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, being the amendments set out in the Annex to Resolution LP.4(8) adopted on 18 October 2013 by the Contracting Parties to the Protocol, enter into force for Australia.</p> <p>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister must announce, by notifiable instrument, the day on which those amendments enter into force for Australia.</p>	

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

### Part 1—Export of carbon dioxide streams

#### *Environment Protection (Sea Dumping) Act 1981*

##### **1 Subsection 10D(1)**

Repeal the subsection, substitute:

- (1) A person commits an offence against this section if:
  - (a) the person exports controlled material from Australia to another country:
    - (i) knowing that it will be dumped into the sea or incinerated at sea; or
    - (ii) reckless as to whether it will be dumped into the sea or incinerated at sea; and
  - (b) if the controlled material is carbon dioxide streams from carbon dioxide capture processes for sequestration into a sub-seabed geological formation—the export of the material is not in accordance with a permit.

##### **2 After subsection 15(2)**

Insert:

- (2A) Section 10C does not apply in relation to the loading of controlled material on a vessel, aircraft or platform in Australia or Australian waters if:
  - (a) the controlled material is carbon dioxide streams from carbon dioxide capture processes for sequestration into a sub-seabed geological formation; and
  - (b) the loading is for the purpose of the export of the carbon dioxide streams from Australia to another country; and
  - (c) there is a permit in force for that export.

##### **3 After subsection 19(7A)**

Insert:



- (7B) The Minister may grant a permit for the export of controlled material from Australia to another country for dumping if the Minister is satisfied:
- (a) that the controlled material is carbon dioxide streams from carbon dioxide capture processes for sequestration into a sub-seabed geological formation; and
  - (b) of the matters referred to in paragraphs 4.1, 4.2 and 4.3 of Annex 1 to the Protocol; and
  - (c) that there is an agreement or arrangement in force between Australia and the other country that includes the matters covered by paragraphs 2.1 and 2.2 (as appropriate) in the Annex to Resolution LP.3(4) adopted on 30 October 2009 by the Contracting Parties to the Protocol; and
  - (d) that the grant of the permit would be in accordance with Annex 2 to the Protocol; and
  - (e) of any other matters the Minister considers relevant.

#### **4 Application provisions**

- (1) The repeal and substitution of subsection 10D(1) of the *Environment Protection (Sea Dumping) Act 1981* made by this Part applies in relation to the export of controlled material from Australia on or after the commencement of this item.
- (2) Subsection 15(2A) of the *Environment Protection (Sea Dumping) Act 1981*, as inserted by this Part, applies in relation to the loading of controlled material on or after the commencement of this item.
- (3) Subsection 19(7B) of the *Environment Protection (Sea Dumping) Act 1981*, as inserted by this Part, applies in relation to the export of controlled material from Australia on or after the commencement of this item.

## **Part 2—Placement of wastes or other matter into the sea for marine geoengineering activities**

### *Environment Protection (Sea Dumping) Act 1981*

#### **5 Title**

After “incineration at sea”, insert “, placement of wastes or other matter into the sea for marine geoengineering activities,”.

#### **6 Before section 1**

Insert:

## **Part 1—Preliminary**

#### **7 Subsection 4(1) (paragraph (a) of the definition of *controlled material*)**

Omit “(within the meaning of the Protocol)”.

#### **8 Subsection 4(1)**

Insert:

*marine geoengineering activity* mean an activity that:

- (a) is marine geoengineering (within the meaning of Article 1 of the Protocol); and
- (b) is listed in Annex 4 to the Protocol.

#### **9 Subsection 4(1) (after paragraph (a) of the definition of *offending craft*)**

Insert:

- (aa) if the primary offence referred to in section 10F is an offence against section 10AA—any vessel, aircraft or platform from which the placement of the wastes or other matter occurred;
- or

**10 Subsection 4(1) (after paragraph (c) of the definition of *offending craft*)**

Insert:

- (ca) if the primary offence referred to in section 10F is an offence against section 10CA—the vessel, aircraft or platform on which the wastes or other matter was loaded; or

**11 Subsection 4(1) (after paragraph (d) of the definition of *offending craft*)**

Insert:

- (da) if the primary offence referred to in section 10F is an offence against section 10DA—any vessel, aircraft or platform used to export the wastes or other matter; or

**12 Subsection 4(1) (paragraph (f) of the definition of *offending material*)**

Repeal the paragraph, substitute:

- (f) in relation to an offence against section 10F, where the primary offence referred to in that section is an offence against section 10A, 10B, 10C, 10D or 10E—the offending material in relation to that primary offence; or
- (g) in relation to an offence against section 10F, where the primary offence referred to in that section is an offence against section 10AA, 10CA or 10DA—the wastes or other matter covered by section 10AA, 10CA or 10DA.

**13 Subsection 4(1)**

Insert:

*wastes or other matter* has the meaning given by Article 1 of the Protocol.

**14 After paragraph 9(2)(c)**

Insert:

- (ca) placement of wastes or other matter into the sea for a marine geoengineering activity;
  - (cb) loading of wastes or other matter for placement into the sea for a marine geoengineering activity;
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**Schedule 1** Amendments

**Part 2** Placement of wastes or other matter into the sea for marine geoengineering activities

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- (cc) export of wastes or other matter for placement into the sea for a marine geoengineering activity;

**15 Before section 10A**

Insert:

**Part 2—Regulation of dumping into the sea, incineration at sea, placement of wastes or other matter into the sea for marine geoengineering activities, and artificial reef placements**

**Division 1—Offences**

**16 After section 10A**

Insert:

**10AA Placement of wastes or other matter into the sea for marine geoengineering activities**

A person commits an offence against this section if:

- (a) the person:
- (i) places wastes or other matter into Australian waters from any vessel, aircraft or platform; or
  - (ii) places wastes or other matter into any part of the sea from any Australian vessel or Australian aircraft; and
- (b) the placement of the wastes or other matter is for a marine geoengineering activity; and
- (c) the placement of the wastes or other matter for that activity is not in accordance with a permit.

Penalty:

- (a) if it is proved that any of the wastes or other matter is seriously harmful material—imprisonment for up to 10 years or a fine up to 2,000 penalty units, or both; or

- (b) in any other case—imprisonment for 12 months or a fine of 250 penalty units, or both.

## **17 After section 10C**

Insert:

### **10CA Loading for the purpose of placement of wastes or other matter into the sea for marine geoengineering activities**

A person commits an offence against this section if:

- (a) the person loads wastes or other matter:
  - (i) on a vessel, aircraft or platform in Australia or Australian waters; or
  - (ii) on any Australian vessel or Australian aircraft; and
- (b) the person knows that, or is reckless as to whether, the wastes or other matter will be placed into Australian waters, or any other part of the sea, for a marine geoengineering activity; and
- (c) the person knows that, or is reckless as to whether, the placement will not be in accordance with a permit.

Penalty:

- (a) if it is proved that any of the wastes or other matter is seriously harmful material—imprisonment for up to 10 years or a fine up to 2,000 penalty units, or both; or
- (b) in any other case—imprisonment for 12 months or a fine of 250 penalty units, or both.

## **18 After section 10D**

Insert:

### **10DA Export for the purpose of placement of wastes or other matter into the sea for marine geoengineering activities**

A person commits an offence against this section if:

- (a) the person exports wastes or other matter from Australia to another country; and
- (b) the person knows that, or is reckless as to whether, the wastes or other matter will be placed into Australian waters, or any

## Schedule 1 Amendments

### Part 2 Placement of wastes or other matter into the sea for marine geoengineering activities

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other part of the sea, for a marine geoengineering activity;  
and

- (c) the person knows that, or is reckless as to whether, the placement will not be in accordance with a permit.

Penalty:

- (a) if it is proved that any of the wastes or other matter is seriously harmful material—imprisonment for up to 10 years or a fine up to 2,000 penalty units, or both; or
- (b) in any other case—imprisonment for 12 months or a fine of 250 penalty units, or both.

#### **19 Subsection 10F(1)**

Omit “section 10A, 10B, 10C, 10D”, substitute “section 10A, 10AA, 10B, 10C, 10CA, 10D, 10DA”.

#### **20 Subsection 10F(3)**

After “against this section”, insert “, where the primary offence is an offence against section 10A, 10B, 10C, 10D or 10E,”.

#### **21 After subsection 10F(3)**

Insert:

- (3A) An offence against this section, where the primary offence is an offence against section 10AA, 10CA or 10DA, is punishable, on conviction, as follows:
- (a) if it is proved that any of the offending material is seriously harmful material—imprisonment for up to 10 years or a fine up to 2,000 penalty units, or both;
- (b) in any other case—imprisonment for up to 1 year or a fine up to 250 penalty units, or both.

#### **22 Subsection 15(1)**

After “permit”, insert “(within its ordinary meaning)”.

#### **23 After subsection 15(1)**

Insert:

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- (1A) Section 10AA does not apply in relation to the placement of wastes or other matter into waters that are not Australian waters for a marine geoengineering activity if the placement is in accordance with a permit (within its ordinary meaning) granted in accordance with the Protocol by a party to the Protocol (other than Australia).

**24 Subsection 15(2)**

After “permit”, insert “(within its ordinary meaning)”.

**25 Before subsection 15(3)**

Insert:

- (2B) Section 10CA does not apply in relation to loading for the purpose of the placement of wastes or other matter into waters that are not Australian waters for a marine geoengineering activity if that placement will be in accordance with a permit (within its ordinary meaning) granted in accordance with the Protocol by a party to the Protocol (other than Australia).
- (2C) Section 10DA does not apply in relation to exporting for the purpose of the placement of wastes or other matter into waters that are not Australian waters for a marine geoengineering activity if that placement will be in accordance with a permit (within its ordinary meaning) granted in accordance with the Protocol by a party to the Protocol (other than Australia).

**26 Before section 16**

Insert:

**Division 2—Restoration of environment**

**27 Subsection 16(2) (after paragraph (b) of the definition of *regulated occurrence*)**

Insert:

- (ba) the placement of wastes or other matter into Australian waters for a marine geoengineering activity;

**28 Paragraph 17(1)(a)**

After “section 10A,”, insert “10AA,”.

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**Schedule 1** Amendments

**Part 2** Placement of wastes or other matter into the sea for marine geoengineering activities

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**29 Subparagraph 17(1)(b)(i)**

After “section 10A,”, insert “10AA,”.

**30 After subparagraph 17(3)(a)(i)**

Insert:

- (ia) an offence against section 10AA or 36 with respect to the placement of wastes or other matter into Australian waters from the vessel, aircraft or platform; or

**31 Before section 18**

Insert:

**Division 3—Permits**

**32 Subsection 18(4)**

After “an application for a permit for dumping”, insert “, placement of wastes or other matter into Australian waters or any other part of the sea for a marine geoengineering activity,”.

**33 Subsection 18(4)**

After “determine the effect that the proposed dumping”, insert “, placement of wastes or other matter”.

**34 Paragraph 18(4)(a)**

After “proposed dumping”, insert “, placement of wastes or other matter”.

**35 Before subsection 19(8)**

Insert:

- (7C) The Minister may grant a permit for the placement of wastes or other matter into Australian waters from any vessel, aircraft or platform, or into any part of the sea from any Australian vessel or Australian aircraft, for a marine geoengineering activity if the Minister is satisfied:

- (a) that the placement of wastes or other matter for that activity is for scientific research covered by Annex 4 to the Protocol; and
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- (b) that pollution of the marine environment from the placement of wastes or other matter for that activity would, as far as practicable, be prevented or reduced to a minimum; and
- (c) that the placement of wastes or other matter for that activity is not contrary to the aims of the Protocol; and
- (d) that the grant of the permit would be in accordance with Annex 5 to the Protocol, taking into account any Specific Assessment Framework:
  - (i) that is referred to in paragraph 3 of that Annex; and
  - (ii) that has been adopted by the Parties to the Protocol; and
  - (iii) that is in force from time to time; and
- (e) of any other matters the Minister considers relevant.

### **36 Subsection 19(9)**

After “Before granting a permit for dumping”, insert “, placement of wastes or other matter into Australian waters or any other part of the sea for a marine geoengineering activity,”.

### **37 Paragraph 19(9)(a)**

After “permit for dumping”, insert “, placement of wastes or other matter into Australian waters or any other part of the sea for a marine geoengineering activity,”.

### **38 Paragraph 19(9)(a)**

Omit “proposed dumping operation”, substitute “proposed dumping, placement of wastes or other matter”.

### **39 Before section 26**

Insert:

## **Division 4—Enforcement**

### **40 After paragraph 29(2)(a)**

Insert:

- (aaa) any wastes or other matter that is to be placed into Australian waters, or any other part of the sea, for a marine geoengineering activity; or

**Schedule 1** Amendments

**Part 2** Placement of wastes or other matter into the sea for marine geoengineering activities

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**41 After paragraph 30(2)(a)**

Insert:

- (aaa) any wastes or other matter that is to be placed into Australian waters, or any other part of the sea, for a marine geoengineering activity; or

**42 After subparagraph 30(3)(a)(i)**

Insert:

- (iaa) any wastes or other matter that is to be placed into Australian waters, or any other part of the sea, for a marine geoengineering activity; or

**43 After subparagraph 31(1)(b)(ii)**

Insert:

- (ia) the loading on a vessel, aircraft or platform of any wastes or other matter that is to be placed into Australian waters, or any other part of the sea, for a marine geoengineering activity; or
- (iab) the placement of any wastes or other matter into Australian waters, or any other part of the sea, for a marine geoengineering activity; or
- (iic) the export of any wastes or other matter that is to be placed into Australian waters, or any other part of the sea, for a marine geoengineering activity; or

**44 After subparagraph 31(1)(c)(i)**

Insert:

- (ia) any wastes or other matter that is to be placed into Australian waters, or any other part of the sea, for a marine geoengineering activity; or

**45 After subparagraph 31(1)(d)(ii)**

Insert:

- (ia) the loading on a vessel, aircraft or platform of any wastes or other matter that is to be placed into Australian waters, or any other part of the sea, for a marine geoengineering activity; or

- (iib) the placement of any wastes or other matter into Australian waters, or any other part of the sea, for a marine geoengineering activity; or

**46 Paragraph 33(1)(a)**

Omit “section 10A, 10B, 10C, 10D or 10E”, substitute “section 10A, 10AA, 10B, 10C, 10CA, 10D, 10DA or 10E”.

**47 Before section 34**

Insert:

**Part 3—Other matters**

**48 Subsection 37(1)**

Omit “section 10A, 10B, 10C, 10D, 10E or 10F”, substitute “section 10A, 10AA, 10B, 10C, 10CA, 10D, 10DA, 10E or 10F”.

**49 Subsection 37(3)**

Omit “, 10E or 10F”, substitute “or 10E, or an offence against section 10F where the primary offence referred to in section 10F is an offence against section 10A, 10B, 10C, 10D or 10E.”.

**50 After subsection 37(3)**

Insert:

- (3A) The penalty that a court of summary jurisdiction may impose for an offence against section 10AA, 10CA or 10DA, or an offence against section 10F where the primary offence referred to in section 10F is an offence against section 10AA, 10CA or 10DA, is as follows:
- (a) if it is proved that any of the wastes or other matter covered by section 10AA, 10CA or 10DA is seriously harmful material—imprisonment for up to 2 years or a fine up to 240 penalty units, or both;
  - (b) in any other case—imprisonment for up to 6 months or a fine up to 60 penalty units, or both.

## 51 Application provisions

- (1) The amendment of section 9 of the *Environment Protection (Sea Dumping) Act 1981* made by this Part applies in relation to the following:
    - (a) the placement of wastes or other matter into the sea on or after the commencement of this item;
    - (b) the loading of wastes or other matter on or after that commencement;
    - (c) the export of wastes or other matter on or after that commencement.
  - (2) Section 10AA and subsection 15(1A) of the *Environment Protection (Sea Dumping) Act 1981*, as inserted by this Part, apply in relation to the placement of wastes or other matter into Australian waters, or any other part of the sea, on or after the commencement of this item.
  - (3) Section 10CA and subsection 15(2B) of the *Environment Protection (Sea Dumping) Act 1981*, as inserted by this Part, apply in relation to the loading of wastes or other matter on or after the commencement of this item.
  - (4) Section 10DA and subsection 15(2C) of the *Environment Protection (Sea Dumping) Act 1981*, as inserted by this Part, apply in relation to the export of wastes or other matter on or after the commencement of this item.
  - (5) The amendment of section 16 of the *Environment Protection (Sea Dumping) Act 1981* made by this Part applies in relation to the placement of wastes or other matter into Australian waters on or after the commencement of this item.
  - (6) The amendments of sections 18, 19, 29 and 30 of the *Environment Protection (Sea Dumping) Act 1981* made by this Part apply in relation to the placement of wastes or other matter into Australian waters, or any other part of the sea, on or after the commencement of this item.
  - (7) The amendments of sections 31 and 33 of the *Environment Protection (Sea Dumping) Act 1981* made by this Part apply in relation to the following:
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- (a) the placement of wastes or other matter into Australian waters, or any other part of the sea, on or after the commencement of this item;
  - (b) the loading of wastes or other matter on or after that commencement;
  - (c) the export of wastes or other matter on or after that commencement.
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*[Minister's second reading speech made in—  
House of Representatives on 22 June 2023  
Senate on 7 August 2023]*

**(82/23)**

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