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# Transport and Regional Services Legislation Amendment (Maritime Safety) (Application of Criminal Code) Regulations 2001 (No. 1)<sup>1</sup>

Statutory Rules 2001 No. <sup>2</sup>

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I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Navigation Act 1912*, the *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993*, the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* and the *Shipping Registration Act 1981*.

Dated 20 DEC 2001 2001

**PETER HOLLINGWORTH**

Governor-General

By His Excellency's Command

**JOHN ANDERSON**

Minister for Transport and Regional Services

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## 1 Name of Regulations

These Regulations are the *Transport and Regional Services Legislation Amendment (Maritime Safety) (Application of Criminal Code) Regulations 2001 (No. 1)*.

2	<i>Transport and Regional Services Legislation Amendment (Maritime Safety) (Application of Criminal Code) Regulations 2001 (No. 1)</i>	2001, 1	351
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**2 Commencement**

These Regulations commence on gazettal.

**3 Amendment of Navigation (Collision) Regulations**

Schedule 1 amends the Navigation (Collision) Regulations.

**4 Amendment of Navigation (Construction) Regulations**

Schedule 2 amends the Navigation (Construction) Regulations.

**5 Amendment of Navigation (Fire Appliances) Regulations**

Schedule 3 amends the Navigation (Fire Appliances) Regulations.

**6 Amendment of Navigation (Orders) Regulations**

Schedule 4 amends the Navigation (Orders) Regulations.

**7 Amendment of Protection of the Sea (Oil Pollution Compensation Fund) Regulations**

Schedule 5 amends the Protection of the Sea (Oil Pollution Compensation Fund) Regulations.

**8 Amendment of Protection of the Sea (Prevention of Pollution from Ships) (Orders) Regulations**

Schedule 6 amends the Protection of the Sea (Prevention of Pollution from Ships) (Orders) Regulations.

**9 Amendment of Shipping Registration Regulations**

Schedule 7 amends the Shipping Registration Regulations.

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2001, ✓

*Transport and Regional Services Legislation Amendment  
(Maritime Safety) (Application of Criminal Code)  
Regulations 2001 (No. ✓)*

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**Schedule 1      Amendments of Navigation  
(Collision) Regulations**  
(regulation 3)

**[1]      Regulations 1 and 2**

*substitute*

**1      Name of Regulations**

These Regulations are the *Navigation (Collision) Regulations 1982*.

**2      Purpose of Regulations**

These Regulations are made for section 258 of the *Navigation Act 1912*.

**[2]      Regulations 4, 5, 6 and 7**

*substitute*

**4      Measures to be observed for the prevention of collisions**

The measures to be observed for the prevention of collisions are the measures required by Part 30 (Prevention of Collisions) of the Marine Orders.

**5      Lights and signals**

The lights and signals to be provided and used on a ship are the lights and signals required by Part 30 (Prevention of Collisions) of the Marine Orders.

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## 6 Requirements of Orders to be complied with

- (1) A master, mate or other person concerned with the navigation, management or working of a ship is guilty of an offence if he or she fails to comply with any measure required by Part 30 (Prevention of Collisions) of the Marine Orders relating to the prevention of collisions and the provision and use of lights and signals.
- (2) An offence against subregulation (1) is an offence of strict liability.

*Note 1* Subsection 258 (7) of the *Navigation Act 1912* provides:

- (7) A person who is guilty of an offence against the regulations made by virtue of this section is punishable on conviction:
  - (a) if the offender is a natural person—by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 2 years, or both; or
  - (b) if the offender is a body corporate—by a fine not exceeding \$20,000.

*Note 2* For *strict liability*, see section 6.1 of the *Criminal Code*.

## Schedule 2      **Amendments of Navigation (Construction) Regulations**

(regulation 4)

### [1]      **Regulation 1**

*substitute*

#### **1            Name of Regulations**

These Regulations are the *Navigation (Construction) Regulations 1968*.

### [2]      **Regulation 19**

*substitute*

#### **19          Information as to cross-flooding fittings and stability to be carried on ships**

- (1) The master or owner of a ship may take the ship to sea, or permit the ship to be taken to sea, only if there is provided in the ship, for the use of the master, in writing:
  - (a) information as to the use of any cross-flooding fittings provided in the ship; and
  - (b) such information as is necessary for the maintenance of sufficient intact stability under service conditions to enable the ship to withstand damage to the extent specified in the Second Schedule; and
  - (c) in the case of a ship provided with cross-flooding fittings, information as to the conditions of stability on which the calculations of heel have been based, including a warning that excessive

heeling may result if the ship sustains damage under less favourable conditions.

Penalty: 2 penalty units.

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

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

**[3] Regulation 20**

*substitute*

**20 Damage control plans**

- (1) The master or owner of a ship may take the ship to sea, or permit the ship to be taken to sea, only if:
- (a) there are permanently exhibited in the wheelhouse or charthouse plans showing clearly, for each deck and hold, the boundaries of the watertight compartments, the openings in those compartments, the means of closure and the position of any controls of those means of closure and the arrangements for the correction of any list due to flooding; and
  - (b) there are on board, in booklet form, a number at least equal to the number of officers normally carried in the ship of copies of the information referred to in paragraph (a).

Penalty: 2 penalty units.

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

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

**[4] Subregulation 65 (2)***substitute*

- (2) The master or owner of a ship may take the ship to sea, or permit the ship to be taken to sea, only if the ship is marked as required by subregulation (1).

Penalty: 2 penalty units.

- (3) An offence against subregulation (2) is an offence of strict liability.

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

**[5] Subregulation 93 (2)***substitute*

- (2) The master or owner of a ship may take the ship to sea, or permit the ship to be taken to sea, only if instructions are displayed in the ship as required by subregulation (1).

Penalty: 2 penalty units.

- (3) An offence against subregulation (2) is an offence of strict liability.

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

**[6] Subregulation 97 (2)***substitute*

- (2) The master or owner of a ship may take the ship to sea, or permit the ship to be taken to sea, only if index plates and indicators are fitted in the ship as required by subregulation (1).

Penalty: 2 penalty units.



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- (3) An offence against subregulation (2) is an offence of strict liability.

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

**[7] Regulation 124**

*substitute*

**124 Spare parts and tools**

- (1) The master or owner of a ship may take the ship to sea, or permit the ship to be taken to sea, only if:
- (a) there is on board an adequate supply of replacements for those parts of the ship's electrical equipment and installations which are essential for the safety of the ship and persons on board the ship; and
  - (b) there is on board such tools as are necessary for the fitting of those replacements.

Penalty: 2 penalty units.

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

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

**[8] Regulation 248***substitute***248 Stores etc**

- (1) The master or owner of a ship may take the ship to sea, or permit the ship to be taken to sea, only if there is on board the ship such stores, spare gear and tools as are sufficient, having regard to the intended service of the ship, to enable running repairs to the boilers and machinery of the ship to be made while the ship is at sea.

Penalty: 2 penalty units.

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

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

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**Schedule 3      Amendments of Navigation  
(Fire Appliances) Regulations**  
(regulation 5)

**[1]      Regulation 1**

*substitute*

**1            Name of Regulations**

These Regulations are the *Navigation (Fire Appliances) Regulations 1968*.

**[2]      Regulation 9**

*omit*

The master of a ship shall

*insert*

(1) The master of a ship must

**[3]      Regulation 9, penalty**

*substitute*

Penalty: 1 penalty unit.

**[4]      Regulation 9**

*after the penalty, insert*

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

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

**[5] Regulation 10***omit*

The master of a ship shall

*insert*

- (1) The master of a ship must

**[6] Regulation 10, penalty***substitute*

Penalty: 1 penalty unit.

**[7] Regulation 10***after the penalty, insert*

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

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

**[8] Subregulation 46 (1)***substitute*

- (1) The master of a ship must not permit the use of a fire pump to pump oil.

Penalty: 1 penalty unit.

- (1A) An offence against subregulation (1) is an offence of strict liability.

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

**[9] Subregulation 46 (3)***substitute*

- (3) The master of a ship in which a sanitary, ballast, bilge or general service pump is counted as a fire pump in accordance with regulation 45 must ensure that that pump is readily available for fire-fighting purposes at all times when not pumping oil.

Penalty: 1 penalty unit.

- (4) An offence against subregulation (3) is an offence of strict liability.

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

**[10] Subregulation 55 (2)***substitute*

- (2) The master of a ship must not use, or permit the use of, any hose that is required by these Regulations to be furnished in the ship, for any purpose other than extinguishing fire, testing fire appliances or fire drill.

Penalty: 1 penalty unit.

- (3) An offence against subregulation (2) is an offence of strict liability.

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

**[11] Regulation 57***omit*

The master

*insert*

- (1) The master

**[12] Regulation 57**

*omit each mention of*

shall

*insert*

must

**[13] Regulation 57, penalty**

*substitute*

Penalty: 1 penalty unit.

**[14] Regulation 57**

*after the penalty, insert*

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

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

**[15] Regulation 65**

*omit*

A master of a ship shall,

*insert*

- (1) A master of a ship must,

**[16] Regulation 65, penalty**

*substitute*

Penalty: 1 penalty unit.

**[17] Regulation 65**

*after the penalty, insert*

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

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

**[18] Regulation 67**

*omit*

Where a fire extinguisher,

*insert*

- (1) If a fire extinguisher,

**[19] Regulation 67**

*omit*

shall

*insert*

must

**[20] Regulation 67, penalty**

*substitute*

Penalty: 1 penalty unit.

**[21] Regulation 67**

*after the penalty, insert*

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

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

**[22] Regulation 68***substitute***68 Unsatisfactory fire extinguishers not permitted on ship**

- (1) If a fire extinguisher does not withstand the pressure applied during the test referred to in subregulation 66 (1), the master must not permit the fire extinguisher to be on the ship.

Penalty: 1 penalty unit.

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

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



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## Schedule 4      Amendments of Navigation (Orders) Regulations

(regulation 6)

[1]      **Regulation 1**  
*substitute*

**1            Name of Regulations**

These Regulations are the *Navigation (Orders) Regulations 1980*.

[2]      **Regulation 4**  
*substitute*

**4            Offences**

- (1) A person who fails to comply with a provision of an order made under subsection 425 (1AA) of the Act that is expressed to be a penal provision is guilty of an offence and is punishable by:
- (a) if the offender is an individual — a fine not exceeding 20 penalty units; or
  - (b) if the offender is a body corporate — a fine not exceeding 50 penalty units.
- (2) An offence against subregulation (1) is an offence of strict liability.

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

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## Schedule 5      Amendments of Protection of the Sea (Oil Pollution Compensation Fund) Regulations

(regulation 7)

### [1]      Regulation 1

*substitute*

#### 1      Name of Regulations

These Regulations are the *Protection of the Sea (Oil Pollution Compensation Fund) Regulations 1994*.

### [2]      Subregulation 23 (1), at the foot

*insert*

Penalty: 10 penalty units.

### [3]      After subregulation 23 (3), including the penalty

*insert*

- (4) For subregulation (1), strict liability applies to whether regulation 22 applies to a person, and whether the form of a return is in accordance with the requirements of the form in the Schedule.

*Note* Section 9.4 of the *Criminal Code* provides that a person can be criminally responsible for an offence even if the person was mistaken about, or ignorant of, the existence or content of subordinate legislation.

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**[4] After subregulation 24 (2), including the penalty**

*insert*

- (3) An offence against subregulation (2) is an offence of strict liability.

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

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## Schedule 6      Amendments of Protection of the Sea (Prevention of Pollution from Ships) (Orders) Regulations

(regulation 8)

### [1]      Regulation 1

*substitute*

#### 1      Name of Regulations

These Regulations are the *Protection of the Sea (Prevention of Pollution from Ships) (Orders) Regulations 1994*.

### [2]      Regulation 4

*substitute*

#### 4      Offences

- (1) A person must not fail to comply with a provision of an order, made under subsection 34 (1) of the Act, that is expressed to be a penal provision.

Penalty:

- (a) 20 penalty units; or  
(b) if the person is a corporation — 50 penalty units.
- (2) An offence against subregulation (1) is an offence of strict liability.

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

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## Schedule 7      Amendments of Shipping Registration Regulations

(regulation 9)

### [1]      Regulation 1

*substitute*

#### 1      Name of Regulations

These Regulations are the *Shipping Registration Regulations 1981*.

### [2]      Subregulation 13 (1)

*omit*

shall not:

*insert*

may:

### [3]      Subregulation 13 (1)

*omit*

unless

*insert*

only if

### [4]      Subregulation 13 (2)

*substitute*

(2) If a ship departs from a port and fails to comply with subregulation (1), the owner and master of the ship are each guilty of an offence.

Penalty: 5 penalty units.

- (2A) An offence against subregulation (2) is an offence of strict liability.

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

**[5] Subregulation 14 (7)**

*substitute*

- (7) A person who fails to comply with subregulation (4) or (5) is guilty of an offence.

Penalty: 5 penalty units.

- (8) An offence against subregulation (7) is an offence of strict liability.

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

- (9) It is a defence to a prosecution under subregulation (7) that the defendant had a reasonable excuse.

*Note* A defendant bears an evidential burden in relation to whether or not he or she had a reasonable excuse for his or her conduct (see subsection 13.3 (3) of the *Criminal Code*).

**[6] Subregulation 15 (5)**

*substitute*

- (5) A person who fails to comply with subregulation (4) is guilty of an offence.

Penalty: 5 penalty units.

- (6) An offence against subregulation (5) is an offence of strict liability.

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

- (7) It is a defence to a prosecution under subregulation (5) that the defendant had a reasonable excuse.

*Note* A defendant bears an evidential burden in relation to whether or not he or she had a reasonable excuse for his or her conduct (see subsection 13.3 (3) of the *Criminal Code*).

**[7] Subregulation 17 (9)***substitute*

- (9) A person who fails to comply with subregulation (7) or (8) is guilty of an offence.

Penalty: 5 penalty units.

- (10) An offence against subregulation (9) is an offence of strict liability.

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

- (11) It is a defence to a prosecution under subregulation (9) that the defendant had a reasonable excuse.

*Note* A defendant bears an evidential burden in relation to whether or not he or she had a reasonable excuse for his or her conduct (see subsection 13.3 (3) of the *Criminal Code*).

**[8] Subregulation 19 (1), penalty***substitute*

Penalty: 5 penalty units.

**[9] Subregulation 19 (2), penalty***substitute*

Penalty: 5 penalty units.

**[10] After subregulation 19 (2), including the penalty***insert*

- (2A) An offence against subregulation (1) or (2) is an offence of strict liability.

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

**[11] Subregulation 35 (4B)***substitute*

(4B) A registered agent of a ship who fails to comply with subregulation (4A) is guilty of an offence.

Penalty: 5 penalty units.

(4C) An offence against subregulation (4B) is an offence of strict liability.

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

(4D) It is a defence to a prosecution under subregulation (4B) that the defendant had a reasonable excuse.

*Note* A defendant bears an evidential burden in relation to whether or not he or she had a reasonable excuse for his or her conduct (see subsection 13.3 (3) of the *Criminal Code*).



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**Notes**

1. These Regulations amend (in Schedule 1) Statutory Rules 1982 No. 304.  
 These Regulations also amend (in Schedule 2) Statutory Rules 1968 No. 25, as amended by 1968 No. 127; 1970 No. 177; 1974 No. 239; 1976 No. 274; 1977 Nos. 226 and 263; 1979 No. 190; 1983 No. 276; 1984 No. 210; 1985 No. 250; 1987 No. 231; 1990 No. 316; 1991 No. 373.  
 These Regulations also amend (in Schedule 3) Statutory Rules 1968 No. 31, as amended by 1970 No. 176; 1975 No. 147; 1978 No. 159; 1983 No. 277; 1991 No. 376.  
 These Regulations also amend (in Schedule 4) Statutory Rules 1980 No. 135, as amended by Statutory Rules 1980 No. 345; 1981 Nos. 3, 379 and 380; 1982 Nos. 180 and 399; 1983 No. 156; 1985 No. 28; 1986 Nos. 335, 336, 387 and 400; 1990 No. 107; 1991 Nos. 335 and 429.  
 These Regulations also amend (in Schedule 5) Statutory Rules 1994 No. 126, as amended by 1996 No. 221; 1998 No. 87.  
 These Regulations also amend (in Schedule 6) Statutory Rules 1994 No. 468.  
 These Regulations also amend (in Schedule 7) Statutory Rules 1981 No. 363, as amended by 1982 No. 181; 1983 No. 211; 1984 No. 273; 1985 No. 262; 1986 Nos. 267 and 268; 1987 No. 234; 1988 No. 237; 1989 No. 384; 1990 No. 313; 1991 No. 430; 1993 No. 286; 1994 No. 92.

2. Notified in the *Commonwealth of Australia Gazette* on *L* 2001. *21 December*