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Environment and Heritage Legislation Amendment (Application of Criminal Code) Regulations 2002 (No. 1)'

Statutory Rules 2002 No. 1²

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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 *Antarctic Marine Living Resources Conservation Act 1981*, the *Antarctic Treaty (Environment Protection) Act 1980*, the *Great Barrier Reef Marine Park Act 1975*, the *Historic Shipwrecks Act 1976* and the *Ozone Protection Act 1989*.

Dated 14 FEB 2002 2002

PETER HOLLINGWORTH

Governor-General

By His Excellency's Command

DAVID KEMP
Minister for the Environment and Heritage

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2 *Environment and Heritage Legislation Amendment (Application of Criminal Code) Regulations 2002 (No. 1)* 2002, / 8
1

1 Name of Regulations

These Regulations are the *Environment and Heritage Legislation Amendment (Application of Criminal Code) Regulations 2002 (No. 1)*.

2 Commencement

These Regulations commence on gazettal.

3 Amendment of Antarctic Marine Living Resources Conservation Regulations

Schedule 1 amends the Antarctic Marine Living Resources Conservation Regulations.

4 Amendment of Antarctic Seals Conservation Regulations

Schedule 2 amends the Antarctic Seals Conservation Regulations.

5 Amendment of Antarctic Treaty (Environment Protection) (Environmental Impact Assessment) Regulations

Schedule 3 amends the Antarctic Treaty (Environment Protection) (Environmental Impact Assessment) Regulations.

6 Amendment of Antarctic Treaty (Environment Protection) (Waste Management) Regulations

Schedule 4 amends the Antarctic Treaty (Environment Protection) (Waste Management) Regulations.

**Schedule 1 Amendments of Antarctic
Marine Living Resources
Conservation Regulations**
(regulation 3)

[1] Regulation 1

substitute

1 Name of Regulations

These Regulations are the *Antarctic Marine Living Resources Conservation Regulations 1994*.

[2] Subregulation 11 (1)

omit

knowingly or recklessly

[3] Subregulation 11 (2)

omit everything before paragraph (a), insert

(2) However, it is a defence to a prosecution under subregulation (1) if the person:

[4] Subregulation 11 (2), at the foot

insert

Note A defendant bears an evidential burden in relation to the matters mentioned in paragraphs 2 (a), (b) and (c) (see section 13.3 of the *Criminal Code*).

[5] Paragraphs 11 (3) (a) to (c)*omit*

without reasonable excuse,

insert

unless he or she has a reasonable excuse,

[6] Subregulation 11 (3), after the penalty*insert*

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

[7] Subregulation 11 (4)*substitute*

- (4) A person who holds a permit, or an individual identified in a permit as an individual under the permit holder's control, must not engage in conduct that contravenes a condition of the permit.

Penalty: 10 penalty units.

Schedule 2 Amendments of Antarctic Seals Conservation Regulations

(regulation 4)

[1] Regulation 1

substitute

1 Name of Regulations

These Regulations are the *Antarctic Seals Conservation Regulations 1986*.

[2] Subregulations 11 (1) to (5)

substitute

(1) A person who:

- (a) is an Australian citizen; or
- (b) is the master, a member of the crew, or a passenger, on a vessel that is Australian property; must not take, or engage in conduct that results in the death of, a seal of a prescribed species in the Convention area.

Penalty: 20 penalty units or imprisonment for 12 months, or both.

(2) A person must not take, or engage in conduct that results in the death of, a seal that is:

- (a) in the Convention area; and
- (b) not a seal of a prescribed species.

Penalty: 20 penalty units.

- (3) A person must not take, or engage in conduct that results in the death of, a seal that is in a part of the Antarctic that is not in the Convention area.

Penalty: 20 penalty units.

- (4) A person must not, in the Antarctic:
- (a) engage in conduct that results in injury to a seal; or
 - (b) use an aircraft, vehicle or vessel in a manner that causes disturbance to a concentration of seals; or
 - (c) use an explosive in a manner that causes disturbance to a concentration of seals; or
 - (d) use a firearm in a manner that causes disturbance to a concentration of seals; or
 - (e) while on foot, engage in conduct that causes disturbance to a concentration of seals; or
 - (f) engage in conduct that results in a significant adverse modification of the habitat of a species, or population, of seals.

Penalty: 10 penalty units.

- (5) However:
- (a) it is a defence to a prosecution under subregulation (1) if the person is acting in accordance with a permit; and
 - (b) it is a defence to a prosecution under subregulation (2), (3) or (4) if the person is acting in accordance with:
 - (i) a permit; or
 - (ii) a recognised foreign authority; and
 - (c) it is a defence to a prosecution under subregulation (1), (2), (3) or (4) if the action is taken in an emergency with the intention of:
 - (i) saving a person from death or serious injury; or

-
- (ii) securing the safety of a vessel or aircraft or the safety of equipment or facilities of high value; or
 - (iii) protecting the environment; and
 - (d) it is a defence to a prosecution under subregulation (4), in relation to action of a kind mentioned in paragraph (4) (b), (c) or (e), if the action is reasonably necessary to establish, supply or maintain a station.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (5) (see section 13.3 of the *Criminal Code*).

[3] Paragraph 11 (5A) (a)

omit

for the purpose

insert

with the intention

[4] After subregulation 11 (5B), including the penalty

insert

- (5C) An offence under subregulation (5A) or (5B) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 A defendant bears an evidential burden in relation to whether or not he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

Schedule 3 Amendments of Antarctic Treaty (Environment Protection) (Environmental Impact Assessment) Regulations
(regulation 5)

[1] Regulation 1
substitute

1 Name of Regulations

These Regulations are the *Antarctic Treaty (Environment Protection) (Environmental Impact Assessment) Regulations 1993*.

[2] After subregulation 5 (2), including the penalty
insert

- (3) An offence under subregulation (1) or (2) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 A defendant bears an evidential burden in relation to whether or not he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

Schedule 4 Amendments of Antarctic Treaty (Environment Protection) (Waste Management) Regulations

(regulation 6)

[1] Regulation 1

substitute

1 Name of Regulations

These Regulations are the *Antarctic Treaty
(Environment Protection) (Waste Management)
Regulations 1994*.

[2] Regulation 5

omit

A

insert

(1) A

[3] Regulation 5

after the penalty, insert

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

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

[4] Regulation 6*omit*

The

insert

(1) The

[5] Paragraph 6 (f)*omit*

except

insert

that is not

[6] Regulation 6*after the penalty, insert*

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

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

[7] Regulation 7*substitute***7 Solid, non-combustible waste**

(1) The generator of solid non-combustible waste must remove the waste if:

- (a) the Minister has authorised the removal of the waste under Part 3 of the Act; or
- (b) Part 3 of the Act does not apply to the removal of the waste.

Penalty: 20 penalty units.

Example of solid non-combustible waste

A fuel drum that is no longer needed.

Note It is an offence under section 21A of the Act to carry on an activity to which Part 3 of the Act applies in the Antarctic without the authorisation of the Minister under that Part.

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

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

[8] Regulation 8

omit

The

insert

- (1) The

[9] Regulation 8

after the penalty, insert

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

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

[10] Regulation 9

omit

The

insert

- (1) The

[11] Regulation 9

after the penalty, insert

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

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

[12] Regulation 11*omit*

The

insert

(1) The

[13] Regulation 11*after the penalty, insert*

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

Note For *strict liability*, see section 6.1 of the *Criminal Code*.**[14] After subregulation 12 (2), including the penalty***insert*

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

Note For *strict liability*, see section 6.1 of the *Criminal Code*.**[15] Regulation 13***substitute***13 Prohibition on open burning of waste**

(1) A person must not burn waste in an open fire.

Penalty: 20 penalty units.

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

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

[16] **Regulations 14 and 15**

substitute

14 Prohibition on disposal of waste in ice-free areas or fresh water

- (1) A person must not dispose of waste onto an ice-free area or into a fresh water system.

Penalty: 20 penalty units.

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

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

15 Conditional prohibition on disposal of waste on ice

- (1) Subject to regulation 16 and subregulation 18 (2), a person must not dispose of waste onto sea ice or glacier ice.

Penalty: 20 penalty units.

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

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

[17] **Regulation 17**

substitute

17 When sewage or domestic waste may be disposed of into sea

- (1) If this regulation applies, a person must not dispose of sewage or domestic waste directly into the sea.

Penalty: 20 penalty units.

-
- (2) However, it is a defence to a prosecution under subregulation (1) if:
- (a) for sewage or waste that is generated at a station with an average weekly occupancy of at least 30 people over the austral summer — the sewage or waste is macerated before disposal; and
 - (b) all reasonable steps are taken to discharge the sewage or waste into the sea at a place where conditions exist for initial dilution and rapid dispersal of the sewage or waste.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (2) (see section 13.3 of the *Criminal Code*).

- (3) This regulation does not apply to the disposal of sewage from a ship.

Note It is an offence under the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* to discharge sewage into the sea from a ship (see sections 26BC and 26D of that Act).

[18] Subregulations 19 (1) and (2)

substitute

- (1) Subject to subregulation (3), a person who uses a waste disposal site or work site in the Antarctic and abandons it must clean up the site if:
- (a) the Minister has authorised the cleaning up of the site under Part 3 of the Act; or
 - (b) Part 3 of the Act does not apply to the cleaning up of the site;

to the extent that the cleaning up of the site does not involve taking from the site a structure that has been designated as a historic site or monument.

Note It is an offence under section 21A of the Act to carry on an activity to which Part 3 of the Act applies in the Antarctic without the authorisation of the Minister under that Part.

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

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

[19] Subregulation 19 (3), at the foot

insert

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (3) (see section 13.3 of the *Criminal Code*).

[20] After subregulation 21 (2), including the penalty

insert

- (3) An offence under subregulation (1) or (2) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 A defendant bears an evidential burden in relation to whether or not he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

Schedule 5 **Amendments of *Great Barrier Reef Marine Park (Aquaculture) Regulations 2000***
(regulation 7)

[1] After subregulation 9 (2), including the penalty

insert

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

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

[2] After subregulation 14 (3), including the penalty

insert

(3A) An offence under subregulation (3) is an offence of strict liability.

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

Schedule 6 **Amendments of *Great Barrier Reef Marine Park Regulations 1983***

(regulation 8)

[1] **Subregulations 38 (1) to (3)**

substitute

(1) A person must not use:

- (a) an underwater breathing apparatus that is not a snorkel; or
 - (b) a power-head;
- for spearfishing in an unzoned area.

Penalty: 10 penalty units.

(2) However, it is a defence to a prosecution under subregulation (1) if:

- (a) the person uses a power-head with the intention of protecting himself or herself, or any other person, from attack by a shark; or
- (b) the person uses the underwater breathing apparatus or power-head:
 - (i) for scientific research; and
 - (ii) in accordance with the written permission of the Authority, given for the purposes of this regulation.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (2) (see section 13.3 of the *Criminal Code*).

[2] Subregulation 40 (1)

substitute

- (1) A person must not take, or have in his or her possession, a fish of a species listed in Schedule 5 that is more than 1 200 millimetres in length.

Penalty: 10 penalty units.

- (1A) However, it is a defence to a prosecution under subregulation (1) if the person is acting in accordance with the written permission of the Authority.

Note A defendant bears an evidential burden in relation to whether or not he or she was acting in accordance with the written permission of the Authority (see section 13.3 of the *Criminal Code*).

- (1B) An offence under subregulation (1) is an offence of strict liability.

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

[3] Subregulation 40 (3)

substitute

- (3) In this regulation:

take, in relation to a fish, means:

- (a) gather, catch, capture or obtain the fish by any means; or
(b) engage in conduct that results in the death or destruction of the fish.

[4] Subregulation 41 (2)

omit everything before subparagraph (a) (i), insert

- (2) However, it is a defence to a prosecution under this regulation in relation to a tender commercial fishing vessel if the vessel:

- (a) is engaged in:

[5] Paragraph 41 (2) (b)

omit

that

[6] After subregulation 41 (4), including the penalty

insert

- (5) An offence under subregulation (4) is an offence of strict liability.

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

[7] Regulation 41A

substitute

41A Certain animals not to be taken onto Commonwealth islands

- (1) A person must not:
- (a) take a living terrestrial animal onto an island, or part of an island, that is:
 - (i) owned by the Commonwealth; and
 - (ii) within the Marine Park; or
 - (b) allow a living terrestrial animal to enter upon an island, or part of an island, that is:
 - (i) owned by the Commonwealth; and
 - (ii) within the Marine Park.

Penalty: 10 penalty units.

- (2) However, it is a defence to a prosecution under subregulation (1) if:
- (a) the person is a blind person and the animal is the person's guide dog; or
 - (b) the person has the written permission of the Authority to take the animal onto, or allow the animal to enter upon, the island or part of an island.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (2) (see section 13.3 of the *Criminal Code*).

[8] Subregulation 45A (2)

omit everything before paragraph (a), insert

- (2) However, it is a defence to a prosecution under subregulation (1) if the sewage is discharged:

[9] Regulation 46

substitute

46 Littering prohibited

- (1) A person must not deposit litter in the Marine Park.

Penalty: 2 penalty units.

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

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

[10] Regulation 48

substitute

48 Authority moorings

- (1) A person must not remove or misuse, or engage in conduct that results in damage to, a mooring installed in the Marine Park by the Authority.

Penalty: 10 penalty units.

- (2) However, it is a defence to a prosecution under subregulation (1) if the person has a reasonable excuse.

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

- (3) An offence under subregulation (1) is an offence of strict liability.

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

[11] After subregulation 84 (2), including the penalty

insert

- (3) For the purposes of an offence under subregulation (2), strict liability applies to the physical element of whether, if the receipt or ticket is being used as evidence, the evidence is evidence for regulation 83.

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

[12] Subregulation 106 (1), at the foot

insert

Penalty: 10 penalty units.

[13] Subregulation 106 (2), at the foot

insert

Penalty: 10 penalty units.

[14] Subregulation 106 (3), at the foot

insert

Penalty: 10 penalty units.

[15] Subregulation 106 (4)

omit

for the purpose of

insert

to enable

[16] After subregulation 106 (4), including the penalty*insert*

- (5) An offence under subregulation (1), (2), (3) or (4) is an offence of strict liability.

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

[17] After subregulation 110 (1), including the penalty*insert*

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

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

[18] Subregulation 113 (1)*substitute*

- (1) A person must not contravene a provision of Part 2 of the Plan.

Penalty: 10 penalty units.

[19] Subregulation 113 (2), at the foot*insert*

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

[20] Subregulation 113 (3)*substitute*

- (3) It is a defence to a prosecution under subregulation (1) if the person is acting in accordance with an authorisation or as permitted by subregulation 29 (3).

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (3) (see section 13.3 of the *Criminal Code*).

[21] Subregulation 117 (1)*substitute*

- (1) A person must not contravene a provision of Part 2 of the Plan.

Penalty: 10 penalty units

[22] Subregulation 117 (2), at the foot*insert*

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

[23] Subregulation 117 (3)*substitute*

- (3) It is a defence to a prosecution under subregulation (1) if the person is acting in accordance with an authorisation or as permitted by subregulation 29 (3).

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (3) (see section 13.3 of the *Criminal Code*).

Schedule 7 Amendments of Historic Shipwrecks Regulations

(regulation 9)

[1] Regulation 1

substitute

1 Name of Regulations

These Regulations are the *Historic Shipwrecks Regulations 1978*.

[2] Paragraph 4 (1) (a)

omit

for the purpose of

insert

for

[3] Paragraph 4 (1) (a)

omit

damage or interfere with

insert

cause damage to, or interference with,

[4] Paragraph 4 (1) (e)

omit

zone;

insert

zone.

[5] Subregulation 4 (1)*omit*

except in accordance with a permit granted under subsection 15 (1) of the Act.

[6] Subregulation 4 (1), at the foot*insert*

Penalty: 10 penalty units, or imprisonment for 1 year, or both.

[7] Subregulation 4 (2)*substitute*

(2) However, it is a defence to a prosecution under subregulation (1) if the person:

- (a) is acting in accordance with a permit granted under subsection 15 (1) of the Act; or
- (b) has a reasonable excuse.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (2) (see section 13.3 of the *Criminal Code*).

Schedule 8 **Amendment of *Ozone Protection Regulations 1995***

(regulation 10)

[1] After subregulation 5 (2), including the penalty

insert

- (3) An offence under subregulation (1) or (2) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 Section 65 of the Act (which relates to the conduct of directors, servants and agents) applies to offences under these Regulations (see subsection 65 (9) of the Act).

Notes

1. These Regulations amend (in Schedule 1) Statutory Rules 1994 No. 345, as amended by 1997 No. 6; 1998 No. 40.

These Regulations also amend (in Schedule 2) Statutory Rules 1986 No. 398, as amended by 1993 No. 289.

These Regulations also amend (in Schedule 3) Statutory Rules 1993 No. 115.

These Regulations also amend (in Schedule 4) Statutory Rules 1994 No. 36, as amended by 1998 No. 231.

These Regulations also amend (in Schedule 5) Statutory Rules 2000 No. 6.

These Regulations also amend (in Schedule 6) Statutory Rules 1983 No. 262, as amended by 1985 No. 169; 1986 No. 1; 1987 No. 247; 1988 No. 185; 1989 Nos. 269, 367 and 368; 1990 Nos. 9 and 35; 1991 Nos. 63, 257 and 296; 1992 No. 69; 1993 Nos. 188, 206 and 266; 1996 No. 277; 1997 Nos. 96 and 326; 1999 No. 252; 2000 No. 5; Act No. 137, 2000; Statutory Rules 2001 Nos. 12, 178, 197 and 307.

These Regulations also amend (in Schedule 7) Statutory Rules 1978 No. 93, as amended by 1979 No. 124; 1980 No. 391; 1983 No. 24; 1990 No. 115.

These Regulations also amend (in Schedule 8) Statutory Rules 1995 No. 389, as amended by 1999 No. 73.

2. Notified in the *Commonwealth of Australia Gazette* on *L* 2002. *21 February*