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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Maritime Legislation Amendment
(Prevention of Pollution from Ships) Bill
2006**

No. , 2006

(Transport and Regional Services)

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

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1 **A Bill for an Act to amend the *Protection of the Sea***
2 ***(Prevention of Pollution from Ships) Act 1983, and***
3 **for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Maritime Legislation Amendment*
7 *(Prevention of Pollution from Ships) Act 2006.*

8 **2 Commencement**

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

13

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedules 1 and 2	The later of: (a) 1 January 2007; and (b) the day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by both Houses of the Parliament and assented to. It will not be
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule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

1
2 **Schedule 1—Amendments dealing with**
3 **prevention of pollution by oil**
4

5 *Navigation Act 1912*

6 **1 Subsection 266(1) (definition of *ship construction***
7 ***certificate*)**

8 Omit “Regulation 6”, substitute “Regulation 8”.

9 **2 Subsection 267(2)**

10 Omit “Regulations 13 to 19 (inclusive) and 22 to 25 (inclusive)”,
11 substitute “Regulations 12, 13, 14, 16, 18, 24, 25, 26, 28, 29, 30, 31, 32,
12 33, 34 and 35”.

13 **3 Subsection 267(3)**

14 Omit “subsection 267A(1)”, substitute “section 267A”.

15 **4 Section 267A**

16 Repeal the section, substitute:

17 **267A Regulations to give effect to certain Regulations of Annex I**

18 The regulations may make provision for and in relation to giving
19 effect to Regulations 12, 13, 14, 16, 18, 24, 25, 26, 28, 29, 30, 31,
20 32, 33, 34 and 35 of Annex I.

21 **5 Transitional provision**

22 If a ship construction certificate issued in respect of an Australian ship
23 was in force under section 267B of the *Navigation Act 1912*
24 immediately before the commencement of this item, the certificate:

- 25 (a) is taken to be a certificate issued in respect of that ship under
26 that section immediately after that commencement; and
27 (b) remains in force until it expires, unless it is cancelled or
28 ceases to have effect sooner.

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

1 **6 Subparagraphs 9(1)(c)(i) and (1B)(b)(i)**

2 Omit “Regulations 9 and 11”, substitute “Regulations 4, 15 and 34”.

3 **7 Subsection 12(5)**

4 Omit “make, without delay, appropriate entries in, or cause appropriate
5 entries to be made, without delay, in,”, substitute “cause appropriate
6 entries to be made without delay in”.

7 **8 Paragraph 12(6)(b)**

8 Repeal the paragraph, substitute:

9 (b) must be signed by the officer in charge of the prescribed
10 operation or prescribed occurrence.

1
2 **Schedule 2—Amendments dealing with**
3 **prevention of pollution by noxious**
4 **substances**
5

6 *Navigation Act 1912*

7 **1 Subsection 267N(2)**

8 Omit “13”, substitute “11”.

9 **2 Subsection 267N(3)**

10 Omit “subsection 267P(1)”, substitute “section 267P”.

11 **3 Section 267P**

12 Repeal the section, substitute:

13 **267P Regulations to give effect to regulation 11 of Annex II**

14 The regulations may make provision for and in relation to giving
15 effect to regulation 11 of Annex II.

16 **4 Subsection 267V(1)**

17 Omit “substance that, for the purposes of Part III of the *Protection of*
18 *the Sea (Prevention of Pollution from Ships) Act 1983*, is a substance in
19 Category A, B, C or D”, substitute “liquid substance”.

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

22 **5 Subsection 3(1)**

23 Insert:

24 *approved form* means a form approved by the Authority under
25 section 3A.

26 **6 After section 3**

27 Insert:

1 **3A Authority may approve form**

2 (1) The Authority may, in writing, approve a form for the purposes of
3 a provision of this Act.

4 (2) An approval made under subsection (1) is not a legislative
5 instrument.

6 **7 Subsection 15(1) (definition of *liquid substance*)**

7 Repeal the definition.

8 **8 Subsection 15(1)**

9 Insert:

10 *Procedures and Arrangements Manual* means a manual that:

- 11 (a) contains the matters set out in appendix 4 of Annex II; and
12 (b) is in accordance with the approved form.

13 **9 Sections 17, 18, 19 and 20**

14 Repeal the sections, substitute:

15 **17 Prohibition of carriage of substances that have not been**
16 **categorized or provisionally assessed**

17 (1) A person commits an offence if:

- 18 (a) the person engages in conduct; and
19 (b) the conduct results in a liquid substance, or a mixture
20 containing a liquid substance, being carried as cargo or part
21 cargo in bulk on an Australian ship; and
22 (c) the person is negligent as to causing that result; and
23 (d) the substance has not been categorized in accordance with
24 regulation 6.1 of Annex II; and
25 (e) the substance has not been provisionally assessed in
26 accordance with regulation 6.3 of Annex II; and
27 (f) the substance is being carried while one of the following
28 subparagraphs applies:
29 (i) the ship is in the sea near a State, the Jervis Bay
30 Territory or an external Territory and there is no law of
31 that State or Territory that makes provision giving effect
32 to regulation 13.1.3 of Annex II in relation to that sea;

- 1 (ii) the ship is in the exclusive economic zone;
2 (iii) the ship is beyond the exclusive economic zone.

3 Penalty: 200 penalty units.

- 4 (2) The master and the owner of an Australian ship each commit an
5 offence if:
6 (a) a liquid substance, or a mixture containing a liquid substance,
7 is carried as cargo or part cargo in bulk on the ship; and
8 (b) the substance has not been categorized in accordance with
9 regulation 6.1 of Annex II; and
10 (c) the substance has not been provisionally assessed in
11 accordance with regulation 6.3 of Annex II; and
12 (d) the substance is carried while one of the following
13 subparagraphs applies:
14 (i) the ship is in the sea near a State, the Jervis Bay
15 Territory or an external Territory and there is no law of
16 that State or Territory that makes provision giving effect
17 to regulation 13.1.3 of Annex II in relation to that sea;
18 (ii) the ship is in the exclusive economic zone;
19 (iii) the ship is beyond the exclusive economic zone.

20 Penalty: 60 penalty units.

- 21 (3) An offence under subsection (2) is an offence of strict liability.

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

- 23 (4) In this section:

24 *engage in conduct* has the same meaning as in the *Criminal Code*.

25 **10 Subparagraph 21(1)(c)(i)**

26 Omit “Regulations 3, 4, 5 and 6”, substitute “regulations 3, 6 and 13”.

27 **11 Subsection 21(1B)**

28 Omit “(12)”, substitute “(11)”.

29 **12 Subparagraph 21(1B)(b)(i)**

30 Omit “Regulations 3, 4, 5 and 6”, substitute “regulations 3, 6 and 13”.

31 **13 Subsections 21(4) to (15)**

1 Repeal the subsections, substitute:

2 *Substance in Category X*

3 (4) Subject to subsection (12), if:

4 (a) the tank of a ship that held a substance in Category X or a
5 mixture containing a substance in Category X has been:

6 (i) emptied to the maximum extent in accordance with
7 procedures in the Procedures and Arrangements
8 Manual; and

9 (ii) washed in accordance with regulations made for the
10 purposes of section 26; and

11 (b) the resulting residues in the tank have been discharged to a
12 reception facility until the concentration of that substance in
13 the effluent to that facility is, in the opinion of an inspector,
14 at or below the residual concentration prescribed for that
15 substance in regulation 13.6.1 of Annex II and until the tank
16 is empty; and

17 (c) the residue then remaining in the tank has been subsequently
18 diluted with water;

19 subsection (1B) does not apply to the discharge from the ship of
20 the water containing that residue if the following conditions are
21 satisfied:

22 (d) the discharge is made when the ship is proceeding en route at
23 a speed of:

24 (i) at least 7 knots, if the ship is self-propelled; or

25 (ii) at least 4 knots, if the ship is not self-propelled;

26 (e) the discharge is made below the ship's waterline through the
27 ship's underwater discharge outlets at a rate not exceeding
28 the maximum rate for which each underwater discharge
29 outlet is designed;

30 (f) the discharge is made when the ship is at least 12 nautical
31 miles from the nearest land and is in water at least 25 metres
32 deep.

33 Note: A defendant bears an evidential burden in relation to the matters in
34 subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

35 *High-viscosity or solidifying substance in Category Y*

36 (5) Subject to subsection (12), if:

37 (a) the tank of a ship that held:

- 1 (i) a high-viscosity or solidifying substance in Category Y;
2 or
3 (ii) a mixture containing a high-viscosity or solidifying
4 substance in Category Y (except a mixture containing a
5 substance in Category X);
6 has been:
7 (iii) emptied to the maximum extent in accordance with
8 procedures in the Procedures and Arrangements
9 Manual; and
10 (iv) washed in accordance with regulations made for the
11 purposes of section 26; and
12 (b) the resulting residues in the tank have been discharged to a
13 reception facility until the tank is empty; and
14 (c) the residue then remaining in the tank has been subsequently
15 diluted with water;
16 subsection (1B) does not apply to the discharge into the sea of the
17 water containing that residue if the following conditions are
18 satisfied:
19 (d) the discharge is made when the ship is proceeding en route at
20 a speed of:
21 (i) at least 7 knots, if the ship is self-propelled; or
22 (ii) at least 4 knots, if the ship is not self-propelled;
23 (e) the discharge is made below the ship's waterline through the
24 ship's underwater discharge outlets at a rate not exceeding
25 the maximum rate for which each underwater discharge
26 outlet is designed;
27 (f) the discharge is made when the ship is at least 12 nautical
28 miles from the nearest land and is in water at least 25 metres
29 deep.

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

32 *Other substances in Category Y*

- 33 (6) Subject to subsection (12), if the tank of a ship that held:
34 (a) a substance in Category Y (except a substance in Category Y
35 referred to in subsection (5)); or
36 (b) a mixture containing a substance in Category Y (except a
37 substance in Category Y referred to in subsection (5)) except
38 a mixture containing a substance in Category X;
-

1 has been emptied to the maximum extent in accordance with the
2 procedures in the Procedures and Arrangements Manual,
3 subsection (1B) does not apply to the discharge into the sea of any
4 residue of that substance or mixture if the following conditions are
5 satisfied:

6 (c) the discharge is made when the ship is proceeding en route at
7 a speed of:

8 (i) at least 7 knots, if the ship is self-propelled; or

9 (ii) at least 4 knots, if the ship is not self-propelled;

10 (d) the discharge is made below the ship's waterline through the
11 ship's underwater discharge outlets at a rate not exceeding
12 the maximum rate for which each underwater discharge
13 outlet is designed;

14 (e) the discharge is made when the ship is at least 12 nautical
15 miles from the nearest land and is in water at least 25 metres
16 deep.

17 Note: A defendant bears an evidential burden in relation to the matters in
18 subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

19 *Substances in Category Z—ship constructed before 1 January 2007*

20 (7) Subject to subsection (12), if:

21 (a) a ship was constructed before 1 January 2007; and

22 (b) the ship's tank held a substance in Category Z or a mixture
23 containing a substance in Category Z; and

24 (c) the tank has been emptied to the maximum extent in
25 accordance with the procedures in the Procedures and
26 Arrangements Manual;

27 subsection (1B) does not apply to the discharge into the sea of any
28 residue of that substance or mixture if the following conditions are
29 satisfied:

30 (d) the discharge is made when the ship is proceeding en route at
31 a speed of:

32 (i) at least 7 knots, if the ship is self-propelled; or

33 (ii) at least 4 knots, if the ship is not self-propelled;

34 (e) the discharge is made when the ship is at least 12 nautical
35 miles from the nearest land and is in water at least 25 metres
36 deep.

37 Note: A defendant bears an evidential burden in relation to the matters in
38 subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

1 *Substances in Category Z—ship constructed on or after 1 January*
2 *2007*

- 3 (8) Subject to subsection (12), if:
4 (a) a ship is constructed on or after 1 January 2007; and
5 (b) the ship's tank held a substance in Category Z or a mixture
6 containing a substance in Category Z; and
7 (c) the tank has been emptied to the maximum extent in
8 accordance with the procedures in the Procedures and
9 Arrangements Manual;
10 subsection (1B) does not apply to the discharge into the sea of any
11 residue of that substance or mixture if the following conditions are
12 satisfied:
13 (d) the discharge is made when the ship is proceeding en route at
14 a speed of:
15 (i) at least 7 knots, if the ship is self-propelled; or
16 (ii) at least 4 knots, if the ship is not self-propelled;
17 (e) the discharge is made below the ship's waterline through the
18 ship's underwater discharge outlets at a rate not exceeding
19 the maximum rate for which each underwater discharge
20 outlet is designed;
21 (f) the discharge is made when the ship is at least 12 nautical
22 miles from the nearest land;
23 (g) the discharge is made when the ship is in water at least 25
24 metres deep.

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

- 27 (9) On application to the Authority in the approved form, the
28 Authority may, in accordance with the regulations, waive the
29 condition in paragraph (8)(f). The Authority must give written
30 notice of a waiver to the applicant. The notice must specify the
31 particular ship, substance in Category Z, and prescribed voyage,
32 for which the condition is waived.

33 *Discharge of bilge water etc.*

- 34 (10) Subsection (1B) does not apply to the discharge from a ship of
35 bilge water, or of a mixture resulting from tank cleaning or
36 de-ballasting operations, that contains one or more liquid

1 substances referred to in regulation 6.1.4 of Annex II but does not
2 contain any other liquid substance.

3 Note: A defendant bears an evidential burden in relation to the matters in
4 subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

5 *Discharge of clean ballast or segregated ballast*

6 (11) Subsection (1B) does not apply to the discharge from a ship of
7 clean ballast or segregated ballast.

8 Note: A defendant bears an evidential burden in relation to the matters in
9 subsection (11) (see subsection 13.3(3) of the *Criminal Code*).

10 *Subsections (4) to (9) do not apply to a mixture that contains no*
11 *noxious liquid substance*

12 (12) Subsections (4) to (9) do not apply in relation to a mixture that
13 contains a liquid substance that is neither a noxious liquid
14 substance nor a liquid substance referred to in regulation 6.1.4 of
15 Annex II.

16 *Subsections (4) to (9) do not apply to discharges in Antarctic Area*

17 (13) Subsections (4) to (9) do not apply to the discharge from a ship of
18 noxious liquid substances, or mixtures containing noxious liquid
19 substances, in the Antarctic Area.

20 *No limitations on generality of subsections*

21 (14) Nothing in subsections (2) to (11) limits the generality of any of
22 those subsections.

23 *Inspector*

24 (15) In this section:

25 *inspector* includes a surveyor appointed or authorized by the
26 Government of a country that is a Party to the Convention for the
27 purpose of implementing regulation 16 of Annex II.

28 Note 1: The following heading to subsection 21(1) is inserted “*Ordinary offence*”.

29 Note 2: The following heading to subsection 21(1B) is inserted “*Strict liability offence*”.

30 Note 3: The following heading to subsection 21(2) is inserted “*Exception for emergencies*”.

31 **14 Section 21A**

1 Repeal the section, substitute:

2 **21A Procedures and Arrangements Manual**

- 3 (1) The master and the owner of an Australian ship each commit an
4 offence if:
5 (a) a chemical tanker construction certificate under Division 12A
6 of Part IV of the *Navigation Act 1912* is in force in respect of
7 the ship; and
8 (b) the ship does not have on board a copy of the Procedures and
9 Arrangements Manual written in English.

10 Penalty: 60 penalty units.

- 11 (2) The master and the owner of a foreign ship each commit an offence
12 if:
13 (a) a chemical tanker construction certificate under Division 12A
14 of Part IV of the *Navigation Act 1912* is in force in respect of
15 the ship; and
16 (b) the ship does not have on board:
17 (i) a copy of the Procedures and Arrangements Manual
18 written in the official language, or one of the official
19 languages, of the country whose flag the ship is entitled
20 to fly; and
21 (ii) if none of those languages is English, Spanish or
22 French—a translation of the Procedures and
23 Arrangements Manual into one of those languages.

24 Penalty: 60 penalty units.

- 25 (3) An offence against subsection (1) or (2) is an offence of strict
26 liability.

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

28 **15 Subsection 22(10) (definition of *liquid substance*)**

29 Omit “Appendix III to”, substitute “regulation 6.1.4 of”.

30 **16 Subsection 22(10) (paragraphs (a) and (b) of the definition
31 of *prescribed incident*)**

32 Omit “(9), (10), (11) or (12)”, substitute “(10) or (11)”.

1 **17 Section 26**

2 Omit “Regulation 8”, substitute “regulations 13 and 16”.