



Protection of the Sea (Shipping Levy Collection) Act 1981

No. 35, 1981

Compilation No. 8

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About this compilation

This compilation

This is a compilation of the *Protection of the Sea (Shipping Levy Collection) Act 1981* that shows the text of the law as amended and in force on 21 October 2016 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to the levy imposed in respect of certain ships in Australian ports with oil on board

1 Short title

This Act may be cited as the *Protection of the Sea (Shipping Levy Collection) Act 1981*.

2 Commencement

This Act shall come into operation on the day on which the *Protection of the Sea (Shipping Levy) Act 1981* comes into operation.

3 Repeal

The *Pollution of the Sea by Oil (Shipping Levy Collection) Act 1972* and the *Pollution of the Sea by Oil (Shipping Levy Collection) Amendment Act 1979* are repealed.

4 Interpretation

(1) In this Act, unless the contrary intention appears:

Australian port means a place appointed, proclaimed or prescribed as a port under the *Customs Act 1901*, or under a law of a State or the Northern Territory.

authorised person means a person appointed under section 4B.

Collector means:

- (a) a Collector within the meaning of the *Customs Act 1901*; or
- (b) an authorised person.

foreign-going ship means a ship that is engaged in making overseas voyages.

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levy means levy imposed by the Levy Act.

Levy Act means the *Protection of the Sea (Shipping Levy) Act 1981*.

master, in relation to a ship, means the person having command or charge of the ship.

oil means any hydrocarbon oil or hydrocarbon liquid fuel, including, but without limiting the generality of the foregoing, crude oil, fuel oil, diesel oil, lubricating oil, heating oil, petrol, aviation fuel and kerosene.

oil in bulk means oil in bunkers or tanks, or in bunkers and tanks.

overseas voyage: a ship's voyage is an **overseas voyage** if in the course of the voyage the ship is present (except because of stress of weather, saving life at sea or other unavoidable cause) in waters outside the outer limits of the exclusive economic zone of Australia. However, the voyage is not an overseas voyage if:

- (a) the voyage commences from a port in Queensland and ends at the same port or another port in Queensland; and
- (b) as an incidental part of its voyage, the ship is present in waters that are outside the outer limits of the exclusive economic zone of Australia but within the Protected Zone; and
- (c) the ship is not otherwise present in waters that are outside the outer limits of the exclusive economic zone of Australia.

Protected Zone means the zone that is:

- (a) established under Article 10 of the Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as Torres Strait, and Related Matters, done at Sydney on 18 December 1978, as amended and in force for Australia from time to time; and
- (b) the area bounded by the line described in Annex 9 to that Treaty.

Note: The text of the Treaty is set out in Australian Treaty Series 1985 No. 4 ([1985] ATS 4). In 2012, the text of a Treaty in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

quarter means a period of 3 months commencing on 1 January, 1 April, 1 July or 1 October in any year.

ship means any kind of vessel used in navigation by water, however propelled or moved, and includes the following:

- (a) a barge, lighter or other floating craft;
- (b) an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water.

tonnage, in relation to a ship, means the net tonnage of the ship.

Tonnage Measurement Convention means the International Convention on Tonnage Measurement of Ships, done at London on 23 June 1969, as amended and in force for Australia from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1982 No. 15 ([1982] ATS 15). In 2012, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

- (2) Where, at any time, the net tonnage applicable to a ship has been determined otherwise than in accordance with the Tonnage Measurement Convention, then, in the application of this Act to the ship at that time, a reference in this Act to the tonnage of a ship shall be taken to be a reference to the net tonnage of the ship expressed in tons.

4A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences created by this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

4B Appointment of authorised person

- (1) The Minister may, in writing, appoint a person to be an authorised person for the purposes of this Act.
- (2) The Minister may, in writing, delegate the power of appointment under subsection (1) to an officer of the Department.

5 Exemption in respect of ship in an Australian port by reason of an emergency etc.

Levy is not payable in respect of a ship for a quarter if, at no time during the quarter, was the ship in an Australian port except for the purpose, in the course of a voyage:

- (a) of taking on board water, provisions or fuel to be used by the ship for completing the voyage;
- (b) of engaging or discharging a member of the crew;
- (c) of disembarking a passenger or a member of the crew for urgent medical treatment; or
- (d) of sheltering or undergoing repairs.

6 Exempt periods in relation to foreign-going ships

- (1) In the application of this Act and the Levy Act in relation to a foreign-going ship in respect of a quarter, regard shall not be had to a time when the ship was in an Australian port during the period (if any) that, in accordance with subsection (2), is the exempt period in relation to the ship for the quarter.
- (2) Where levy is payable in respect of a foreign-going ship for a quarter, the exempt period in relation to the ship for the next succeeding quarter is so much of that succeeding quarter as occurs before the expiration of a period of 3 months from the earliest time during the first-mentioned quarter when the ship was in an Australian port, other than a time by reference to which levy was not payable in respect of the ship for that quarter.

7 Time for payment of levy

Levy in respect of a ship for a quarter becomes payable upon the expiration of the quarter.

8 Payments on account of levy

- (1) Subject to subsection (5), there is payable on the first day of a quarter, on account of levy that may become payable for that quarter in respect of a ship, being a ship to which the Levy Act applies other than a foreign-going ship, an amount equal to the amount of levy that may become so payable.
- (3) Where:
 - (a) a foreign-going ship, being a ship to which the Levy Act applies, is in an Australian port at any time during a quarter; and
 - (b) an amount has not previously become payable under this section on account of levy that may become payable in respect of the ship for that quarter;a Collector may, by notice served on the master of the ship in such manner as is prescribed, require an amount to be paid on account of levy that may become so payable and, subject to subsection (5), there is payable, within such period as is specified in the notice, on account of levy that may become so payable, an amount equal to the amount of levy that may become so payable.
- (4) Where an amount is paid to the Commonwealth under this section on account of levy that may become payable in respect of a ship for a quarter, the amount so paid:
 - (a) shall, if levy becomes payable in respect of the ship for the quarter, be deemed to be payment of the levy; or
 - (b) shall, if levy does not become so payable, be repaid to the master or owner of the ship.
- (5) An amount is not payable under this section on account of levy in respect of a ship for a quarter if the owner or master of the ship

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satisfies a Collector that levy is not, and is not likely to become, payable in respect of the ship for that quarter.

9 Persons liable to pay levy and amounts on account of levy

The owner and master of a ship are jointly and severally liable to pay levy that is payable in respect of the ship or an amount that, under section 8, is payable on account of levy that may become payable in respect of the ship.

10 Recovery of levy and amounts on account of levy

- (1) Levy that has become payable, or an amount that, under section 8, is payable on account of levy, is a debt due to the Commonwealth by the person or persons by whom the levy or the amount is payable.
- (2) In proceedings to recover levy in respect of a ship for a quarter, it shall be presumed, unless the contrary is established by the defendant:
 - (a) that, at some time when the ship was in an Australian port during the quarter, there was on board the ship a quantity of oil in bulk weighing not less than 10 tonnes; and
 - (b) that, at no time during the quarter, was the ship in an Australian port, in the course of a voyage, only for a purpose specified in section 5.

11 Recovery of unpaid levy by distress

- (1) Where levy payable in respect of a ship has not been paid, a Collector may, without prejudice to any other remedy for the recovery of the levy, enter upon the ship and distrain goods or equipment belonging to the ship, and detain them until the levy is paid.
- (2) If payment of the levy is not made before the expiration of the period of 3 days after the distress, the Collector may, at any time while the levy remains unpaid, sell by public auction the goods or equipment distrained and, out of the proceeds of the sale, may, to

the extent that the amount of those proceeds allows, recover the levy and all reasonable expenses incurred by him under this section.

- (3) For the purposes of a sale under subsection (2), the Commonwealth shall be deemed to be the absolute owner of the goods or equipment the subject of the sale.
- (4) Where, after deducting from the proceeds of the sale the amount of the levy and the expenses of the Collector, a surplus remains, the Collector shall, on demand, pay that surplus to the owner or master of the ship.
- (5) A reference in this section to levy payable in respect of a ship shall be read as including a reference to an amount that, under section 8, is payable on account of levy that may become payable in respect of the ship.

12 Detention of ship for unpaid levy

- (1) A ship in respect of which levy is payable may be detained by a Collector until the levy is paid.
- (2) If a ship that has been detained by a Collector under subsection (1) goes to sea without having been released by the Collector, the master of the ship commits an offence punishable, upon conviction, by a fine not exceeding 5 penalty units.
- (2A) An offence under subsection (2) is an offence of strict liability.
Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (3) A reference in this section to levy payable in respect of a ship shall be read as including a reference to an amount that, under section 8, is payable on account of levy that may become payable in respect of the ship.
- (4) While a ship is detained under subsection (1), a person does not have the power of seizure provided for by section 123 of the *Personal Property Securities Act 2009* in relation to the ship.

13 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, prescribing penalties not exceeding \$200 for offences against the regulations.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnotes

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Protection of the Sea (Shipping Levy Collection) Act 1981	35, 1981	14 Apr 1981	1 Oct 1982 (s 2 and gaz 1982, No S197)	
Protection of the Sea Legislation Amendment Act 1986	167, 1986	18 Dec 1986	Part V (s 41, 42): 18 Dec 1986 (s 2(1))	—
Transport and Regional Services Legislation Amendment (Application of Criminal Code) Act 2001	143, 2001	1 Oct 2001	2 Oct 2001 (s 2)	s 4
Protection of the Sea Legislation Amendment Act 2008	94, 2008	3 Oct 2008	Sch 3 (items 3–6): 3 Oct 2008 (s 2(1) item 7)	—
Personal Property Securities (Consequential Amendments) Act 2009	131, 2009	14 Dec 2009	Sch 3 (item 14): 30 Jan 2012 (s 2(1) item 1)	—
Navigation (Consequential Amendments) Act 2012	129, 2012	13 Sept 2012	Sch 2 (items 71–76): 1 July 2013 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 252): 10 Mar 2016 (s 2(1) item 6)	—
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 1 (item 395): 21 Oct 2016 (s 2(1) item 1)	—

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
s 4	am No 167, 1986; No 94, 2008; No 129, 2012
s 4A.....	ad No 143, 2001
s 4B.....	ad No 94, 2008
s 8	am No 129, 2012
s 12	am No 143, 2001; No 131, 2009; No 4, 2016; No 61, 2016
