



Control of Naval Waters Act 1918

Act No. 28 of 1918 as amended

This compilation was prepared on 23 December 2003
taking into account amendments up to Act No. 135 of 2003

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting,
Attorney-General's Department, Canberra

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An Act relating to Control of Naval Waters

1 Short title *[see Note 1]*

This Act may be cited as the *Control of Naval Waters Act 1918*.

2 Interpretation

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

aircraft means a machine or apparatus that can derive support in the atmosphere from the reactions of the air or from buoyancy, but does not include a hovercraft.

defence land means land used by the Commonwealth for purposes related to the defence of the Commonwealth, and includes:

- (a) land set apart for, or dedicated to, a public purpose, being a purpose related to the defence of the Commonwealth, by the Governor-General under section 122 of the *Lands Acquisition Act 1989*; and
- (b) land reserved under a law of a Territory for a purpose related to the defence of the Commonwealth.

exempt vessel means:

- (a) a vessel belonging to, or used by, the Commonwealth, including a vessel belonging to, or used by, the Australian Navy; or
- (b) a vessel that is, by virtue of a Proclamation in force under section 3A, an exempt vessel.

hovercraft means a vehicle that is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle.

installation means:

- (a) a naval establishment, dock, dockyard, slipway, victualling yard, arsenal, wharf or mooring owned or used by the Commonwealth; or

- (b) any fixed structure, apparatus or equipment used by the Commonwealth for purposes related to the naval defence of the Commonwealth.

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

nautical mile means an international nautical mile.

naval waters means waters that, by virtue of a Proclamation in force under section 3B, are naval waters for the purposes of this Act.

sea includes any waters within the ebb and flow of the tide.

seaplane includes a flying boat and any other aircraft designed to manoeuvre on water.

superintendent means a superintendent appointed under section 3C and, in relation to any naval waters, means the superintendent in whose instrument of appointment those naval waters are specified.

vessel means any kind of vessel used in navigation by water however propelled or moved and includes a hovercraft or a seaplane on or in water and any other thing capable of carrying persons or goods on, in or under water.

waters means waters of the sea.

- (2) A reference in the succeeding provisions of this Act (other than section 3A) to a vessel, not being a reference to an exempt vessel, shall be read as not including a reference to an exempt vessel.

3 Extension of Act to Territories

This Act extends to the external Territories, other than the Australian Antarctic Territory.

3AA Application of the *Criminal Code*

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

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

3A Declaration of vessels as exempt vessels

The Governor-General may, by Proclamation, declare all vessels, or a specified vessel, belonging to, or used by, the naval forces of a specified country to be exempt vessels or an exempt vessel, as the case may be, for the purposes of this Act.

3B Declaration of waters as naval waters

- (1) This section applies to:
 - (a) waters that are wholly within a distance of 5 nautical miles from, or from the limits of, an installation; or
 - (b) waters that are wholly within a distance of 2 nautical miles from the limits of defence land on which there is not an installation.
- (2) The Governor-General may, by Proclamation, declare that specified waters, being waters to which this section applies, are naval waters for the purposes of this Act.

3C Appointment of superintendents

- (1) The Governor-General may, by instrument in writing, appoint a person to be the superintendent of such naval waters as are specified in the instrument.
- (2) An appointment under subsection (1) may specify the person to whom the appointment relates by reference to the office or position that the person holds or the functions or duties that the person performs.

4 Power to make regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters and things which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for the purpose of carrying out or giving effect to the control of naval waters, and in particular for the following:

- (a) for regulating the mooring or anchoring of vessels within, or so as not to obstruct navigation into in or out of, naval waters;
- (b) for appropriating any space in naval waters as a mooring place or anchoring ground for the exclusive use of exempt vessels;
- (c) for prohibiting or restricting the entry, into any specified part of any naval waters, of any vessel having explosives, ammunition, tar, oil, or other combustible substance on board, and for regulating the loading and unloading of explosives and ammunition in naval waters;
- (d) for prohibiting or restricting the discharging of explosives and ammunition in any naval waters or part thereof;
- (e) for restricting the use of fire and light on board any vessel in any specified part of any naval waters;
- (f) for regulating the speed at which vessels may be navigated in any specified part of any naval waters;
- (g) for requiring the presence of at least one person at all hours of the day and night on board every vessel above a specified size moored anchored or placed in any specified part of any naval waters;
- (h) for prohibiting or regulating the breaming or careening and cleaning of vessels in any specified part of naval waters or on the foreshore of any specified part of any naval waters;
- (i) for prescribing the lights or signals to be carried or used, and the steps for avoiding collision to be taken, by exempt vessels and other vessels navigating naval waters;
- (j) for conferring upon prescribed persons powers of search and inspection for the purposes of this Act;
- (k) for conferring upon prescribed persons power to remove from, or from the foreshore of, any naval waters persons:
 - (i) who, in those waters or on the foreshore of those waters, have contravened the regulations; or
 - (ii) who, by entering into those waters or onto the foreshore of those waters, have contravened the regulations;
- (l) for prohibiting, restricting or regulating the entry of:
 - (i) vessels or persons into any naval waters or any specified part of any naval waters;

- (ii) aircraft or persons into the airspace over any naval waters or any specified part of any naval waters; or
 - (iii) aircraft, vehicles or persons onto the foreshore of any naval waters or any specified part of the foreshore of any naval waters;
 - (m) for prohibiting, restricting or regulating the doing of any act or thing:
 - (i) in any naval waters or any specified part of any naval waters;
 - (ii) in the airspace over any naval waters or any specified part of any naval waters; or
 - (iii) on the foreshore of any naval waters or any specified part of the foreshore of any naval waters;
 - (n) generally for making provision for the proper protection of:
 - (i) installations in, or on the foreshore of, any naval waters; and
 - (ii) exempt vessels within any naval waters; and
 - (o) for prescribing penalties, not exceeding \$1,000 or imprisonment for 6 months, for any contravention of, or failure to comply with, the regulations.
- (2) Without limiting the generality of the power of the Governor-General to make regulations under this section, the regulations may:
- (a) prohibit the doing of an act or thing absolutely; or
 - (b) prohibit the doing of an act or thing unless the approval of a specified person to the doing of the act or thing has been obtained.

5 Construction of certain buildings etc. may be prohibited

The Minister may, subject to the regulations, prohibit the construction:

- (a) of any jetty, wharf, building or structure in or on the foreshore of any naval waters; and
- (b) of any factory or store for explosives, oil or other inflammable material within five miles of the limits of a dockyard or within two miles of the limits of any naval waters.

6 Power of superintendent to give directions concerning vessels within naval waters etc.

- (1) Where a vessel is within any naval waters, the superintendent of those naval waters may give to the master of the vessel directions as to the mooring, anchoring, placing, unmooring or removal of the vessel.
- (2) The master of a vessel is guilty of an offence if:
 - (a) the master is given a direction under subsection (1); and
 - (b) the master fails to comply with the direction.

Maximum penalty: \$1,000.

- (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) If:
 - (a) there is no person on board a vessel within any naval waters to comply with directions given or proposed to be given under subsection (1) by the superintendent of those naval waters; or
 - (b) the master of a vessel within any naval waters refuses or fails to comply with directions given under subsection (1) by the superintendent of those naval waters;the superintendent may cause the vessel to be moored, anchored, placed, unmoored, or removed in compliance with directions given by him, and, for that purpose, may do, or cause to be done, such acts or things as he considers necessary.

6A Power of superintendent to give directions concerning aircraft, vehicles or vessels on foreshore of naval waters etc.

- (1) Where an aircraft, vehicle or vessel is on the foreshore of any naval waters, the superintendent of those naval waters may give to the person having the command or charge of the aircraft, vehicle or vessel directions as to the placing or removal of the aircraft, vehicle or vessel.

- (2) The person having the command or charge of an aircraft, vehicle, or vessel shall not fail to comply with a direction given to him under subsection (1).

Penalty: \$1,000.

- (3) If:
- (a) there is no person having the command or charge of an aircraft, vehicle or vessel that is on the foreshore of any naval waters to comply with directions given or proposed to be given under subsection (1) by the superintendent of those naval waters; or
 - (b) the person having the command or charge of an aircraft, vehicle or vessel that is on the foreshore of any naval waters refuses or fails to comply with directions given under subsection (1) by the superintendent of those naval waters;
- the superintendent may cause the aircraft, vehicle or vessel to be placed or removed in compliance with directions given by him, and, for that purpose, may do, or cause to be done, such acts or things as he considers necessary.

7 Power to remove vessel, wreck etc.

- (1) The superintendent of any naval waters may cause to be removed:
- (a) any wreck or other thing that is an obstruction to, or to the approaches to, those naval waters;
 - (b) any floating timber that impedes the navigation of those naval waters; or
 - (c) any vessel wrecked, laid by, abandoned, sunk, stranded or neglected that is lying within, or on the foreshore of, those naval waters.
- (2) Any vessel removed in pursuance of this section may be laid on some part of the strand or seashore, or in some other place, where it may without injury to any person be placed.

8 Recovery of expenses of removal of vessels etc.

- (1) The expenses incurred by the Commonwealth by reason of the exercise by a superintendent of a power conferred on him by subsection 6(3) or 6A(3) or section 7, shall, on demand, be paid to

the Commonwealth by the owner of the property in relation to which the power was exercised.

- (2) Where the Commonwealth has incurred expenses referred in to subsection (1), the superintendent may detain the property in respect of which the expenses were incurred until payment of those expenses in accordance with that subsection.
- (3) If, after the expiration of 3 months after the making of a demand for the payment of expenses referred to in subsection (1), payment of those expenses has not been made to the Commonwealth, the Commonwealth may cause to be sold by public auction the property in respect of which the expenses were incurred and, out of the proceeds of the sale, may, to the extent that the amount of those proceeds allows, recover those expenses and the expenses of the sale.
- (4) For the purposes of a sale under subsection (3), the Commonwealth shall be deemed to be the absolute owner of the property the subject of the sale.
- (5) Where, after the recovery of expenses from the proceeds of a sale under subsection (3), a surplus remains, the Commonwealth shall, on demand by the owner of the property the subject of the sale, pay that surplus to the owner.
- (6) Where the proceeds of a sale of property under subsection (3) are not sufficient to recover the expenses incurred in respect of the property and the expenses of the sale, any deficiency is recoverable by the Commonwealth from the owner of the property in any court of competent jurisdiction as a debt due to the Commonwealth.

9 Service of summons etc.

Any summons or other document in any proceeding under this Act may (in addition to any other mode of service) be served by being left for the person to be served on board any vessel to which he belongs, with the person being or appearing to be in command or charge of the vessel.

10 Offences, where to be deemed to have been committed

For the purpose of giving jurisdiction, every offence against this Act or any regulation under it shall be deemed to have been committed, and every cause of complaint shall be deemed to have arisen, either in the place in which it actually was committed or arose, or in any place in which the offender or person alleged to have committed it happens to be.

Table of Acts**Notes to the *Control of Naval Waters Act 1918*****Note 1**

The *Control of Naval Waters Act 1918* as shown in this compilation comprises Act No. 28, 1918 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 1 October 2001 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Control of Naval Waters Act 1918</i>	28, 1918	27 Nov 1918	27 Nov 1918	
<i>Statute Law Revision (Decimal Currency) Act 1966</i>	93, 1966	29 Oct 1966	1 Dec 1966	—
<i>Statute Law Revision Act 1973</i>	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9(1) and 10
<i>Control of Naval Waters Amendment Act 1978</i>	8, 1978	1 Apr 1978	1 Aug 1990 (see <i>Gazette</i> 1990, No. S184)	S. 9
<i>Defence Legislation Amendment Act (No. 2) 1990</i>	21, 1991	5 Feb 1991	Ss. 10–13 and 16–18: 1 July 1990 Remainder: Royal Assent	—
<i>Defence Legislation Amendment (Application of Criminal Code) Act 2001</i>	141, 2001	1 Oct 2001	S. 4: Royal Assent Schedule 1 (items 3, 4): 15 Dec 2001	S. 4 [see Table A] S. 2(2) (am. by 135, 2003, Sch. 2 (item 28))
as amended by <i>Defence Legislation Amendment Act 2003</i>	135, 2003	17 Dec 2003	Schedule 2 (item 28): (a)	—

Act Notes

(a) Subsection 2(1) (item 9) of the *Defence Legislation Amendment Act 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
9. Schedule 2, item 28	Immediately after the commencement of section 2 of the <i>Defence Legislation Amendment (Application of Criminal Code) Act 2001</i>	1 October 2001

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 2	am. No. 216, 1973 rs. No. 8, 1978 am. No. 21, 1991
S. 3	rs. No. 8, 1978
S. 3AA	ad. No. 141, 2001
Ss. 3A–3C	ad. No. 8, 1978
S. 4	am. No. 93, 1966; No. 216, 1973; No. 8, 1978
S. 5	am. No. 8, 1978
S. 6	rs. No. 8, 1978 am. No. 141, 2001
S. 6A	ad. No. 8, 1978
S. 7	am. No. 8, 1978
S. 8	rs. No. 8, 1978

Table A

Table A

Application, saving or transitional provisions

Defence Legislation Amendment (Application of Criminal Code) Act 2001
(No. 141, 2001)

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.