



**Maritime Legislation Amendment
(Prevention of Air Pollution from Ships)
Act 2007**

No. 24, 2007

**An Act to amend the *Protection of the Sea
(Prevention of Pollution from Ships) Act 1983*, and
for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	3
Schedule 1—Prevention of air pollution from ships		4
	<i>Navigation Act 1912</i>	4
	<i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i>	11
Schedule 2—Other amendments		23
	<i>Navigation Act 1912</i>	23
	<i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i>	24



No. 24, 2007

**An Act to amend the *Protection of the Sea
(Prevention of Pollution from Ships) Act 1983*, and
for other purposes**

[Assented to 15 March 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Maritime Legislation Amendment
(Prevention of Air Pollution from Ships) Act 2007*.

2 Commencement

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

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.	15 March 2007
2. Schedule 1	<p>A single day to be fixed by Proclamation.</p> <p>A Proclamation must not specify a day that occurs before the day on which the Protocol of 1997 to amend the Convention (within the meaning of the <i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i>) to add Annex VI enters into force for Australia.</p> <p>However, if the provision(s) do not commence within the period of 6 months beginning on the day on which that Protocol enters into force for Australia, they commence on the first day after the end of that period. If the provision(s) commence in this way, the Minister must announce by notice in the <i>Gazette</i> the day on which the provision(s) commenced.</p> <p>The notice is not a legislative instrument.</p>	
3. Schedule 2, items 1 to 4	The day after this Act receives the Royal Assent.	16 March 2007
4. Schedule 2, items 5 and 6	The later of: (a) the day on which this Act receives the Royal Assent; and (b) 1 August 2007.	1 August 2007

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
5. Schedule 2, items 7 and 8	The day after this Act receives the Royal Assent.	16 March 2007
6. Schedule 2, items 9 to 12	The day after this Act receives the Royal Assent.	16 March 2007
7. Schedule 2, items 13 and 14	The day on which this Act receives the Royal Assent.	15 March 2007
8. Schedule 2, items 15 to 18	The day after this Act receives the Royal Assent.	16 March 2007
9. Schedule 2, item 19.	The day on which this Act receives the Royal Assent.	15 March 2007

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

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

3 Schedule(s)

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

Schedule 1—Prevention of air pollution from ships

Navigation Act 1912

1 Subsection 6(1)

Insert:

approved form means a form approved by the Authority under section 6F.

2 After section 6E

Insert:

6F Authority may approve form

The Authority may, in writing, approve a form for the purposes of a provision of this Act.

3 After Division 12C of Part IV

Insert:

Division 12D—Air pollution

267ZT Definitions

(1) In this Division:

air pollution prevention certificate means an air pollution prevention certificate issued under subsection 267ZW(1) or (2) and includes an International Air Pollution Prevention Certificate issued for the purposes of:

- (a) regulation 7 of Annex VI; or
- (b) the law of a foreign country giving effect to that regulation for an Australian ship.

Annex VI means Annex VI to the Prevention of Pollution from Ships Convention.

Australian ship means:

- (a) a ship registered in Australia; or
- (b) an unregistered ship having Australian nationality.

foreign ship means a ship that is not an Australian ship.

- (2) An expression that is used:
 - (a) in this Division; and
 - (b) in the Prevention of Pollution from Ships Convention, including Annex VI but not including any other Annex to that Convention;has, in this Division, the same meaning as in that Convention (whether or not a particular meaning is assigned to it by that Convention).
- (3) For the purposes of this Division, a ship is taken not to comply with Annex VI if it does not comply with the regulations and orders made for the purposes of section 267ZV.

267ZU Application of Division

- (1) Section 2 does not have effect in relation to this Division.
- (2) This Division does not apply in relation to a ship referred to in subsection 2(1) so far as a law of a State or Territory gives effect to Regulations 5, 6, 8, 9, 13 and 16 of Annex VI in relation to that ship.
- (3) A reference in this section to this Division includes a reference to any regulations or orders made for the purposes of section 267ZV.

267ZV Regulations to give effect to Regulations 5, 6, 8, 9, 13 and 16 of Annex VI

The regulations may make provision for and in relation to giving effect to Regulations 5, 6, 8, 9, 13 and 16 of Annex VI.

267ZW Air pollution prevention certificates for Australian ships

- (1) The Authority must issue an air pollution prevention certificate for an Australian ship of 400 gross tonnage or above, in the approved form, if, on the basis of declarations of survey in respect of the

ship, the Authority is satisfied that the ship is constructed in accordance with Annex VI.

- (2) A survey authority may issue an air pollution prevention certificate for an Australian ship of 400 gross tonnage or above, in the approved form, if:
 - (a) the survey authority surveys the ship; and
 - (b) on the basis of the survey, the survey authority is satisfied that the ship is constructed in accordance with Annex VI.
- (3) For the purposes of subsections (1) and (2), it does not matter whether the ship is required by Annex VI to comply with that Annex.
- (4) An air pollution prevention certificate issued under subsection (1) or (2) is not a legislative instrument.

267ZX International Air Pollution Prevention Certificates for foreign ships

- (1) The Authority may issue an International Air Pollution Prevention Certificate for a foreign ship, in the approved form, if:
 - (a) the ship is not a ship that is entitled to fly the flag of a State that is not a Party to the Prevention of Pollution from Ships Convention; and
 - (b) the Authority has caused the ship to be surveyed; and
 - (c) the survey was carried out at the request of the government of the State under whose authority the ship is operating; and
 - (d) on the basis of the declarations of survey in respect of the ship, the Authority is satisfied that that ship is constructed in accordance with Annex VI.
- (2) For the purposes of subsection (1), it does not matter whether the ship is required by Annex VI to comply with that Annex.
- (3) An air pollution prevention certificate issued under subsection (1) is not a legislative instrument.

267ZY Obligation to report damage etc. to ship

- (1) If:
-

- (a) an Australian ship has a current air pollution prevention certificate; and
- (b) something happens to the ship that affects its compliance with Annex VI; and
- (c) notice of the happening is not given in accordance with the regulations within 7 days after the happening;

then the master and the owner each commit an offence for each subsequent day that passes without the notice having been given.

Penalty: 60 penalty units.

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

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

267ZZ Authority may cancel certificates

- (1) The Authority may cancel an air pollution prevention certificate that is in force for an Australian ship if the Authority has reason to believe that:
 - (a) the report of a surveyor in respect of the ship was fraudulently or erroneously made or obtained; or
 - (b) the certificate was issued upon false or erroneous information; or
 - (c) the construction of the ship has been altered, or damaged, in a manner that affects the ship's compliance with Annex VI; or
 - (d) the owner of the ship has failed to comply with section 267ZZA in respect of the ship.
- (2) The Authority may cancel an air pollution prevention certificate under subsection (1) whether or not the certificate was issued by the Authority.
- (3) The cancellation takes effect when the Authority gives written notice of the cancellation:
 - (a) addressed to the owner, agent or master of the ship; and
 - (b) served in accordance with the regulations.
- (4) If an air pollution prevention certificate for a ship is cancelled, the Authority may:
 - (a) require the certificate to be given to a specified person; and
 - (b) detain the ship until the requirement is complied with.

- (5) The requirement under paragraph (4)(a) must be:
- (a) made by notice in writing; and
 - (b) addressed to the owner, agent or master of the ship; and
 - (c) served in accordance with the regulations.
- (6) A notice under paragraph (5)(a) is not a legislative instrument.

267ZZA Ships to be surveyed periodically

- (1) A person commits an offence if:
- (a) an air pollution prevention certificate is in force for an Australian ship; and
 - (b) the person is the owner of the ship; and
 - (c) the person does not, at least once in each prescribed period in relation to the ship, cause the ship to be surveyed to ensure it complies with Annex VI.

Penalty: 60 penalty units.

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

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

267ZZB Certificate lapses if ship ceases to be Australian ship

An air pollution prevention certificate issued for an Australian ship ceases to have effect if the ship ceases to be an Australian ship.

267ZZC Certificates required for Australian ships

- (1) A person commits an offence if:
- (a) the person takes a ship to sea; and
 - (b) the ship is an Australian ship that is of 400 gross tonnage or above; and
 - (c) the person is the master of the ship; and
 - (d) an air pollution prevention certificate is not in force for the ship.

Penalty: 100 penalty units.

- (2) A person commits an offence if:
- (a) the person permits a ship to be taken to sea; and

- (b) the ship is an Australian ship that is of 400 gross tonnage or above; and
- (c) the person is the owner of the ship; and
- (d) an air pollution prevention certificate is not in force for the ship.

Penalty: 100 penalty units.

- (3) If the ship was constructed before the commencement of this section, subsections (1) and (2) apply to the ship from the earlier of the following:
 - (a) the first scheduled dry-docking of the ship after that commencement;
 - (b) 19 May 2008.

267ZZD Certificates to be carried on board Australian ships

A person commits an offence if:

- (a) the person is the owner of a ship; and
- (b) the ship is an Australian ship of 400 gross tonnage or above; and
- (c) an air pollution prevention certificate is in force for the ship; and
- (d) the person fails to ensure that the certificate is carried on board the ship.

Penalty: 100 penalty units.

267ZZE Production of certificate

- (1) This section applies if application is made to an officer of Customs in respect of an Australian ship that is of 400 gross tonnage or above for a clearance under the Customs Act for a voyage from a port in Australia.
- (2) The officer of Customs may:
 - (a) require the master of the ship to produce to him or her an air pollution prevention certificate for the ship; and
 - (b) do either or both of the following until the requirement is complied with:
 - (i) refuse to grant the clearance;

- (ii) detain the ship.

267ZZF Directions in relation to foreign ships

- (1) If the Authority considers that a foreign ship is not constructed in accordance with Annex VI, the Authority may give one or more of the following directions in relation to the ship:
- (a) that the ship not enter any port, or one or more specified ports, in Australia;
 - (b) that the ship not use any off-shore terminal, or one or more specified off-shore terminals, in Australia;
 - (c) that the ship comply with specified requirements while it is entering, is in or is leaving any port, or is in one or more specified ports, in Australia;
 - (d) that the ship comply with specified requirements while it is approaching, using or leaving any off-shore terminal, or one or more specified off-shore terminals, in Australia.
- (2) A direction must:
- (a) be given by written notice addressed to the master or the owner of the ship; and
 - (b) be served in accordance with the regulations.
- (3) A notice given under paragraph (2)(a) is not a legislative instrument.
- (4) For the purposes of subsection (1), it does not matter whether the ship is required by Annex VI to be constructed in accordance with that Annex.
- (5) The Authority may give a direction only to the extent that it appears to it necessary or expedient to do so to protect the environment.
- (6) If:
- (a) the master or owner of a ship is served with a notice under subsection (2); and
 - (b) the master or owner does not comply with any direction contained in that notice;
- the master and the owner each commit an offence.
- Penalty: 100 penalty units.

(7) An offence under subsection (6) is an offence of strict liability.

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

(8) If:

- (a) the master or owner of a ship is served with a notice under subsection (2); and
- (b) the master or owner does not comply with any direction contained in that notice; and
- (c) the master or owner is reckless as to whether there is a failure to comply with that direction;

the master and the owner each commit an offence.

Penalty: 500 penalty units.

(9) In proceedings for an offence against subsection (6) or (8) in relation to a failure to comply with a direction, it is a defence if it is proved:

- (a) that the failure to comply with the direction resulted from the need to save life at sea or was due to an emergency involving a threat to a person's life; or
- (b) that compliance with the direction was not possible.

Note: A defendant bears a legal burden in relation to the matter in subsection (9) (see subsection 13.4 of the *Criminal Code*).

4 Section 377H

Omit "or 267ZQ(1)", substitute ", 267ZQ(1) or 267ZZF(1)".

Note: The heading to section 377H is altered by omitting "and 12C" and substituting ", 12C and 12D".

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

5 Title

Repeal the title, substitute:

An Act relating to the prevention of pollution from ships

6 Subsection 5(2)

Omit “and 26F”, substitute “, 26F, 26FEG, 26FEL, 26FEN, 26FEO and 26FEP”.

7 After Part IIIC

Insert:

Part IIID—Prevention of air pollution

Division 1—Definitions

26FEF Definitions

- (1) In this Part:

Annex VI means Annex VI to the Convention.

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

fuel oil means fuel oil for combustion purposes and does not include coal in its solid form, or nuclear fuels.

fuel oil supplier of fuel oil delivered to a ship means the person responsible for the final blend of the fuel oil immediately before it is delivered to the ship.

registered local supplier of fuel oil means a local supplier of fuel oil registered in the Register of Local Suppliers of Fuel Oil.

Register of Local Suppliers of Fuel Oil means the register established under section 26FEM.

- (2) An expression that is used in this Part and in Annex VI has, in this Part, the same meaning as in that Annex (whether or not a particular meaning is assigned to it by that Annex).

Division 2—Sulphur content of fuel oil

26FEG Using fuel oil with a sulphur content of more than 4.5% m/m

Ordinary offence

- (1) A person commits an offence if:
(a) the person engages in conduct; and
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- (b) the conduct results in fuel oil with a sulphur content of more than 4.5% m/m being used on board a ship; and
- (c) the person is reckless or negligent as to causing that result; and
- (d) one of the following applies:
 - (i) the fuel oil is used while the ship is in the sea near a State, the Jervis Bay Territory or an external Territory and no law of that State or Territory gives effect to Regulation 14(1) of Annex VI in relation to that sea;
 - (ii) the fuel oil is used while the ship is in the exclusive economic zone;
 - (iii) the fuel oil is used on board an Australian ship while the ship is beyond the exclusive economic zone, but not within an SOx emission control area.

Penalty: 2,000 penalty units.

Strict liability offence

- (2) The master and the owner of a ship each commit an offence if:
 - (a) fuel oil with a sulphur content of more than 4.5% m/m is used on board the ship; and
 - (b) one of the following applies:
 - (i) the fuel oil is used while the ship is in the sea near a State, the Jervis Bay Territory or an external Territory and no law of that State or Territory gives effect to Regulation 14(1) of Annex VI in relation to that sea;
 - (ii) the fuel oil is used while the ship is in the exclusive economic zone;
 - (iii) the fuel oil is used on board an Australian ship while the ship is beyond the exclusive economic zone, but not within an SOx emission control area.

Penalty: 500 penalty units.

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

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

Presumption

- (4) It is presumed, unless the contrary is proved, that fuel oil is used as mentioned in paragraph (1)(d) or paragraph (2)(b).
-

Note: A defendant bears a legal burden in relation to proving the contrary (see section 13.4 of the *Criminal Code*).

26FEH Australian ship in SO_x emission control area

Ordinary offence

- (1) A person commits an offence if:
- (a) the person:
 - (i) takes an Australian ship into an SO_x emission control area; or
 - (ii) permits an Australian ship to be taken into an SO_x emission control area; and
 - (b) the person is the master or owner of the ship; and
 - (c) the ship does not meet the SO_x emission control conditions while the ship is within that area.

Penalty: 2,000 penalty units.

Strict liability offence

- (2) A person commits an offence if:
- (a) the person:
 - (i) takes an Australian ship into an SO_x emission control area; or
 - (ii) permits an Australian ship to be taken into an SO_x emission control area; and
 - (b) the person is the master or owner of the ship; and
 - (c) the ship does not meet the SO_x emission control conditions while the ship is within that area.

Penalty: 500 penalty units.

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

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

SO_x emission control conditions

- (4) The ***SO_x emission control conditions*** for a ship in an SO_x emission control area are:
- (a) the sulphur content of fuel oil used on board the ship while the ship is within that area does not exceed 1.5% m/m; or

- (b) both:
 - (i) an exhaust gas cleaning system, or other technological method, approved by a prescribed officer, is operating on the ship in accordance with the regulations, while the ship is within that area, to reduce the total emission of sulphur oxides from the ship to (or below) the level prescribed by the regulations; and
 - (ii) waste streams arising from the operation of such a system or other method are discharged in accordance with the regulations.
- (5) If an approval under subparagraph (4)(b)(i) is given in writing, the approval is not a legislative instrument.

Exception for emergencies

- (6) Subsection (2) does not apply to a ship if:
 - (a) the ship does not meet the SO_x emission control conditions while the ship is within an SO_x emission control area only because the total emission of sulphur oxides from the ship is more than the level prescribed by the regulations; and
 - (b) either:
 - (i) the non-compliance was a result of securing the safety of a ship or saving life at sea; or
 - (ii) the non-compliance was a result of unintentional damage to the ship or its equipment, and all reasonable precautions were taken after the occurrence of the damage, or the discovery of the emission, for the purpose of preventing or minimising the emission.

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

- (7) For the purposes of subparagraph (6)(b)(ii), damage to a ship or to its equipment is not unintentional if the damage arose:
 - (a) in circumstances where the master or owner of the ship:
 - (i) acted with intent to cause the damage; or
 - (ii) acted recklessly and with knowledge that the damage would probably result; or
 - (b) as a result of the negligence of the master or owner of the ship.

- (8) For the purposes of this section, damage to a ship or to its equipment does not include:
- (a) deterioration resulting from failure to maintain the ship or equipment; or
 - (b) defects that develop during the normal operation of the ship or equipment.

26FEI Flushing fuel oil service system

A person commits an offence if:

- (a) the person is the master of an Australian ship; and
- (b) the ship enters an SO_x emission control area; and
- (c) separate fuel oils are used on board the ship; and
- (d) at least one of the fuel oils has a sulphur content of 1.5% m/m or less; and
- (e) at least one of the fuel oils has a sulphur content of more than 1.5% m/m; and
- (f) insufficient time is allowed for the ship's fuel oil service system to be fully flushed of fuel oil with a sulphur content of more than 1.5% m/m before the ship enters the SO_x emission control area.

Penalty: 200 penalty units.

26FEJ Record of prescribed fuel-changeover operation

- (1) The master and the owner of an Australian ship each commit an offence if:
- (a) an entry in a prescribed record book is not made in accordance with the regulations as soon as practicable after a prescribed fuel-changeover operation on the ship occurs when the ship enters an SO_x emission control area; or
 - (b) the record book is not:
 - (i) retained on board the ship for the prescribed period; or
 - (ii) readily available for inspection at all reasonable times.

Penalty: 200 penalty units.

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

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

- (3) A person commits an offence if:
- (a) the person makes an entry in a prescribed record book; and
 - (b) the entry is false or misleading in a material particular.

Penalty: 200 penalty units.

26FEK New SO_x emission control areas

- (1) This section applies if an amendment is made (whether before or after the commencement of this section), in accordance with Annex VI, designating an area as an SO_x emission control area.
- (2) Sections 26FEH, 26FEI and 26FEJ do not apply in relation to the SO_x emission control area during the period of 12 months immediately after the amendment concerned enters into force.

Division 3—Fuel oil quality requirements

26FEL Local suppliers must be registered

A person commits an offence if:

- (a) the person is not a registered local supplier of fuel oil; and
- (b) the person delivers fuel oil to a ship; and
- (c) the delivery happens while the ship is:
 - (i) in the sea near a State, the Jervis Bay Territory or an external Territory and no law of that State or Territory gives effect to Regulation 18(7)(a) of Annex VI in relation to that sea; or
 - (ii) in the exclusive economic zone.

Penalty: 200 penalty units.

26FEM Register of Local Suppliers of Fuel Oil

- (1) The Authority must establish and maintain a register of local suppliers of fuel oil.
- (2) The register is to be called the Register of Local Suppliers of Fuel Oil.
- (3) The regulations may:

- (a) prescribe the way in which the Register must be established or maintained, including the details that the Authority must enter in the Register; and
 - (b) prescribe requirements that must be met by:
 - (i) persons seeking registration as local suppliers of fuel oil; and
 - (ii) persons registered as local suppliers of fuel oil.
- (4) The Register is to be made available for inspection on the Internet.
- (5) The Register established under subsection (1) is not a legislative instrument.

26FEN Using fuel oil that does not meet fuel oil quality requirements

- (1) The master and the owner of a ship each commit an offence if:
- (a) fuel oil is used on board the ship; and
 - (b) the fuel oil does not meet the requirements set out in Regulation 18(1) of Annex VI; and
 - (c) one of the following applies:
 - (i) the fuel oil is used while the ship is in the sea near a State, the Jervis Bay Territory or an external Territory and no law of that State or Territory gives effect to Regulation 18(1) of Annex VI in relation to that sea;
 - (ii) the fuel oil is used while the ship is in the exclusive economic zone;
 - (iii) the ship is an Australian ship and the fuel oil is used while the ship is beyond the exclusive economic zone.

Penalty: 500 penalty units.

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

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

Presumption

- (3) It is presumed, unless the contrary is proved, that fuel oil is used as mentioned in paragraph (1)(c).

Note: A defendant bears a legal burden in relation to proving the contrary (see section 13.4 of the *Criminal Code*).

26FEO Bunker delivery note and sample must be provided

- (1) A person commits an offence if:
- (a) the person delivers fuel oil to a ship; and
 - (b) the ship has a gross tonnage of 400 or more; and
 - (c) the delivery happens while the ship is:
 - (i) in the sea near a State, the Jervis Bay Territory or an external Territory and no law of that State or Territory gives effect to Regulation 18(1) of Annex VI in relation to that sea; or
 - (ii) in the exclusive economic zone; and
 - (d) the person does not provide to the master of the ship, in accordance with the regulations, a completed bunker delivery note in the approved form for the fuel oil delivered.

Penalty: 200 penalty units.

- (2) A person commits an offence if:
- (a) the person delivers fuel oil to a ship; and
 - (b) the ship has a gross tonnage of 400 or more; and
 - (c) the delivery happens while the ship is:
 - (i) in the sea near a State, the Jervis Bay Territory or an external Territory and no law of that State or Territory gives effect to Regulation 18(1) of Annex VI in relation to that sea; or
 - (ii) in the exclusive economic zone; and
 - (d) the person does not provide to the master of the ship, in accordance with the regulations, a representative sample of the fuel oil that is sealed and signed in accordance with the regulations.

Penalty: 200 penalty units.

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

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

26FEP Fuel oil delivered must be in accordance with declaration

- (1) A person commits an offence if:
- (a) fuel oil is delivered to a ship; and

- (b) the person is the fuel oil supplier of that fuel oil; and
- (c) the ship has a gross tonnage of 400 or more; and
- (d) the delivery happens while the ship is:
 - (i) in the sea near a State, the Jervis Bay Territory or an external Territory and no law of that State or Territory gives effect to Regulation 18(7)(b) of Annex VI in relation to that sea; or
 - (ii) in the exclusive economic zone; and
- (e) a bunker delivery note is provided for the delivery; and
- (f) the bunker delivery note contains a declaration signed by the person or the person's representative certifying that the fuel oil meets the requirements set out in regulation 18(1) of Annex VI; and
- (g) the fuel oil delivered does not meet those requirements.

Penalty: 500 penalty units.

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

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

26FEQ Bunker delivery note must be retained and available for inspection

- (1) A person commits an offence if:
- (a) the person delivers fuel oil to a ship; and
 - (b) the person provides a bunker delivery note for the delivery; and
 - (c) the person does not:
 - (i) retain a copy of the bunker delivery note for at least 3 years after the fuel oil is delivered; and
 - (ii) have that copy readily available for inspection by an inspector at all reasonable times.

Penalty: 200 penalty units.

- (2) The master and the owner of an Australian ship each commit an offence if:
- (a) fuel oil is delivered to the ship; and
 - (b) the ship has a gross tonnage of 400 or more; and

- (c) a bunker delivery note for the delivery of fuel oil to the ship is provided to the master of the ship; and
- (d) the bunker delivery note is not:
 - (i) retained in the ship for 3 years after the delivery; and
 - (ii) readily available for inspection at all reasonable times.

Penalty: 200 penalty units.

- (3) The master and the owner of a foreign ship each commit an offence if:
 - (a) fuel oil is delivered to the ship; and
 - (b) the ship has a gross tonnage of 400 or more; and
 - (c) a bunker delivery note for the delivery of fuel oil to the ship is provided to the master of the ship; and
 - (d) the bunker delivery note is not:
 - (i) retained in the ship for 3 years after the delivery; and
 - (ii) readily available for inspection at all reasonable times while the ship is in an Australian port or an Australian offshore terminal.

Penalty: 200 penalty units.

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

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

26FER Sample must be retained

- (1) The master and the owner of a ship each commit an offence if:
 - (a) fuel oil is delivered to the ship; and
 - (b) the ship has a gross tonnage of 400 or more; and
 - (c) a representative sample of fuel oil is provided to the master in connection with the delivery of fuel oil to the ship; and
 - (d) the sample is not retained in accordance with the regulations until the later of the following:
 - (i) the time at which the fuel oil delivered is substantially consumed;
 - (ii) the end of 12 months after the day on which the fuel oil is delivered.

Penalty: 200 penalty units.

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

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

8 At the end of paragraphs 27(1)(e), (f), (g), (h), (j), (k), (m) and (n)

Add “and”.

9 Paragraph 27(1)(p)

Repeal the paragraph, substitute:

- (p) require the master of the ship to produce any substances on board the ship or under the ship’s control; and
- (pa) examine, and take samples of, any substances on board the ship or under the ship’s control; and

10 Subsection 27A(6) (definition of *pollution breach*)

Repeal the definition, substitute:

pollution breach means:

- (a) a discharge or disposal from a ship that:
 - (i) contravenes this Act; or
 - (ii) gives rise to a right of recovery by the Authority under Part IVA of the *Protection of the Sea (Civil Liability) Act 1981*; or
- (b) an offence against section 26FEG or 26FEN.

11 Subsection 28(4)

Omit “or 26F”, substitute “, 26F, 26FEG or 26FEH”.

12 Subsection 33(2)

Omit “or V”, substitute “, V or VI”.

Schedule 2—Other amendments

Navigation Act 1912

1 Subsection 186G(1)

Insert:

navigates without a licensed pilot has the meaning given by subsections (4) and (5).

2 Subsection 186G(1) (definition of *navigates without a pilot*)

Repeal the definition.

3 Subsections 186G(4) and (5)

Repeal the subsections, substitute:

(4) Subject to subsection (5), a ship *navigates without a licensed pilot* if the ship does not have a licensed pilot on board to assist the master in navigating it.

(5) If:

(a) apart from this subsection, a ship navigates without a licensed pilot; and

(b) the ship is being towed by another vessel that is navigating with a licensed pilot;

the ship under tow is to be treated as if it were navigating with a licensed pilot.

4 Sections 186I, 186J and 186K

Omit “pilot” (wherever occurring), substitute “licensed pilot”.

Note 1: The heading to section 186I is altered by omitting “pilot” and substituting “licensed pilot”.

Note 2: The heading to section 186J is altered by omitting “Pilots” and substituting “Licensed pilots”.

Note 3: The heading to section 186K is altered by omitting “pilot” and substituting “licensed pilot”.

5 Subsection 267(2)

After “12,” insert “12A,”.

6 Section 267A

After “12,” insert “12A,”.

7 Subsection 267(2)

After “26,” insert “27,”.

8 Section 267A

After “26,” insert “27,”.

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

9 Subsection 3(1) (definition of *the 1973 Convention*)

Omit “(other than an amendment not accepted by Australia)”, substitute “(other than an amendment that has not entered force for Australia)”.

10 Subsection 3(1) (definition of *the 1978 Protocol*)

Omit “(other than an amendment not accepted by Australia)”, substitute “(other than an amendment that has not entered force for Australia)”.

11 Sub-subparagraph 9(4)(a)(iv)(A)

Omit “an existing tanker”, substitute “a tanker delivered on or before 31 December 1979”.

12 Sub-subparagraph 9(4)(a)(iv)(B)

Omit “new tanker”, substitute “tanker delivered after 31 December 1979”.

13 Paragraph 9(4)(e)

Repeal the paragraph.

Note: This item repeals a spent provision.

14 Subsection 9(4A)

Repeal the subsection.

Note: This item repeals a spent provision.

15 After subsection 32(1A)

Insert:

- (1B) Subject to subsection (2), the regulations may provide that any of the provisions of this Act relating to the keeping of a shipboard waste management plan on board Australian ships apply, with any modifications or exceptions that are prescribed, to foreign ships:
- (a) in a port in Australia; or
 - (b) in the territorial sea of Australia; or
 - (c) in the sea on the landward side of the territorial sea of Australia.

16 At the end of paragraph 33(1)(c)

Add “, any other Act or any instrument made under any other Act”.

17 After subsection 33(1)

Insert:

- (1A) The limit in paragraph (1)(f) on penalties does not apply to regulations made for the purposes of subsection 32(1), (1A) or (1B).

18 Application

The amendment made by item 17 applies to regulations made for the purposes of subsection 32(1), (1A) or (1B) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* on or after the commencement of that item.

19 Subsections 33(2) and (2A)

Repeal the subsections, substitute:

- (2) Regulations, and orders made under section 34, giving effect to Annex I, II, III, IV or V to the Convention do not apply in relation to a ship as defined by subsection (4) to the extent that a law of a State or a Territory gives effect to the Annex in relation to that ship.

*[Minister's second reading speech made in—
House of Representatives on 6 December 2006
Senate on 26 February 2007]*

(198/06)