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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

Presented and read a first time

Exposure Draft

Maritime Legislation Amendment Bill 2022

No. , 2022

(Infrastructure, Transport, Regional Development, Communications and the Arts)

**A Bill for an Act to amend the law relating to the
protection of the sea, and for related purposes**

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OPC drafter to complete	
1. Does this Bill need a message? (See H of R Practice, sixth ed, pp. 423-427, and OGC advice.) If yes: <ul style="list-style-type: none">• List relevant clauses/items—• Prepare message advice (see Drafting Direction 4.9)• Give a copy of the message advice to the Legislation area.	No
2. Does this Bill need a notice? (See H of R Standing Order 178 and Drafting Direction 3.2.) If no list relevant clauses/items—	Yes
3. Is there any constitutional reason why this Bill should not be introduced in the Senate? (See Constitution sections 53 and 55 and Drafting Direction 3.2.)	No

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A Bill for an Act to amend the law relating to the protection of the sea, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Maritime Legislation Amendment Act 2022*.

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
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not	The day this Act receives the Royal Assent.	

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
elsewhere covered by this table		
2. Schedule 1	The day after this Act receives the Royal Assent.	
3. Schedule 2	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 November 2022.	
4. Schedule 3	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 January 2023.	
5. Schedule 4	The day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedules**

8 Legislation 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 **Schedule 1—Discharge of persistent floaters**
2

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

5 *[Ref2AGs A47 (whole Schedule intended to implement Resolution*
6 *MEPC.315(74) (Cargo residues and tank washings of persistent*
7 *floating products), amending Annex II to MARPOL)*

8 **1 Subsection 15(1)**

9 Insert:

10 ***regulated persistent floater*** means a persistent floater with:

11 (a) a viscosity equal to or greater than 50 mPa·s at 20°C; or

12 (b) a melting point equal to or greater than 0°C.

13 **2 Subsection 21(4)**

14 Omit “subsection (12)”, substitute “subsections (12) and (13)”.

15 **3 Subparagraph 21(4)(a)(ii)**

16 Omit “regulations made for the purposes of section 26”, substitute “the
17 prewash procedure specified in Appendix VI to Annex II”.

18 **4 Subsection 21(4)**

19 Omit “following conditions are satisfied.”, substitute “conditions in
20 subsection (9A) are satisfied.”.

21 **5 Paragraphs 21(4)(d), (e) and (f)**

22 Repeal the paragraphs.

23 **6 Subsection 21(5)**

24 Omit “subsection (12)”, substitute “subsections (12) to (13A)”.

25 **7 Subparagraph 21(5)(a)(iv)**

26 Omit “regulations made for the purposes of section 26”, substitute “the
27 prewash procedure specified in Appendix VI to Annex II”.

1 **8 Subsection 21(5)**

2 Omit “following conditions are satisfied.”, substitute “conditions in
3 subsection (9A) are satisfied.”.

4 **9 Paragraphs 21(5)(d), (e) and (f)**

5 Repeal the paragraphs.

6 **10 After subsection 21(5)**

7 Insert:

8 *Regulated persistent floaters in Category Y*

9 (5A) Subject to subsections (12) and (13), if:

- 10 (a) the tank of a ship that held:
- 11 (i) a regulated persistent floater in Category Y; or
- 12 (ii) a mixture containing a regulated persistent floater in
- 13 Category Y;
- 14 has been:
- 15 (iii) emptied to the maximum extent in accordance with
- 16 procedures in the Procedures and Arrangements
- 17 Manual; and
- 18 (iv) washed in accordance with the prewash procedure
- 19 specified in Appendix VI to Annex II; and
- 20 (b) the resulting residues in the tank have been discharged to a
- 21 reception facility at the port of unloading until the tank is
- 22 empty; and
- 23 (c) the residue then remaining in the tank has been subsequently
- 24 diluted with water;

25 subsection (1B) does not apply to the discharge from the ship of

26 the water containing that residue, into the North West European

27 waters, the Baltic Sea area, the Western European waters or the

28 Norwegian Sea, if the conditions in subsection (9A) are satisfied.

29 Note: A defendant bears an evidential burden in relation to the matters in

30 subsection (5A) (see subsection 13.3(3) of the *Criminal Code*).

31 **11 Subsection 21(6)**

32 Omit “subsection (12)”, substitute “subsections (12) to (13A)”.

1 **12 Subsection 21(6)**

2 Omit “following conditions are satisfied.”, substitute “conditions in
3 subsection (9A) are satisfied.”

4 **13 Paragraphs 21(6)(c), (d) and (e)**

5 Repeal the paragraphs.

6 **14 Subsection 21(7)**

7 Omit “subsection (12)”, substitute “subsections (12) and (13)”.

8 **15 Subsection 21(8)**

9 Omit “subsection (12)”, substitute “subsections (12) and (13)”.

10 **16 Subsection 21(8)**

11 Omit “following conditions are satisfied.”, substitute “conditions in
12 subsection (9A) are satisfied”.

13 **17 Paragraphs 21(8)(d), (e), (f) and (g)**

14 Repeal the paragraphs.

15 **18 Subsection 21(9)**

16 Omit “paragraph (8)(f)”, substitute “paragraph (9A)(c) in relation to the
17 discharge into the sea of residue referred to in subsection (8)”.

18 **19 After subsection 21(9)**

19 Insert:

20 *Conditions for the discharge of residue into the sea*

21 (9A) For the purposes of subsections (4), (5), (5A), (6) and (8), the
22 following conditions must be satisfied in relation to the discharge
23 of any residue into the sea:

24 (a) the discharge is made when the ship is proceeding en route at
25 a speed of:

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

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

28 (b) the discharge is made below the ship’s waterline through the
29 ship’s underwater discharge outlets at a rate not exceeding

- 1 the maximum rate for which each underwater discharge
2 outlet is designed;
- 3 (c) the discharge is made when the ship is at least 12 nautical
4 miles from the nearest land;
- 5 (d) the discharge is made when the ship is in water at least 25
6 metres deep.

7 **20 After subsection 21(13)**

8 Insert:

9 *Subsections (5) [and (6)] do not apply to discharges of regulated*
10 *persistent floaters in certain waters*

11 (13A) Subsections (5) [and (6)] do not apply to the discharge from a ship
12 of water containing residues from tanks that held regulated
13 persistent floaters, or mixtures containing regulated persistent
14 floaters, in the North West European waters, the Baltic Sea area,
15 the Western European waters or the Norwegian Sea.

16 **21 Subsection 22(10) (paragraphs (a) and (b) of the definition** 17 **of prescribed incident)**

18 After “(5)”, insert “, (5A)”.

1 **Schedule 2—Carriage of heavy grade oil in**
2 **Arctic waters**
3

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

6 *[Ref2AGs A47 (whole Schedule intended to implement Resolution*
7 *MEPC.329(76) (Prohibition on the use and carriage for use as fuel of*
8 *heavy fuel oil by ships in Arctic waters), amending Annex I to*
9 *MARPOL)*

10 **1 Subsection 3(1)**

11 Insert:

12 ***ship with fuel tank protection*** means either of the following:

- 13 (a) a ship with an aggregate oil fuel capacity of 600m³ or above
14 which is delivered on or after 1 August 2010 (as defined in
15 regulation 1.28.9 of Annex I to the Convention);
16 (b) a category A ship, or category B ship, constructed on or after
17 1 January 2017 with an aggregate oil fuel capacity of less
18 than 600m³.

19 ***ship without fuel tank protection*** means a ship other than a ship
20 with fuel tank protection.

21 **2 After section 10A**

22 Insert:

23 **10AA Prohibition of carriage or use of heavy grade oil on Australian**
24 **ships in Arctic waters**

- 25 (1) A person commits an offence if:
26 (a) the person is the master or owner of an Australian ship; and
27 (b) the person engages in conduct; and
28 (c) the conduct results in heavy grade oil being used, or carried
29 for use, as fuel on the ship in Arctic waters; and
30 (d) either of the following apply:

- 1 (i) for a ship without fuel tank protection—the person
2 engages in the conduct on or after 1 July 2024;
3 (ii) for a ship with fuel tank protection—the person engages
4 in the conduct on or after 1 July 2029.

5 Penalty: 2,000 penalty units.

- 6 (2) A person commits an offence if:
7 (a) the person is the master or owner of an Australian ship; and
8 (b) the person engages in conduct; and
9 (c) the conduct results in heavy grade oil being used, or carried
10 for use, as fuel on the ship in Arctic waters; and
11 (d) either of the following apply:
12 (i) for a ship without fuel tank protection—the person
13 engages in the conduct on or after 1 July 2024;
14 (ii) for a ship with fuel tank protection—the person engages
15 in the conduct on or after 1 July 2029.

16 Penalty: 500 penalty units.

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

18 *[Ref2AGs A32 (note strict liability penalty is 500 penalty units, consistent*
19 *with existing penalties in s10A and 10B)*

- 20 (4) Subsections (1) and (2) do not apply to heavy grade oil that is
21 carried or used as fuel on an Australian ship that is:
22 (a) engaged in securing the safety of a ship; or
23 (b) engaged in a search and rescue operation; or
24 (c) dedicated to oil spill preparedness and response.

25 Note: A defendant bears an evidential burden in relation to the matter in
26 subsection (4): see subsection 13.3(3) of the Criminal Code.

- 27 (5) If, at any time (whether before or after this section commences)
28 before an Australian ship enters Arctic waters, heavy grade oil is
29 carried or used as fuel on the ship, subsections (1) and (2) do not
30 apply to any residue of the oil that is not cleaned or flushed from a
31 tank or pipeline of the ship.

32 Note: A defendant bears an evidential burden in relation to the matter in
33 subsection (5): see subsection 13.3(3) of the Criminal Code.

1 **Schedule 3—Extension of controls on**
2 **anti-fouling systems**
3

4 ***Protection of the Sea (Harmful Anti-fouling Systems) Act***
5 **2006**

6 *[Ref2AGs A47 (whole Schedule intended to implement Resolution*
7 *MEPC.331(76) (Controls on cybutryne and form of the International*
8 *Anti-fouling System Certificate), amending Annexes 1 and 4 to the*
9 *International Convention on the Control of Harmful Anti-Fouling*
10 *Systems on Ships, 2001)*

11 **1 Section 3 (definition of HAFC)**

12 After “in an anti-fouling system”, insert “, or cybutryne”.

13 **2 Section 3**

14 Insert:

15 *pre-2023 exempt platform* means an exempt platform that was
16 constructed before 1 January 2023 and has not been in dry dock on
17 or after that date.

18 **3 At the end of section 4**

19 Add:

20 ; or (c) for a ship that has cybutryne applied on a designated external
21 surface—neither of the following has occurred:

22 (i) the first scheduled renewal of the ship’s anti-fouling
23 system after 1 January 2023;

24 (ii) the day that is 60 months after the last application of
25 cybutryne to the ship before 1 January 2023.

26 **4 Paragraph 9(1)(a)**

27 Omit “on or after 1 January 2008,”.

28 **5 After paragraph 9(1)(d)**

29 Insert:

1 ; and (e) for a ship that has cybutryne applied to a designated external
2 surface—none of the following apply:

- 3 (i) the ship is a pre-2023 exempt platform;
4 (ii) the ship does not engage in international voyages.

5 **6 Paragraph 9(2)(a)**

6 Repeal the paragraph, substitute:

- 7 (a) a person allows an Australian ship to remain in a shipping
8 facility; and

9 **7 After paragraph 9(2)(d)**

10 Insert:

11 ; and (e) for a ship that has cybutryne applied to a designated external
12 surface—none of the following apply:

- 13 (i) the ship is a pre-2023 exempt platform;
14 (ii) the ship does not engage in international voyages.

15 **8 Paragraph 9(3)(a)**

16 Omit “on or after 1 January 2008,”.

17 **9 After paragraph 9(3)(d)**

18 Insert:

19 ; and (e) for a ship that has cybutryne applied to a designated external
20 surface—neither of the following apply:

- 21 (i) the ship is a pre-2023 exempt platform;
22 (ii) the ship does not engage in international voyages.

23 **10 Paragraph 9(4)(a)**

24 Repeal the paragraph, substitute:

- 25 (a) a person allows a foreign ship to remain in an Australian
26 shipping facility; and

27 **11 After paragraph 9(4)(d)**

28 Insert:

29 ; and (e) for a ship that has cybutryne applied to a designated external
30 surface—neither of the following apply:

- 31 (i) the ship is a pre-2023 exempt platform;
-

1 (ii) the ship does not engage in international voyages.

2 **12 Paragraph 9(5)(a)**

3 Omit “on or after 1 January 2008,”.

4 **13 After paragraph 9(5)(d)**

5 Insert:

6 ; and (e) for a ship that has cybutryne applied to a designated external
7 surface—none of the following apply:

8 (i) the ship is a pre-2023 exempt platform;

9 (ii) the ship does not engage in international voyages.

10 **14 Paragraph 9(6)(a)**

11 Repeal the paragraph, substitute:

12 (a) an Australian ship remains in a shipping facility; and

13 **15 After paragraph 9(6)(c)**

14 Insert:

15 ; and (d) for a ship that has cybutryne applied to a designated external
16 surface—none of the following apply:

17 (i) the ship is a pre-2023 exempt platform;

18 (ii) the ship does not engage in international voyages.

19 **16 Paragraph 9(7)(a)**

20 Omit “on or after 1 January 2008,”.

21 **17 After paragraph 9(7)(d)**

22 Insert:

23 ; and (e) for a ship that has cybutryne applied to a designated external
24 surface—neither of the following apply:

25 (i) the ship is a pre-2023 exempt platform;

26 (ii) the ship does not engage in international voyages.

27 **18 Paragraph 9(8)(a)**

28 Repeal the paragraph, substitute:

29 (a) a foreign ship remains in an Australian shipping facility; and

1 **19 After paragraph 9(8)(c)**

2 Insert:

3 ; and (e) for a ship that has cybutryne applied to a designated external
4 surface—neither of the following apply:

5 (i) the ship is a pre-2023 exempt platform;

6 (ii) the ship does not engage in international voyages;

7 **20 Application of amendments**

8 The amendments of subsections 9(2), (4), (6) and (8) of the *Protection*
9 *of the Sea (Harmful Anti-fouling Systems) Act 2006* made by this
10 Schedule apply in relation to a ship whether or not the ship entered the
11 shipping facility before the commencement of this Schedule.

1 **Schedule 4—Marine orders**
2

3 *Protection of the Sea (Harmful Anti-fouling Systems) Act*
4 *2006*

5 **1 Section 3**

6 Insert:

7 *Marine Order* has the meaning given by section 24.

8 **2 Section 3 (definition of orders)**

9 Repeal the definition.

10 **3 Section 3 (definition of regulations)**

11 Omit “orders”, substitute “Marine Orders”.

12 **4 Section 24**

13 After “make orders”, insert “(*Marine Orders*)”.

14 **5 Paragraph 25(d) (note)**

15 Omit “the orders”, substitute “Marine Orders”.

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

18 **6 Subsection 3(1)**

19 Insert:

20 *marine order* has the meaning given by section 34.

21 **7 Subsection 3(1) (definitions of the regulations and this**
22 **Act)**

23 Omit “orders made under section 34”, substitute “Marine Orders”.

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8 Paragraph 26AB(6)(a)

Omit “regulations or orders made pursuant to regulations”, substitute “the regulations”.

9 Paragraph 26AB(6)(b)

Omit “or orders” (wherever occurring).

10 Paragraphs 26B(11)(a) and (b)

Omit “or orders made under the regulations”.

11 Paragraphs 26BCC(6)(b) and 26D(6)(a)

Omit “, or orders made pursuant to the regulations,”.

12 Paragraph 33(1)(f)

Omit “of the orders made under section 34”, substitute “Marine Order”.

13 Subsection 33(2)

Omit “orders made under section 34”, substitute “Marine Orders”.

14 Subsection 34(1)

After “orders”, insert “(*Marine Orders*)”.