



Agenda item	9
	AIS data used as evidences at court cases
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Use of AIS data in court – Australia

AIS data has been used as evidence in a number of pilotage and pollution cases in recent years without controversy.

GARBAGE POLLUTION – THE XIN TAI HAI

A recent example of this process is demonstrated in relation to the illegal disposal of garbage into the sea in which the owner of the vessel XIN TAI HAI and its master were each convicted of strict liability offences against the *Protection of the Sea (Prevention of Pollution from Ships) Act 1981*. In that case a fisherman travelling in the wake of the vessel saw approximately 20 garbage bags of waste torn and floating on the water. The bags were spilling contents into the sea and the witness took photographs of this. He also noted his GPS position and notified authorities who later attended the vessel identified by the witness, taking evidence from the log book about the location of the vessel at the time of the report by the witness.

AIS data was used to show that the identified vessel had been in the location recorded by the witness at the relevant time and also that there were no other vessels in the area.

The defendants entered guilty pleas although the master noted that shipboard procedures prohibited garbage disposal and that he had no knowledge that dumping was taking place. The use of the AIS data was not mentioned in the judgement (which is not usually published in such cases).

EVIDENCE REQUIREMENTS

AIS data is presented by way of maps developed by the Australian Maritime Safety Authority GIS team or our State-based colleagues. Data in this form is considered to be a 'document' and a 'commonwealth record' for the purposes of the *Evidence Act 1995* (Cth).

AIS evidence is introduced into Court by way of a Witness Statement which, unless contested, is accepted without further submissions. The witness may be required to give evidence in person if the affected party so requests. This has happened once but the discussion did not go to the accuracy of the AIS data itself. The following sections of the *Evidence Act 1995* (Cth) are relevant in relation to these matters:

146 Evidence produced by processes, machines and other devices

(1) This section applies to a document or thing:

- (a) that is produced wholly or partly by a device or process; and
- (b) that is tendered by a party who asserts that, in producing the document or thing, the device or process has produced a particular outcome.

(2) If it is reasonably open to find that the device or process is one that, or is of a kind that, if properly used, ordinarily produces that outcome, it is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) that, in producing the document or thing on the occasion in question, the device or process produced that outcome.

155 Evidence of official records

(1) Evidence of a Commonwealth record .. may be adduced by producing a document that:

- (a) ...; or
- (b) purports to be a copy of or extract from the record that is certified to be a true copy or extract by:
 - (i) a Minister, or a Minister of the State or Territory, as the case requires; or
 - (ii) a person who might reasonably be supposed to have custody of the record.

161 Electronic communications

(1) If a document purports to contain a record of an electronic communication it is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) that the communication:

- (a) was sent or made in the form of electronic communication that appears from the document to have been the form by which it was sent or made; and
- (b) was sent or made by or on behalf of the person by or on whose behalf it appears from the document to have been sent or made; and
- (c) was sent or made on the day on which, at the time at which and from the place from which it appears from the document to have been sent or made; and
- (d) was received at the destination to which it appears from the document to have been sent; and
- (e) if it appears from the document that the sending of the communication concluded at a particular time—was received at that destination at that time.

167 Requests may be made about certain matters

A party may make a reasonable request to another party for the purpose of determining a question that relates to:

- (a) ...; or
- (b) ...; or
- (c) the authenticity, identity or admissibility of a document or thing.

169 Failure or refusal to comply with requests

(1) If the party has, without reasonable cause, failed or refused to comply with a request, the court may, on application, make one or more of the following orders:

- (a) an order directing the party to comply with the request;
- (b) an order that the party produce a specified document or thing, or call as a witness a specified person;
- (c) an order that the evidence in relation to which the request was made is not to be admitted in evidence;
- (d) such order with respect to adjournment or costs as is just.

(5) Without limiting the matters that the court may take into account in relation to the exercise of a power under subsection (1), it is to take into account:

- (a) the importance in the proceeding of the evidence in relation to which the request was made; and
- (b) whether there is likely to be a dispute about the matter to which the evidence relates; and
- (c) whether there is a reasonable doubt as to the authenticity or accuracy of the evidence that is, or the document the contents of which are, sought to be proved; and
- (d) whether there is a reasonable doubt as to the authenticity of the document or thing that is sought to be tendered; and
- (e) if the request relates to evidence of a previous representation— whether there is a reasonable doubt as to the accuracy of the representation or of the evidence on which it was based; and
- (f) ...; and
- (g) whether compliance with the request would involve undue expense or delay or would not be reasonably practicable; and
- (h) the nature of the proceeding.