

MARINE POLLUTION (AMENDMENT) ACT 1991 No. 81

NEW SOUTH WALES



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MARINE POLLUTION (AMENDMENT) ACT 1991 No. 81

NEW SOUTH WALES



Act No. 81, 1991

An Act to amend the Marine Pollution Act 1987 to provide for the detention of vessels believed to have caused pollution in State waters.
[Assented to 17 December 1991]

Marine Pollution (Amendment) 1991

The Legislature of New South Wales enacts:**Short title**

1. This Act may be cited as the Marine Pollution (Amendment) Act 1991.

Commencement

2. This Act commences on a day to be appointed by proclamation.

Amendment of Marine Pollution Act 1987 No. 299

3. The Marine Pollution Act 1987 is amended as set out in Schedule 1.
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SCHEDULE 1—AMENDMENTS

(Sec. 3)

- (1) Sections 46 (**Recovery of costs and expenses with respect to pollution by oil**), 47 (**Recovery of costs and expenses with respect to pollution by noxious liquid substances**):

In sections 46 (4) and 47 (5), after “section 52”, wherever occurring, insert “or section 52A”.

- (2) Section 52 (**Additional provisions relating to recovery of costs and expenses**):

- (a) Section 52 (1):

Omit “is, a charge”, insert instead “and the amount of any penalty that can be imposed under this Act against the owner or master of the ship in relation to the discharge are charges”.

- (b) Section 52 (2):

Omit “to the satisfaction of the Board”, insert instead “in accordance with section 52B”.

- (3) Sections 52A–52C:

After section 52, insert:

Detention of ships believed to have discharged oil or noxious substances

52A. (1) A ship in State waters may be detained by a person authorised by the Board if the Board has reasonable cause to believe:

SCHEDULE 1—AMENDMENTS—*continued*

- (a) that a discharge to which this Act applies has occurred from the ship; and
 - (b) that, if the Board were to establish that the discharge had occurred from the ship, the Board could take proceedings to recover the costs and expenses incurred by it in taking action in relation to that discharge under section 46, 47 or 50; and
 - (c) that the ship will depart from State waters before the completion of the Board's investigation into the source of the discharge.
- (2) A ship that has been detained must be immediately released:
- (a) if security is provided in accordance with section 52B; or
 - (b) if proceedings are instituted in relation to the discharge and are discontinued; or
 - (c) if proceedings are instituted in relation to the discharge and are concluded, whether or not an appeal is pending, without any person being convicted or costs or expenses being awarded against any person; or
 - (d) if proceedings in relation to the discharge are concluded and all costs and expenses ordered to be paid and all penalties imposed have been paid; or
 - (e) if the Board has sought to recover costs and expenses incurred by it as a debt due and the amount has been paid; or
 - (f) if the Board forms the belief that the discharge did not occur from the ship; or
 - (g) if the Board determines for any other reason that the ship should be released.
- (3) Security may be required to be provided for the payment of:
- (a) any amount that might, in the opinion of the Board, be recoverable by the Board under section 46, 47 or 50 from the owner or master of the ship in relation to the discharge; and

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) the maximum amount of penalties that can be imposed under this Act against the owner or master in relation to the discharge.

Security taken by the Board

52B. (1) This section applies where security is taken by the Board under section 52 or 52A.

- (2) The security must be in a form acceptable to the Board.
- (3) The amount available under the security must be applied only as follows:
 - (a) in payment of any costs or expenses that have been ordered to be paid to the Board by the master or owner in the course of proceedings for an offence in respect of the discharge or that are recoverable under this Part against the master or owner as a debt due;
 - (b) in payment of any penalty imposed by a court in the course of proceedings for an offence in respect of the discharge.

Departure of ships under detention

52C. (1) The master and the owner of a ship detained under this Part which departs State waters before it is released from detention are each guilty of an offence against this section.

Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in any other case).

- (2) A person is not guilty of an offence under this section if the person can establish that he or she was not aware that the ship had been detained under this Part.

*[Minister's second reading speech made in—
Legislative Assembly on 13 November 1991
Legislative Council on 11 December 1991]*