

**PREVENTION OF OIL POLLUTION OF NAVIGABLE
WATERS ACT.**

Act No. 48, 1960.

An Act relating to the prevention of the pollution of navigable waters by oil; to repeal the Oil in Navigable Waters Act, 1927; and for purposes connected therewith. [Assented to, 17th November, 1960.] **Elizabeth II,
No. 48, 1960.**

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Prevention of Oil Pollution of Navigable Waters Act, 1960". Short title
and
commence-
ment.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Oil in Navigable Waters Act, 1927, is hereby repealed. Repeal.

3. (1) This Act shall bind the Crown.

Act to
bind Crown.

(2) This Act shall apply to all ships within the jurisdiction: Provided that sections nine, ten and fifteen of this Act shall not apply to ships trading, or proceeding, to or from a port outside the jurisdiction. Application.

4.

Prevention of Oil Pollution of Navigable Waters Act.

No. 48, 1960. 4. (1) In this Act, unless the context or subject matter
Definitions. otherwise indicates or requires,—

“Board” means The Maritime Services Board of New South Wales.

“Discharge” means any discharge or escape, howsoever caused.

“Master” includes every person having lawfully or de facto the command, charge or management of a ship for the time being.

“Mixture containing oil” means a mixture of oil, as herein defined, with water or any other substance.

“Occupier” in relation to a place on land means the person exercising by himself, his servants or agents any right of occupation thereof, or if it has no occupier means the owner thereof, and in relation to a vehicle includes the person in charge thereof and the owner thereof and not the occupier of the land on or over which such vehicle stands or moves.

“Oil” means oil of any description and includes spirit produced therefrom and coal tar.

“Oil residues” means those parts of a mixture containing oil which remain after undergoing a separation process.

“Place on land” includes any structure or apparatus on, and any thing or vehicle resting on or moving over, any land, and anything resting on or lying under the bed or shores of any navigable waters, and also includes anything afloat (other than a ship) if it is anchored or attached to the bed or shore of any navigable waters.

“Prescribed” means prescribed by this Act or the regulations thereunder.

“Regulations” means regulations made under this Act.

“Ship” includes every description of vessel or craft.

“Tanker” means a ship constructed or adapted for carrying a cargo of oil in bulk.

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Prevention of Oil Pollution of Navigable Waters Act.

403

“The Convention” means the International Convention ^{No. 48, 1960.} for the Prevention of Pollution of the Sea by Oil, 1954, and includes that Convention as amended by any amendment accepted by Australia.

“The jurisdiction” means the sea lying within the territorial limits, the ports and tidal rivers, and the inland navigable waters of New South Wales.

(2) Any discharge of oil, or of any mixture containing oil, onto or into any lands or waters, or any structure or thing, having the result that the whole or any part of such oil or mixture containing oil eventually enters any waters within the jurisdiction, is for all purposes under this Act a discharge into such waters within the jurisdiction of the said oil or mixture containing oil, or of so much of the same as enters the said waters within the jurisdiction.

5. (1) This Act shall be read and construed subject to the ^{Saving.} Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected.

(2) The provisions of this Act shall be read and construed as being in addition to and not in derogation of or in substitution for any provisions contained in any other Act or in any by-laws, ordinances or regulations made thereunder.

6. If any discharge of oil, or of any mixture containing oil, ^{Discharge of oil into waters.} into any waters within the jurisdiction occurs from any ship, or from any place on land, or from any apparatus used for transferring oil from or to any ship (whether to or from a place on land or to or from another ship) then subject to the provisions of this Act—

- (a) if the discharge is from a ship, both the owner and the master of the ship, or
- (b) if the discharge is from a place on land, the occupier of that place, or

(c)

Prevention of Oil Pollution of Navigable Waters Act.

No. 48, 1960.

- (c) if the discharge is from apparatus used for transferring oil from or to a ship, the person in charge of the apparatus,

shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding one thousand pounds.

Special defences.

7. (1) Where the owner or master of a ship is charged with an offence against section six of this Act it shall be a defence to prove—

- (a) that the discharge of oil or mixture containing oil was necessary for the purpose of securing the safety of the ship, or of preventing damage to the ship or cargo or of saving life, and was a reasonable step to take in the circumstances;
- (b) that the oil or mixture containing oil escaped—
- (i) in consequence of damage to the ship and that all reasonable steps were taken after the occurrence of the damage for stopping or reducing the escape of the oil or mixture; or
- (ii) in consequence of leakage which could not have been avoided, foreseen or anticipated and that all reasonable steps were taken for prompt discovery of the leakage and after such discovery for stopping or reducing the escape of the oil or mixture.

(2) Where the occupier of a place on land, or the person in charge of any apparatus, is charged with an offence under section six of this Act it shall be a defence to prove that the escape of the oil or mixture containing oil was due to accident which could not have been avoided, foreseen or anticipated, and that all reasonable steps were taken for prompt discovery of the escape of the oil or mixture and after such discovery for stopping or reducing such escape.

Removal of oil pollution.

8. (1) Where any discharge of oil or of any mixture containing oil occurs as referred to in section six of this Act, the Board may take such action as it deems appropriate to remove, disperse, destroy or mitigate the pollution caused by the oil so discharged, or the oil contained in any mixture so discharged, or any substance other than water contained in any

Prevention of Oil Pollution of Navigable Waters Act.

405

any such mixture, and may recover all costs and expenses incurred in and about such removal, dispersal, destruction or mitigation from either the owner or master of the vessel from which the discharge occurs, or from the occupier of the place on land from which the discharge occurs or from the person in charge of the apparatus from which the discharge occurs, as the case may require. No. 48, 1960.

(2) Such costs and expenses may be recovered as a debt in any court of competent jurisdiction.

(3) Proceedings under this section shall be in addition to and not in derogation of or in substitution for any proceedings which may be taken apart from this section.

9. (1) Every ship shall be fitted with such equipment for the prevention of the discharge of oil and of any mixture containing oil into any waters within the jurisdiction and shall comply with such requirements relating or incidental to such prevention as may be prescribed by regulations made by the Board with the approval of the Governor. Equipment
in ships to
prevent oil
pollution.

(2) Where any regulations made pursuant to this section require ships to be fitted with prescribed equipment the regulations may provide—

- (a) for inspection of ships to which the regulations apply by persons appointed by the Board for that purpose;
- (b) that prescribed equipment shall not be installed in a ship to which the regulations apply unless it is of a type tested and approved by a person appointed by the Board for that purpose;
- (c) that equipment so tested and approved, while installed in such a ship shall not be treated as satisfying the requirements of the regulations unless, at such times as may be prescribed, it is tested and approved by a person appointed by the Board for that purpose; and
- (d) for payment of such fees for the inspection provided for in paragraph (a) of this subsection and the carrying out of tests provided for in paragraphs (b) and (c) of this subsection as may be prescribed.

(3)

No. 48, 1960.

(3) If, in the case of any ship, the provisions of any regulations under this section which apply to that ship are contravened, both the owner and the master of the ship shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding five hundred pounds.

Keeping
of oil
records.

10. (1) The Board with the approval of the Governor may make regulations requiring the owner of a ship or the occupier of a place on land to keep or cause to be kept such records of the nature hereinafter described, and such other records, for the purposes of this Act, as may be prescribed.

(2) The regulations may require the owner of a ship to keep or cause to be kept records—

- (a) of any occasion on which oil or a mixture containing oil is discharged from such ship for the purpose of securing its safety or of preventing damage to such ship or cargo or of saving life;
- (b) of any occasion on which oil or a mixture containing oil is found to be escaping, or to have escaped, from such ship in consequence of damage to such ship or by reason of leakage;
- (c) of the carrying out, on board or in connection with such ship, of such operations as may be prescribed, including operations relating to—
 - (i) the ballasting of oil tanks (whether cargo or bunker fuel tanks) and the discharge of ballast from, and cleaning of, such tanks;
 - (ii) the separation of oil from water, or from other substances, in any mixture containing oil;
 - (iii) the disposal of any oil or water, or any other substance, arising from operations relating to any of the matters specified in subparagraphs (i) and (ii) of this paragraph; and
 - (iv) the disposal of any other oil residues;
- (d) relating to the transfer of oil to or from such ship.

(3)

Prevention of Oil Pollution of Navigable Waters Act.

407

(3) The regulations may require the occupier of any place on land to keep or cause to be kept records relating to—

No. 48, 1960.

- (a) the transfer of oil or a mixture containing oil from or to any ship and to, from, or through such place on land;
- (b) the operation of facilities provided at such place on land for the disposal of oil residues from any ship; and
- (c) any discharge of oil or a mixture containing oil occurring in the course of or in connection with any such transfer of oil or disposal of oil residues.

(4) The regulations may—

- (a) prescribe the form in which such records shall be kept and the nature of the entries to be made therein;
- (b) require the person keeping such records to retain them for a prescribed period;
- (c) require that person, at the end of the prescribed period, to transmit such records to a place or person determined by or under the regulations;
- (d) provide for the custody or disposal of such records after their transmission to such place or person.

(5) Any person who makes any entry in any records required to be kept pursuant to this section which is to his knowledge false or misleading in any particular shall be guilty of an offence against this Act and be liable to a penalty not exceeding five hundred pounds.

11. (1) If any discharge of oil, or of any mixture containing oil, occurs from any ship or from any place on land into any waters within the jurisdiction, the owner and master of the ship from which such discharge occurs or the occupier of the place on land from which such discharge occurs shall forthwith inform the Board of all details of the occurrence, and, if he fails to do so, shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding two hundred pounds.

Report-
ing and
investiga-
tion of
discharges
of oil, etc.

(2)

Prevention of Oil Pollution of Navigable Waters Act.

No. 48, 1960.

(2) The harbour master of any port, or any officer or employee of the Board having charge of any district, or any other person appointed for that purpose by the Board may where any discharge of oil or any mixture containing oil into any waters within the jurisdiction occurs or where he has reasonable cause to suspect that any such discharge has occurred—

- (a) go on board and inspect any ship being within the jurisdiction;
- (b) inspect any records required to be kept in respect of such ship by this Act or any regulations made thereunder, or by any laws of any Contracting Government to the Convention for the carrying out of the purposes of the Convention;
- (c) if such records are kept in a language other than English, be accompanied and assisted by an interpreter; and
- (d) cause any entry in any such records to be copied and require the person by whom the records are to be kept to certify the copy as a true copy of the entry:

Provided that a person exercising any powers conferred by this section shall not unnecessarily detain or delay the ship from proceeding on any voyage.

(3) Any person appointed in that behalf by the Board may, where any discharge of oil or mixture containing oil from any place on land into any waters within the jurisdiction has occurred or where he has reasonable cause to suspect that any such discharge has occurred, enter and inspect such place on land, inspect any records required to be kept under this Act in respect of such place, cause any entry in any such records to be copied and require the person by whom the records are to be kept to certify the copy as a true copy of the entry.

(4) Any person making an inspection under subsection two or three of this section may take samples of any substances or mixtures of substances being in, on, or in the vicinity of the ship or place on land inspected, and require the master of such ship or the occupier of such place on land, or a person representing such master or such occupier, to certify

certify the taking of such samples, and require the testing of any equipment or apparatus in such ship or on such place on land, the condition or efficiency of which he considers relevant to the discharge or suspected discharge. No. 48, 1960.

(5) Any person who assaults, resists, hinders or obstructs any person acting in the exercise of any power conferred by virtue of this section, or who fails to comply with any requirement duly made under this section, shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding two hundred pounds.

12. (1) The Board in such places as it deems necessary may provide facilities for enabling ships to dispose of oil residues, or may join with any other person including the Crown in providing such facilities, or may arrange for the provision of such facilities by any other person including the Crown. ^{Oil reception facilities.}

(2) The Governor, on the recommendation of the Board, may make regulations fixing charges and imposing conditions in respect of the use of any such facilities.

(3) Any such facilities shall be open to all ships for the disposal of oil residues on payment of such charges and subject to compliance with such conditions as may be fixed and imposed in accordance with subsection two of this section :

Provided that—

- (a) ships disposing of oil residues for purposes of under-going repairs and tankers shall not be entitled as of right to use such facilities;
- (b) such facilities shall not be available as of right for the disposal of any mixture containing oil which has not been subjected to an effective process for separating the oil from such mixture.

(4) The Board may require the owner or occupier of any oil terminal, oil depot, oil installation or other similar establishment used for the loading or unloading of oil in bulk and

Prevention of Oil Pollution of Navigable Waters Act.

No. 48, 1960. and the owner or occupier of any establishment at which ships are repaired or any other work is performed in relation to ships involving the disposal of oil residues—

- (a) to provide facilities of a standard satisfactory to the Board for the disposal of oil residues by ships berthed, docked or otherwise being at any such establishment;
- (b) to maintain such facilities in good order and condition;
- (c) to make such facilities available for enabling ships to dispose of such oil residues.

Restrictions on transfer of oil at night.

13. (1) No oil shall be transferred between sunset and sunrise from or to a ship (whether to or from a place on land or to or from another ship) in any waters within the jurisdiction unless notice of such transfer has been given to, and permission in writing obtained from, the harbour master or other person having charge of those waters, or the Board.

(2) In the case of a transfer of oil to be performed at a place where such transfers are frequently and regularly carried out, the notice may be a general notice that transfers will be carried out within a period specified in the notice, and the permission may be general and subject to such conditions as the harbour master or other person having charge of those waters, or the Board, thinks fit.

(3) If any oil is transferred to or from any ship in contravention of this section, or if any condition attached to any permission given is not observed, the master of the ship, and, if the oil is transferred from or to a place on land, the occupier of that place, shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding two hundred pounds.

Regulations. **14.** (1) The Board with the approval of the Governor may, subject to subsection two of section twelve of this Act, make regulations not inconsistent with this Act prescribing all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2)

(2) The regulations may prescribe penalties not exceeding five hundred pounds for offences against the regulations. No. 48, 1960.

(3) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

(4) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before the House disallowing any regulation or part thereof, the regulation or part thereupon ceases to have effect.

(5) The regulations under this Act may be made either as respects all, or as respects any one or more, of the classes of ships, or other matters, to which the regulations relate; and different provisions may be made by any such regulations as respects different classes of ships, or otherwise as respects different classes of cases or different circumstances.

15. (1) Any person appointed by the Board to report to it regarding the proper observance of, and the adequacy of, the prohibitions, restrictions and obligations imposed by virtue of this Act may go on board any ship, or may enter any place on land, and may inspect any records required to be kept under this Act and may cause any entry in such records to be copied and require the person by whom the records are to be kept to certify the copy as a true copy of such entry, and may inspect and test any equipment required to be fitted pursuant to this Act and may require any person in or upon or concerned with such ship or place on land to answer such questions and require the production of such books, papers or documents which he considers relevant to the purpose of his report. Inspection
and report.

(2)

Prevention of Oil Pollution of Navigable Waters Act.

No. 48, 1960.

(2) Any person who assaults, resists, hinders or obstructs any person acting in the exercise of any power conferred by or under this section, or who fails to comply with any requirement duly made under this section, or who in giving any answer required under this section makes a statement which is false or misleading in any particular, shall be guilty of an offence against this Act and be liable to a penalty not exceeding two hundred pounds.

Dispensa-
tions and
exemptions.

16. (1) Where, in regard to any requirement prescribed by regulations made under this Act, the Board is satisfied—

- (a) that the requirement has been substantially complied with; or
- (b) that compliance with the requirement is, in the circumstances of the case, impracticable or unnecessary; or
- (c) that the action taken or provision made as regards the subject matter of the requirement is as effective as, or more effective than, actual compliance with the requirement,

it may direct that compliance with that requirement be dispensed with.

(2) The Board may exempt any ship or class of ship from any of the provisions of this Act or of any regulations made thereunder :

Provided that no exemption whatsoever shall be granted in any case from the provisions of section six of this Act.

(3) Whenever any dispensation has been directed or any exemption has been granted under this section, the Board may, at the same time or any time thereafter, impose in consideration of such dispensation or exemption any conditions which it deems appropriate, and may vary or revoke the same, and a breach of any such condition shall incur the same penalties and consequences as a breach of the statutory provision or regulation from which the dispensation or exemption was directed or granted.

(4) Any dispensation or exemption directed or granted under this section may be revoked by the Board at any time.

Prevention of Oil Pollution of Navigable Waters Act.

413

17. In any proceedings under this Act—

No. 48, 1960.

- (a) any records required to be kept by this Act or any regulations made thereunder or by any laws of any Contracting Government to the Convention for the carrying out of the purposes of the Convention shall be prima facie evidence of the facts stated in those records;
- (b) any copy of an entry in such records, which is certified by the person by whom such records are required to be kept to be a true copy of the entry, shall be prima facie evidence of the facts stated in the entry;
- (c) any document purporting to be records kept in pursuance of any of the requirements referred to in this section or purporting to be such a certified copy as is mentioned in paragraph (b) of this section shall, in the absence of evidence to the contrary, be deemed to be such records or such a certified copy as the case may be.

Admissible evidence.

18. (1) Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a stipendiary magistrate or any two justices in petty sessions.

Proceedings for offences.

(2) All penalties, recovered for any offence under this Act or the regulations, shall be paid into the funds of the Board.

19. Any prosecution or legal proceedings taken under this Act by an officer of the Board shall be deemed to have been taken by or under the direction or authority of the Board and section thirty-four of the Maritime Services Act, 1935, as amended by subsequent Acts, shall apply, mutatis mutandis, thereto.

Proof of certain matters not required.

20. A statement in writing purporting to be signed by the Secretary or Acting Secretary to the Board—

Evidence of administrative acts.

(a) that any person has been generally or specially appointed by the Board—

(i) to carry out all or any of the inspections and tests referred to in section nine of this Act;
or

(ii)

Prevention of Oil Pollution of Navigable Waters Act.**No. 48, 1960.**

- (ii) to investigate any discharge or suspected discharge of oil or of a mixture containing oil under section eleven of this Act; or
 - (iii) to report to it regarding the proper observance of, and the adequacy of, the prohibitions, restrictions and obligations imposed, under section fifteen of this Act; or
- (b) that any dispensation has been directed, any exemption has been granted, or any conditions have been imposed by the Board in consideration of such dispensation or exemption, any variation or revocation of such conditions, or the revocation of any exemption granted or dispensation directed has been made, under section sixteen of this Act,

shall be prima facie evidence of the matters stated therein.