



New South Wales

# Marine Pollution Act 2012 No 5

## Contents

---

|               | Page  |
|---------------|---|
| <b>Part 1</b> | <b>Preliminary</b>  |
| 1             | Name of Act 2   |
| 2             | Commencement 2  |
| 3             | Definitions 2   |
| 4             | Expressions used in this Act and MARPOL 8   |
| 5             | Meaning of “responsible” 8  |
| 6             | Time when ship taken to be proceeding on voyage 8   |
| 7             | References to tonnage 9   |
| 8             | Notes 9   |
| <b>Part 2</b> | <b>Application of Act</b>   |
| 9             | Saving of other laws 10   |
| 10            | Act subject to Ports and Maritime Administration Act 1995 10  |
| 11            | Detention of ships and holding of security over them:<br>exclusion of matters from operation of Commonwealth Act 10 |

---

---

|  | Page |
|--|------|
| 12 Application of Act to mixtures of marine pollutants                                   | 11   |
| 13 Discharge outside State waters that enters State waters                               | 11   |
| 14 Discharges to which Act does not apply  | 11   |
| <br>   |      |
| <b>Part 3 Prevention of pollution by oil</b>   |      |
| <b>Division 1 Offences relating to discharge of oil</b>                                  |      |
| 15 Discharging oil into State waters from a ship prohibited                              | 13   |
| 16 Causing discharge of oil into State waters from a ship prohibited                     | 13   |
| 17 Offence of being responsible for discharge of oil into State waters from a ship       | 14   |
| <br>   |      |
| <b>Division 2 Defences</b>   |      |
| 18 Defence if discharge was caused by damage to ship or equipment                        | 14   |
| 19 Defence if discharge was to secure safety or save life                                | 14   |
| 20 Defence if discharge was for purpose of combating pollution                           | 14   |
| 21 Defence if discharge was authorised for training                                      | 14   |
| 22 Defence for certain ships 400 tonnes or more and oil tankers not within special areas | 14   |
| 23 Defence for certain ships 400 tonnes or more and oil tankers within special areas     | 15   |
| 24 Defence for smaller ships and oil tankers   | 15   |
| 25 Defence for discharge of clean or segregated ballast from oil tankers                 | 16   |
| <br>   |      |
| <b>Division 3 Offence relating to oil residues</b>                                       |      |
| 26 Failing to retain oil residues  | 16   |
| <br>   |      |
| <b>Part 4 Prevention of pollution by noxious liquid substances</b>                       |      |
| <b>Division 1 Offences relating to carrying uncategoryed noxious liquid substances</b>   |      |
| 27 Carrying uncategoryed noxious liquid substances prohibited                            | 17   |
| 28 Causing carriage of uncategoryed noxious liquid substances prohibited                 | 17   |
| <br>   |      |
| <b>Division 2 Offences relating to discharge of noxious liquid substances</b>            |      |
| 29 Discharging noxious liquid substances into State waters from ship prohibited          | 17   |

---

|  | Page  |    |
|--|---|----|
| 30   | Causing discharge of noxious liquid substances into State waters from ship prohibited                             | 18 |
| 31   | Offence of being responsible for discharge of noxious liquid substances into State waters from a ship             | 19 |
| <b>Division 3 Defences</b>                         |   |    |
| 32   | Defence if discharge was caused by damage to ship or equipment  | 19 |
| 33   | Defence if discharge was to secure safety or save life  | 19 |
| 34   | Defence if discharge was for purpose of combating pollution   | 19 |
| 35   | Defence for discharge of certain Category X substances  | 20 |
| 36   | Defence for discharge of certain high-viscosity or solidifying substances in Category Y                           | 21 |
| 37   | Defence for discharge of certain other Category Y substances  | 22 |
| 38   | Defence for discharge of Category Z substances from ships constructed before 1 January 2007                       | 23 |
| 39   | Defence for discharge of Category Z substances from ships constructed on or after 1 January 2007                  | 23 |
| 40   | Defence for discharge of bilge water  | 24 |
| 41   | Defence for discharge of clean ballast or segregated ballast  | 24 |
| <b>Division 4 Cleaning of tanks of ships</b>       |   |    |
| 42   | Regulations may make provision for cleaning of tanks of ships   | 25 |
| <b>Part 5</b>                                      | <b>Prevention of pollution by harmful substances in packaged form</b>   |    |
| <b>Division 1 Offences relating to carriage</b>    |   |    |
| 43   | Certain carriage of harmful substances in packaged form prohibited  | 26 |
| 44   | Causing certain carriage of harmful substances in packaged form prohibited  | 26 |
| <b>Division 2 Offences relating to jettisoning</b> |   |    |
| 45   | Jettisoning of harmful substances in packaged form into State waters from ship prohibited                         | 26 |
| 46   | Causing jettisoning of harmful substances in packaged form into State waters from ship prohibited                 | 27 |
| 47   | Offence of being responsible for jettisoning of harmful substances in packaged form into State waters from a ship | 27 |

|  |   | Page |
|--|---|------|
| <b>Division 3      Defences</b>                                  |   |      |
| 48   | Defence for jettisoning to secure safety or save life   | 28   |
| 49   | Defence for certain leakages causing substance to be washed overboard   | 28   |
| <b>Division 4      Miscellaneous</b>                             |   |      |
| 50   | Part does not apply to stores or equipment  | 28   |
| 51   | Leakages taken to be jettisoned   | 28   |
| 52   | Empty packaging   | 28   |
| <b>Part 6      Prevention of pollution by sewage</b>             |   |      |
| <b>Division 1      Offences relating to discharge of sewage</b>  |   |      |
| 53   | Discharge of sewage into State waters from ship prohibited  | 29   |
| 54   | Causing discharge of sewage into State waters from ship prohibited  | 29   |
| 55   | Offence of being responsible for discharge of sewage into State waters from a ship                              | 30   |
| <b>Division 2      Defences</b>                                  |   |      |
| 56   | Defence for discharge caused by damage to ship or equipment   | 30   |
| 57   | Defence for discharge to secure safety or save life   | 30   |
| 58   | Defence for discharge of comminuted and disinfected sewage not less than 3 nautical miles from the nearest land | 30   |
| 59   | Defence of discharge of treated sewage  | 31   |
| <b>Part 7      Prevention of pollution by garbage</b>            |   |      |
| <b>Division 1      Offences relating to discharge of garbage</b> |   |      |
| 60   | Discharging of garbage into State waters from ship prohibited   | 32   |
| 61   | Causing discharge of garbage into State waters from ship prohibited   | 32   |
| 62   | Offence of being responsible for discharge of garbage into State waters from a ship                             | 33   |
| <b>Division 2      Defences</b>                                  |   |      |
| 63   | Defence if discharge was caused by damage to ship or equipment  | 33   |
| 64   | Defence if discharge was to secure safety or save life  | 33   |
| 65   | Defence if accidental loss of nets and other materials  | 33   |
| 66   | Defence in relation to certain dunnage, lining or packing materials that will float                             | 33   |

---

|                   | Page  |
|-------------------|---|
| <b>Part 8</b>     | <b>Prevention of pollution from transfer operations</b>   |
| <b>Division 1</b> | <b>Application of Part</b>  |
| 67                | Meaning of “prescribed marine pollutant” 35   |
| <b>Division 2</b> | <b>Offences relating to transfer operations</b>   |
| 68                | Discharge of prescribed marine pollutant from ship in transfer operation prohibited 35                              |
| 69                | Discharge of prescribed marine pollutant from place on land in transfer operation prohibited 36                     |
| 70                | Discharge of prescribed marine pollutant from apparatus on a ship used in transfer operation prohibited 36          |
| 71                | Discharge of prescribed marine pollutant from apparatus on a place on land used in transfer operation prohibited 37 |
| 72                | Offence of causing discharge of prescribed marine pollutant from pipeline in connection with transfer operation 37  |
| 73                | Discharge of prescribed marine pollutant from pipeline in connection with transfer operation prohibited 38          |
| 74                | Transfer of prescribed marine pollutant at night 38   |
| <b>Division 3</b> | <b>Discharges to which Division 2 does not apply</b>  |
| 75                | Division 2 does not apply to certain discharges 39  |
| 76                | Division 2 does not apply to discharge for purposes of combating pollution incidents 39                             |
| 77                | Division 2 does not apply to certain licensed discharges 39   |
| <b>Division 4</b> | <b>Record keeping relating to transfer operations</b>   |
| 78                | Keeping of records relating to transfer 40  |
| 79                | Entries required to be made 40  |
| 80                | Transmission of records relating to transfer operation 40   |
| 81                | Disposal of records relating to transfer operation 40   |
| 82                | False or misleading entries prohibited 41   |
| <b>Division 5</b> | <b>Miscellaneous</b>  |
| 83                | Several liability 41  |
| 84                | Multiple offenders 41   |
| 85                | Prohibitions on discharges from ships still apply 41  |
| <b>Part 9</b>     | <b>Reporting of pollution incidents</b>   |
| <b>Division 1</b> | <b>Meaning of “reportable incident”</b>   |
| 86                | Meaning of “reportable incident” 42   |

---

|  | Page |
|--|------|
| <b>Division 2      Master's obligations</b>  |      |
| 87    Master must report reportable incident   | 42   |
| 88    Master must provide supplementary report if Minister requires it                             | 43   |
| 89    Master must provide supplementary report if further developments arise                       | 43   |
| <b>Division 3      Obligations of other persons</b>  |      |
| 90    Duty of other persons to report if ship abandoned or report cannot be obtained               | 43   |
| 91    Duty of other persons to report if report incomplete   | 44   |
| 92    Duty of other persons to provide supplementary report  | 44   |
| <b>Division 4      Miscellaneous</b>   |      |
| 93    False or misleading reports  | 45   |
| 94    Inadmissibility of certain evidence  | 45   |
| <br><b>Part 10      Emergency plans and other plans</b>  |      |
| <b>Division 1      Shipboard oil pollution emergency plan</b>                                      |      |
| 95    Obligation to carry shipboard oil pollution emergency plan                                   | 46   |
| 96    Approval of shipboard oil pollution emergency plan   | 46   |
| 97    Contents of shipboard oil pollution emergency plan   | 46   |
| 98    Language of shipboard oil pollution emergency plan   | 47   |
| 99    Plans may be combined  | 47   |
| <b>Division 2      Shipboard marine pollution emergency plan for noxious liquid substances</b>     |      |
| 100    Obligation to carry shipboard marine pollution emergency plan for noxious liquid substances | 48   |
| 101    Approval of shipboard marine pollution emergency plan for noxious liquid substances         | 48   |
| 102    Contents of shipboard marine pollution emergency plan for noxious liquid substances         | 48   |
| 103    Language of shipboard marine pollution emergency plan for noxious liquid substances         | 49   |
| <b>Division 3      Procedures and arrangements manual</b>  |      |
| 104    Procedures and arrangements manual required   | 49   |
| 105    Form and content of procedures and arrangements manual                                      | 50   |
| 106    Language of procedures and arrangements manual  | 50   |

|  | Page |
|--|------|
| <b>Division 4 Shipboard garbage management plan</b>                  |      |
| 107  | 50   |
| 108  | 50   |
| 109  | 51   |
| <b>Division 5 Placards relating to garbage disposal requirements</b> |      |
| 110  | 51   |
| 111  | 52   |
| 112  | 52   |
| <b>Part 11 Record keeping</b>  |      |
| <b>Division 1 Requirement to carry oil record book</b>               |      |
| 113  | 53   |
| 114  | 53   |
| 115  | 53   |
| 116  | 54   |
| 117  | 54   |
| 118  | 54   |
| 119  | 54   |
| 120  | 55   |
| 121  | 55   |
| 122  | 56   |
| 123  | 56   |
| <b>Division 2 Requirement to carry cargo record book</b>             |      |
| 124  | 56   |
| 125  | 56   |
| 126  | 57   |
| 127  | 57   |
| 128  | 57   |
| 129  | 57   |
| 130  | 58   |
| 131  | 58   |
| 132  | 58   |
| 133  | 59   |
| 134  | 59   |
| <b>Division 3 Requirement to carry garbage record book</b>           |      |
| 135  | 59   |
| 136  | 60   |

|                   | Page  |    |
|-------------------|---|----|
| 137               | Minister may waive requirement to carry garbage record book                         | 60 |
| 138               | Form of garbage record book   | 60 |
| 139               | Language of garbage record book   | 60 |
| 140               | Master must sign completed page of garbage record book                              | 60 |
| 141               | Entries in relation to prescribed operations or occurrences                         | 61 |
| 142               | Entries in relation to inspections  | 61 |
| 143               | False entries in garbage record book  | 61 |
| 144               | Garbage record book to be retained on ship for one year                             | 61 |
| 145               | Garbage record book to be retained  | 62 |
| 146               | Master may be required to certify entry in garbage record book                      | 63 |
| 147               | Admissibility of certified entry in garbage record book                             | 63 |
| <br>              |   |    |
| <b>Part 12</b>    | <b>Certification of construction of ships</b>                                       |    |
| <br>              |   |    |
| <b>Division 1</b> | <b>Regulations relating to construction of ships</b>                                |    |
| 148               | Regulations relating to construction of ships                                       | 64 |
| 149               | References to compliance with Annexes of MARPOL                                     | 64 |
| <br>              |   |    |
| <b>Division 2</b> | <b>Requirement for certification of certain ships</b>                               |    |
| 150               | Requirement for ship construction certificate                                       | 64 |
| 151               | Requirement for chemical tanker construction certificate                            | 65 |
| 152               | Requirement for sewage pollution prevention certificate                             | 66 |
| <br>              |   |    |
| <b>Division 3</b> | <b>Local certification</b>  |    |
| 153               | Application for NSW certificate   | 67 |
| 154               | Ship to be surveyed   | 68 |
| 155               | Issue of NSW certificates   | 68 |
| 156               | Duration of NSW certificate   | 69 |
| <br>              |   |    |
| <b>Division 4</b> | <b>Surveys after accident or discovery of defect</b>                                |    |
| 157               | Duty of master and owner to notify Minister of certain accidents                    | 69 |
| 158               | Duty of master and owner to notify Minister of certain defects                      | 69 |
| 159               | Minister may investigate ship or require survey after notifiable accident or defect | 69 |
| 160               | Ships to be surveyed after accident or discovery of defect                          | 70 |
| <br>              |   |    |
| <b>Division 5</b> | <b>Approval of major changes to NSW certified ship</b>                              |    |
| 161               | Changes to construction of ships must be notified and pre-approved                  | 70 |



|  | Page |
|--|------|
| 162 Minister may investigate ship or require survey after notice of proposed change          | 70   |
| 163 Ships to be surveyed after notice given of proposed change                               | 71   |
| <b>Division 6 Annual surveying of ships</b>  |      |
| 164 Ships to be surveyed annually  | 71   |
| <b>Division 7 Renewal of local certification</b>   |      |
| 165 Application for renewal of NSW certificate   | 71   |
| 166 Ship to be surveyed before renewal   | 71   |
| 167 Renewal of NSW certificates  | 72   |
| 168 Extension of NSW certificates  | 72   |
| <b>Division 8 Cancellation of local certification</b>  |      |
| 169 Cancellation of NSW certificate  | 72   |
| 170 Cancelled NSW certificate has no effect  | 73   |
| 171 Surrender of cancelled NSW certificate   | 73   |
| 172 Detained ship must not leave port  | 73   |
| <b>Part 13 Ships must be insured against damage by discharge of oil</b>                      |      |
| 173 Application of Part  | 74   |
| 174 Ships must be insured against oil pollution  | 74   |
| 175 Ships must carry evidence of insurance   | 75   |
| 176 Ship may be detained   | 75   |
| 177 Detained ship must not leave port  | 75   |
| <b>Part 14 Reception facilities for collecting waste</b>                                     |      |
| <b>Division 1 Minister may provide reception facilities</b>                                  |      |
| 178 Minister may arrange for provision of reception facilities                               | 76   |
| 179 Regulations concerning reception facilities  | 76   |
| <b>Division 2 Minister may direct persons to provide reception facilities</b>                |      |
| 180 Minister may require person to provide, maintain and make available reception facilities | 76   |
| 181 Owner or occupier must comply with requirement relating to reception facilities          | 77   |
| 182 Notices  | 77   |

|                |  | Page |
|----------------|--|------|
| <b>Part 15</b> | <b>Minister may take action to prevent or clean up pollution</b>                                     |      |
| 183            | Minister may take action to prevent or clean up marine pollution                                     | 78   |
| 184            | Recovery of costs and expenses of preventative action or clean-up action                             | 79   |
| 185            | Costs and expenses incurred by Minister are charges on ship  | 80   |
| 186            | Detention of ship until recovery of costs and expenses or giving of security                         | 81   |
| 187            | Detained ship must not leave port  | 81   |
| 188            | Obstruction of officers is an offence  | 81   |
| 189            | Oiled Wildlife Care Network  | 81   |
| <b>Part 16</b> | <b>Marine environment protection notices</b>   |      |
|                | <b>Division 1 Preliminary</b>  |      |
| 190            | Definitions  | 83   |
| 191            | Classification of marine environment protection notices  | 85   |
| 192            | Marine environment protection notices may be given orally  | 85   |
|                | <b>Division 2 Marine pollution clean-up notices</b>  |      |
| 193            | Clean-up by polluters  | 85   |
| 194            | Clean-up by public authorities   | 86   |
| 195            | Fee  | 87   |
|                | <b>Division 3 Marine pollution prevention notices</b>  |      |
| 196            | Meaning of environmentally unsatisfactory manner   | 87   |
| 197            | Preventative action  | 87   |
| 198            | Offence  | 89   |
| 199            | Commencement of operation of marine pollution prevention notices or variations                       | 89   |
| 200            | Fee  | 89   |
|                | <b>Division 4 Marine pollution prohibition notices</b>   |      |
| 201            | Prohibition on activities  | 90   |
| 202            | Offence  | 90   |
|                | <b>Division 5 Minister may take action if marine environment protection notice not complied with</b> |      |
| 203            | Minister may take action in event of failure to comply   | 90   |
| 204            | Obstruction of persons acting in compliance with notice is an offence                                | 91   |

|   | Page |
|---|------|
| <b>Division 6 Compliance costs</b>  |      |
| 205 Marine pollution compliance cost notices  | 91   |
| 206 Recovery of amounts   | 92   |
| <b>Division 7 Recovery of costs and expenses if the Minister takes action</b>                     |      |
| 207 Costs and expenses incurred by Minister are charges on ship                                   | 92   |
| 208 Detention of ship until recovery of costs and expenses or giving of security                  | 92   |
| 209 Detained ship must not leave port   | 93   |
| <b>Division 8 Miscellaneous</b>   |      |
| 210 Minister's other preventative powers not affected   | 93   |
| 211 Multiple notices  | 93   |
| 212 Extraterritorial application  | 93   |
| 213 Revocation or variation   | 93   |
| 214 Power to enter land   | 93   |
| 215 Obstruction of persons  | 94   |
| <b>Part 17 Recovery of costs, expenses and damages</b>  |      |
| <b>Division 1 Recovery of costs, expenses and damages by Minister or any other person</b>         |      |
| 216 Recovery of damages, costs or expenses relating to discharge prohibited by Act                | 95   |
| 217 Recovery of loss, damage, costs or expenses   | 97   |
| <b>Division 2 Joint liability for damage relating to transfer operations</b>                      |      |
| 218 Joint and several liability where oil or noxious liquid substance is discharged from pipeline | 97   |
| 219 Several liability where oil or noxious liquid substance is discharged from 2 or more ships    | 97   |
| <b>Division 3 Rights of recovery not affected</b>   |      |
| 220 Rights of recovery not affected   | 97   |
| <b>Part 18 Detention of ships and taking of securities</b>  |      |
| 221 Ships that are believed to have discharged marine pollutants may be detained                  | 98   |
| 222 Detained ships must not depart  | 98   |
| 223 Security may be required to be provided   | 99   |
| 224 Detained ships must be released if security provided or no liability                          | 99   |

---

|  | Page |
|--|------|
| 225 Security taken by Minister   | 99   |
| <b>Part 19 Enforcement</b>   |      |
| <b>Division 1 Appointment of inspectors and authorised persons</b>                                     |      |
| 226 Appointment of inspectors  | 101  |
| 227 Identity cards for inspectors and authorised persons   | 101  |
| <b>Division 2 Powers of inspectors and authorised persons</b>  |      |
| 228 Powers of inspectors and authorised persons  | 101  |
| 229 Inspectors and authorised persons may enter or inspect place on land                               | 102  |
| 230 Inspector and authorised persons must not unnecessarily delay ships                                | 103  |
| 231 Obstruction of inspectors and authorised persons   | 103  |
| 232 Inspectors and certain other persons have no personal liability                                    | 103  |
| <b>Part 20 Proceedings for enforcement</b>   |      |
| <b>Division 1 Proceedings for enforcement</b>  |      |
| 233 Time within which proceedings may be commenced   | 104  |
| 234 Proceedings for offences   | 104  |
| 235 Offences by corporations   | 104  |
| <b>Division 2 Penalties are charges on ship</b>  |      |
| 236 Penalties are charges on ship  | 104  |
| 237 Detention of ship until recovery of penalty or provision of security                               | 105  |
| <b>Division 3 Evidence</b>   |      |
| 238 Records are admissible as evidence   | 105  |
| 239 Proof of certain matters not required  | 105  |
| 240 Evidence of analysts   | 105  |
| <b>Division 4 Miscellaneous</b>  |      |
| 241 No double jeopardy   | 106  |
| 242 Defences operate separately  | 107  |
| <b>Part 21 Regulations and orders</b>  |      |
| 243 Regulations  | 108  |
| 244 Regulations may prescribe decisions that are to be reviewable by Administrative Decisions Tribunal | 109  |

Marine Pollution Act 2012 No 5

Contents

---

|   | Page |
|---|------|
| 245 Orders  | 109  |
| 246 Prescribing matters by reference to other instruments       | 110  |
| <b>Part 22 Miscellaneous</b>                                    |      |
| 247 Delegation  | 111  |
| 248 Service of instruments (except in proceedings for offences) | 111  |
| 249 Act to bind Crown   | 112  |
| 250 Repeal  | 112  |
| 251 Review of Act   | 112  |
| <b>Schedule 1 Amendment of other Acts</b>                       | 113  |
| <b>Schedule 2 Savings, transitional and other provisions</b>    | 115  |



New South Wales

## **Marine Pollution Act 2012 No 5**

Act No 5, 2012

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An Act to protect the State's marine and coastal environment from pollution by oil and certain other marine pollutants discharged from ships; to repeal the *Marine Pollution Act 1987*; and for other purposes. [Assented to 14 March 2012]

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

## **Part 1 Preliminary**

### **1 Name of Act**

This Act is the *Marine Pollution Act 2012*.

### **2 Commencement**

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

### **3 Definitions** (cf former Act s 3)

In this Act:

***Australian fishing vessel*** means a fishing vessel that is registered, or entitled to be registered, in Australia or in relation to which an instrument under section 4 (2) of the *Fisheries Management Act 1991* of the Commonwealth is in force and includes a fishing fleet support vessel within the meaning of the *Navigation Act 1912* of the Commonwealth.

***Australian ship*** means:

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

***cargo record book***, in relation to a ship, means a book required to be carried on board the ship by section 124.

***certified***:

- (a) in relation to a ship with a home port in this State—means certified by Roads and Maritime Services or the Australian Maritime Safety Authority, or
- (b) in relation to an Australian ship with a home port outside this State—means certified by the Australian Maritime Safety Authority or by the interstate maritime authority that regulates its home port, or
- (c) in relation to a ship having nationality outside Australia—means certified by the relevant national maritime authority of the country whose flag the ship is entitled to fly.

***discharging*** includes jettisoning.

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***fishing vessel*** means a vessel used or intended to be used for catching fish, seals, walrus or other living resources of the sea or seabed for profit or reward and includes any such vessel in the course of construction, but does not include any vessel:

- (a) engaged in harvesting or transportation of algae or aquatic plants, or
- (b) that is primarily a carrier or a mother vessel.

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

***function*** includes a power, authority or duty, and ***exercise*** a function includes perform a duty.

***garbage disposal requirements placard***, in relation to a ship, means a placard required to be displayed on the ship by section 110.

***garbage record book***:

- (a) in relation to a ship—means a book required to be carried on board the ship by section 135, or
- (b) in relation to a platform—means a book required to be carried on the platform by section 136.

***Government ship*** has the same meaning as in section 13 (1) of the *Protection of the Sea (Civil Liability) Act 1981* of the Commonwealth.

***harmful substance*** means a substance that is identified as a marine pollutant in the International Maritime Dangerous Goods Code and includes a substance that meets the criteria in the Appendix of Annex III of MARPOL.

***inspector*** means a person who is appointed under section 226 to be an inspector for the purposes of this Act.

***International Maritime Dangerous Goods Code*** means the Code adopted by the International Maritime Organization by resolution A.716(17), as amended from time to time.

***inter-State voyage*** has the same meaning as in the *Navigation Act 1912* of the Commonwealth.

***intra-State voyage*** means a voyage other than an inter-State voyage or an overseas voyage.

***jettisoning*** includes leakage and accidental discharge or loss overboard.

***large ship*** means a ship:

- (a) that has a gross tonnage of 400 tons or more, or
- (b) that has a gross tonnage of less than 400 tons and that is certified to carry more than 15 persons, or
- (c) that does not have a measured tonnage and is certified to carry more than 15 persons.



**marine pollutant** means any one, or any combination, of the following substances (whether in bulk, packaged or another form):

- (a) oil,
- (b) a noxious liquid substance,
- (c) a harmful substance, whether or not in packaged form,
- (d) sewage,
- (e) garbage.

**MARPOL** means the *International Convention for the Prevention of Pollution from Ships, 1973*:

- (a) as corrected by the Proces-Verbal of Rectification dated 13 June 1978, and
- (b) as affected by any amendment made under Article 16 of MARPOL, other than an amendment not accepted by Australia or that has not entered into force in Australia, and
- (c) as modified and added to by the Protocol of 1978 relating to the *International Convention for the Prevention of Pollution from Ships, 1973*, as affected by any amendment to that Protocol made under Article VI of that Protocol other than an amendment not accepted by Australia or that has not entered into force in Australia.

**Note.** The full text of the 1973 Convention and the 1978 Protocol referred to in this definition (including all amendments) can be found by searching for "MARPOL" on the website of the Australian Maritime Safety Authority ([www.amsa.gov.au](http://www.amsa.gov.au)). The amendments accepted by Australia are the amendments reproduced on that website.

**master**, in relation to a ship, means a person, other than a pilot, having command or charge of the ship.

**mixture** includes ballast water, tank washings and other residues.

**NSW certificate** means:

- (a) a NSW chemical tanker construction certificate, or
- (b) a NSW sewage pollution prevention certificate, or
- (c) a NSW ship construction certificate.

**NSW chemical tanker construction certificate** means a certificate issued under section 155 (2).

**NSW sewage pollution prevention certificate** means a certificate issued under section 155 (3).

**NSW ship construction certificate** means a certificate issued under section 155 (1).

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**occupier:**

- (a) in relation to a place on land (other than a pipeline) means:
  - (i) the person exercising personally or by employees or agents the right of occupation of the land, or
  - (ii) if there is no occupier—the owner of the land, and, in the case of a vehicle, includes the person in charge and the owner of the vehicle, but does not include the occupier or owner of the land on or over which the vehicle stands or moves, and
- (b) in relation to a pipeline means:
  - (i) the owner of the pipeline, and
  - (ii) the lessee, licensee or user of any lease, licence or right of user for the use of the pipeline for the carriage of oil or a noxious liquid substance or any combination of those substances (whether in bulk, packaged or another form).

**oil record book**, in relation to a ship, means a book required to be carried on board the ship by section 113.

**overseas voyage** has the same meaning as in the *Navigation Act 1912* of the Commonwealth.

**packaged form** means a form of containment specified for harmful substances in the International Maritime Dangerous Goods Code.

**place on land** includes the following:

- (a) any structure or apparatus on or above or below the surface of any land,
- (b) any thing or vehicle resting on or moving over land,
- (c) any thing resting on or lying under the bed, bank or shore of any State waters,
- (d) a pipeline,
- (e) any thing afloat (other than a ship) if it is anchored or attached to the bed, bank or shore of any State waters or is used in any operation for the exploration of the sea-bed or subsoil beneath any State waters or for the exploitation of the natural resources of that sea-bed or subsoil.

**pleasure vessel** means:

- (a) a vessel used wholly for the purpose of recreational or sporting activities and not for hire or reward, or
- (b) any other vessel prescribed by the regulations.

**port** has the same meaning as in the *Ports and Maritime Administration Act 1995*.

***procedures and arrangements manual***, in relation to a ship, means a manual for the ship required to be carried on board the ship by section 104.

***relevant provisions of MARPOL*** means:

- (a) in relation to the issue of a ship construction certificate—the provisions of Annex I of MARPOL, or
- (b) in relation to the issue of a chemical tanker construction certificate—the provisions of Annex II of MARPOL, or
- (c) in relation to the issue of a sewage pollution prevention certificate—the provisions of Annex IV of MARPOL.

***responsible***—see section 5.

***ship*** means a vessel of any type capable of being used on or in water and includes:

- (a) a hydrofoil boat, or
- (b) an air-cushion vehicle, or
- (c) a submersible or submarine, or
- (d) a floating craft, or
- (e) a fixed or floating platform, or
- (f) a barge (whether self-propelled or not), or
- (g) a sea-plane, or
- (h) a floating dock (whether self-propelled or not),

but does not include a pleasure vessel.

***shipboard garbage management plan***, in relation to a ship, means a plan required to be carried on board the ship by section 107.

***shipboard marine pollution emergency plan for noxious liquid substances***, in relation to a ship, means a plan required to be carried on board the ship by section 100.

***shipboard oil pollution emergency plan***, in relation to a ship, means a plan required to be carried on board the ship by section 95.

***State waters*** means:

- (a) coastal waters of the State (within the meaning of Part 10 of the *Interpretation Act 1987*), and
- (b) other waters within the limits of the State prescribed by the regulations for the purposes of this definition.

**Note.** The coastal waters of the State is the area extending from the low water mark, or other baseline, on the coast of the State to an imaginary line 3 nautical miles seaward of that mark or other baseline.

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***strictly prohibited oily mixture*** means a mixture that contains oil and that also contains:

- (a) chemicals or other substances in quantities or concentrations that are hazardous to the marine environment, or
- (b) chemicals or other substances that have been introduced for the purpose of attempting to prevent the application of section 15, 16 or 17 to the discharge of a mixture containing oil from a ship.

***survey authority*** means a corporation or association for the survey of shipping, approved by the Minister in writing, for the purposes of this definition.

***trading ship*** means a ship that is used, or being a ship in the course of construction is intended to be used, for or in connection with, any business or commercial activity and, without limiting the generality of the foregoing, includes a ship that is used, or being a ship in the course of construction is intended to be used, wholly or principally for:

- (a) the carriage of passengers or cargo for hire or reward, or
- (b) the provision of services to ships or shipping, whether for reward or otherwise,

but does not include a Commonwealth ship within the meaning of the *Navigation Act 1912* of the Commonwealth or a fishing vessel.

***transfer operation*** means any operation that is involved in the preparation for, or in the commencement, carrying on or termination of, a transfer of oil or a noxious liquid substance or any combination of those substances (whether in bulk, packaged or another form) to or from a ship or a place on land.

***unavoidable damage***, in relation to a ship, means any damage other than the following:

- (a) damage deliberately caused by the master or owner of, or a member of the crew of, the ship,
- (b) damage recklessly caused by the master or owner of, or a member of the crew of, the ship, with the knowledge that damage would probably result,
- (c) damage arising as a result of the negligence of the master or owner of, or a member of the crew of, the ship,
- (d) deterioration resulting from failure to maintain the ship or equipment,
- (e) defects that develop during the normal operation of the ship or equipment.

***uncategorised noxious liquid substance*** means a noxious liquid substance:

- (a) that has not been categorised in accordance with Regulation 6.1 of Annex II of MARPOL, and
- (b) that has not been provisionally assessed in accordance with Regulation 6.3 of Annex II of MARPOL.

**4 Expressions used in this Act and MARPOL** (cf former Act ss 7, 14 and 25)

- (1) An expression used in this Act that is also used in MARPOL (whether or not a particular meaning is assigned to it by MARPOL), has in this Act the same meaning as in MARPOL.
- (2) Except as far as the context or subject matter otherwise indicates or requires, if a word or expression is defined in MARPOL (including Protocol I or an Annex of MARPOL) and this Act:
  - (a) this Act's definition does not limit or exclude, but may extend, the meaning of the word or expression given under MARPOL, and
  - (b) the definitions are to be read in the context of each other and the other provisions of this Act, but, if the definitions so read are inconsistent, the MARPOL definition is displaced.

**5 Meaning of "responsible"**

For the purposes of this Act, a person is ***responsible*** for a discharge if that person, or another person acting under the direction of that person, committed an act that caused the discharge and the person committed the act:

- (a) with intent to cause the discharge, or
- (b) recklessly and with the knowledge that the discharge would probably result, or
- (c) negligently.

**6 Time when ship taken to be proceeding on voyage**

For the purposes of the definitions of ***inter-State voyage***, ***intra-State voyage*** and ***overseas voyage***, a ship is taken to be proceeding on a voyage from the time when it is got under way for the purpose of proceeding on the voyage until the time when it is got under way for the purpose of proceeding on another voyage.

**7 References to tonnage** (cf former Act s 3 (6))

(1) A reference in this Act to the gross tonnage of a ship not expressed in tons is, in the application of this Act to a non-TMC ship, taken to be a reference to the gross tonnage of the ship expressed in tons.

(2) In this section:

*non-TMC ship* means a ship the gross tonnage of which has been determined otherwise than in accordance with the Tonnage Measurement Convention.

*Tonnage Measurement Convention* means the *International Convention on Tonnage Measurement of Ships 1969*, as affected by any amendment made under Article 16 of MARPOL other than an amendment not accepted by Australia.

**8 Notes**

Notes and examples included in this Act do not form part of this Act.

**Note.** To assist the reader, many provisions of this Act contain bracketed notes in headings drawing attention to the provision of MARPOL that the provision of this Act gives effect to.

For the purposes of comparison, a number of provisions of this Act contain bracketed notes in headings drawing attention ("cf former Act") to equivalent or comparable (though not necessarily identical) provisions of the repealed *Marine Pollution Act 1987*.

## Part 2 Application of Act

### 9 Saving of other laws (cf former Act s 5)

This Act is to be read and construed as being in addition to, and not in derogation of, any other law of the State.

**Note.** It is noted that section 7 (3) of the *Protection of the Environment Operations Act 1997* provides that this Act prevails over that Act.

### 10 Act subject to Ports and Maritime Administration Act 1995 (cf former Act s 5A)

This Act is subject to the *Ports and Maritime Administration Act 1995*.

### 11 Detention of ships and holding of security over them: exclusion of matters from operation of Commonwealth Act

(1) The exercise, while a ship is compulsorily detained under this Act, of a right of seizure created by the Commonwealth Act is declared to be an excluded matter for the purposes of section 259 of the Commonwealth Act in relation to section 123 of that Act.

(2) The priority given to interests (within the meaning of the Commonwealth Act) by Division 2 of Part 2.6 of the Commonwealth Act, to the extent that it would give priority to such an interest over a statutory State interest in a ship, is declared to be an excluded matter for the purposes of section 259 of the Commonwealth Act in relation to Division 2 of Part 2.6 of that Act.

(3) In this section:

**Commonwealth Act** means the *Personal Property Securities Act 2009* of the Commonwealth.

**compulsorily detained under this Act**, in relation to a ship, means the detention of the ship under section 171, 176, 186, 208, 221 or 237 of this Act.

**right of seizure created by the Commonwealth Act** means a right under section 123 of the Commonwealth Act of a secured party (within the meaning of that Act) to seize collateral in the form of a ship.

**statutory State interest** means an interest of the Minister under a security provided in compliance with section 186, 208, 223 or 237 of this Act.

**Note.** New South Wales has referred certain matters relating to security interests in personal property to the Commonwealth, which means that the Commonwealth Parliament has power under section 51(xxxvii) of the *Commonwealth Constitution* to make laws in respect of those matters. The Commonwealth Parliament passed the *Personal Property Securities Act 2009*. Normally a law of the Commonwealth prevails over a State law to the extent of any inconsistency between them (see section 109 of the *Commonwealth Constitution*). However, section 259 of the *Personal Property Securities Act*

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2009 of the Commonwealth provides that a law of a referring State can declare a matter to be an excluded matter for the purposes of that section. If that is done, the *Personal Property Securities Act 2009* does not apply in relation to the excluded matter. This section excludes certain matters in relation to certain provisions of the Commonwealth Act.

## 12 Application of Act to mixtures of marine pollutants

- (1) In this Act, a reference to a discharge of a marine pollutant or a residue includes a reference to a discharge of a mixture that contains that marine pollutant or residue.
- (2) If a mixture that contains more than one marine pollutant is discharged into State waters, each of the applicable Parts in relation to each of the marine pollutants in the mixture applies in relation to the mixture.
- (3) However, a person is not liable to be convicted of an offence under more than one applicable Part in respect of the same discharge of a mixture.
- (4) In this section:  
*applicable Part* means:
  - (a) in relation to oil—Part 3, or
  - (b) in relation to a noxious liquid substance—Part 4, or
  - (c) in relation to a harmful substance—Part 5, or
  - (d) in relation to sewage—Part 6, or
  - (e) in relation to garbage—Part 7.

## 13 Discharge outside State waters that enters State waters (cf former Act s 3 (5))

- (1) The discharge of a marine pollutant onto or into any land or waters, or any structure or thing, that occurs outside State waters is, for the purposes of this Act, taken to be a discharge into State waters of the marine pollutant if the whole or any part of the marine pollutant enters any State waters.
- (2) The discharge is taken to happen when the discharged marine pollutant enters State waters.

## 14 Discharges to which Act does not apply (Article 2 of 1978 Protocol)

This Act does not apply to the following discharges:

- (a) the release of harmful substances directly arising from the exploration, exploitation and associated off-shore processing of sea-bed mineral resources,
- (b) the release of harmful substances for purposes of legitimate scientific research into pollution abatement or control,



- (c) dumping within the meaning of the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972*, done at London on 13 November 1972.

**Note.** The *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972* defines **dumping** as:

- (a) any deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea, or
- (b) any deliberate disposal at sea of vessels, aircraft, platforms or other man-made structures at sea.

Under that Convention, **dumping** does not include:

- (a) the disposal at sea of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structures, or
- (b) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of the Convention.

## Part 3 Prevention of pollution by oil

### Division 1 Offences relating to discharge of oil

**15 Discharging oil into State waters from a ship prohibited** (Reg 15.1 of Annex I of MARPOL) (cf former Act s 8 (1))

- (1) The master and the owner of a ship are each guilty of an offence if any oil is discharged from the ship into State waters.

Maximum penalty:

- (a) in the case of an individual—\$500,000, or  
(b) in the case of a corporation—\$10,000,000.

- (2) In proceedings for an offence against this section in relation to a ship:

- (a) it is sufficient for the prosecution to allege and prove that oil was discharged from the ship into State waters, but  
(b) it is a defence if it is proved that, by virtue of Division 2, this section does not apply in relation to the discharge.

**16 Causing discharge of oil into State waters from a ship prohibited** (Reg 15.1 of Annex I of MARPOL) (cf former Act s 8A (1))

- (1) A crew member of a ship is guilty of an offence if the crew member's act causes any oil to be discharged from the ship into State waters.

Maximum penalty: \$500,000.

- (2) A person involved in the operation or maintenance of a ship is guilty of an offence if the person's act causes any oil to be discharged from the ship into State waters.

Maximum penalty:

- (a) in the case of an individual—\$500,000, or  
(b) in the case of a corporation—\$10,000,000.

- (3) In proceedings for an offence against this section in relation to a ship:

- (a) it is sufficient for the prosecution to allege and prove that:  
(i) oil was discharged from the ship into State waters, and  
(ii) the crew member or person involved in the operation or maintenance of the ship committed an act that caused the discharge, but  
(b) it is a defence if it is proved that, by virtue of Division 2, this section does not apply in relation to the discharge.

**17 Offence of being responsible for discharge of oil into State waters from a ship** (Reg 15.1 of Annex I of MARPOL) (cf former Act s 8A (3))

A person responsible for the discharge of any oil from a ship into State waters is guilty of an offence.

Maximum penalty:

- (a) in the case of an individual—\$500,000, or
- (b) in the case of a corporation—\$10,000,000.

**Division 2 Defences**

**18 Defence if discharge was caused by damage to ship or equipment**

(Reg 4.2 of Annex I of MARPOL) (cf former Act s 8 (2) (b) and (3))

Division 1 does not apply to the discharge of oil from a ship if:

- (a) the oil escaped from the ship in consequence of unavoidable damage to the ship or its equipment, and
- (b) all reasonable precautions were taken after the occurrence of the damage or the discovery of the discharge for the purpose of preventing or minimising the escape of the oil.

**19 Defence if discharge was to secure safety or save life** (Reg 4.1 of Annex I of MARPOL) (cf former Act s 8 (2) (a))

Division 1 does not apply to the discharge of oil from a ship for the purpose of securing the safety of a ship or saving life at sea.

**20 Defence if discharge was for purpose of combating pollution** (Reg 4.3 of Annex I of MARPOL) (cf former Act s 8 (2) (c))

Division 1 does not apply to the discharge of a mixture containing oil from a ship if the discharge was for the purpose of combating specific pollution incidents in order to minimise the damage from pollution and was approved by an officer prescribed by the regulations for the purposes of this section.

**21 Defence if discharge was authorised for training** (cf former Act s 8 (2) (d))

Division 1 does not apply to the discharge of oil from a ship if the discharge was authorised by the Minister for training purposes.

**22 Defence for certain ships 400 tonnes or more and oil tankers not within special areas** (Regs 15.2 and 15.8 of Annex I of MARPOL)

Division 1 does not apply to the discharge of oil from a ship if:

- (a) the ship is not within a special area, and
- (b) the ship has a gross tonnage of equal to or greater than 400, and

- (c) the ship is proceeding en route, and
- (d) in the case of a mixture containing oil, the mixture is processed using oil filtering equipment meeting the requirements set out by the regulations referred to in section 9 (4) (a) (iii) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* of the Commonwealth, and
- (e) the oil content of the effluent without dilution does not exceed 15 parts in 1,000,000 parts, and
- (f) the mixture is not a strictly prohibited oily mixture, and
- (g) in the case of a mixture containing oil that is discharged from an oil tanker:
  - (i) the mixture does not originate from the cargo pump room bilges of the ship, and
  - (ii) the mixture is not mixed with oil cargo residue.

**23 Defence for certain ships 400 tonnes or more and oil tankers within special areas** (Regs 15.3 and 15.8 of Annex I of MARPOL)

Division 1 does not apply to the discharge of oil from a ship if:

- (a) the ship has a gross tonnage of equal to or greater than 400, and
- (b) the ship is within a special area, and
- (c) the ship is proceeding en route, and
- (d) in the case of a mixture containing oil, the mixture is processed using oil filtering equipment meeting the requirements set out by the regulations referred to in section 9 (4) (b) (iii) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* of the Commonwealth, and
- (e) the oil content of the effluent without dilution does not exceed 15 parts in 1,000,000 parts, and
- (f) the mixture is not a strictly prohibited oily mixture, and
- (g) in the case of a mixture containing oil discharged from an oil tanker:
  - (i) the mixture does not originate from the cargo pump room bilges of the ship, and
  - (ii) the mixture is not mixed with oil cargo residue.

**24 Defence for smaller ships and oil tankers** (Regs 15.6 and 15.8 of Annex I of MARPOL)

Division 1 does not apply to the discharge of oil from a ship if:

- (a) the ship has a gross tonnage of less than 400, and
- (b) the ship is proceeding en route, and

- (c) the ship has in operation equipment, of a kind that meets the requirements set out by the regulations referred to in section 9 (4) (c) (iii) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* of the Commonwealth, that ensures that the oil content of the effluent without dilution does not exceed 15 parts in 1,000,000 parts, and
- (d) the mixture is not a strictly prohibited oily mixture, and
- (e) in the case of a mixture containing oil discharged from an oil tanker:
  - (i) the mixture does not originate from the cargo pump room bilges of the ship, and
  - (ii) the mixture is not mixed with oil cargo residue.

**25 Defence for discharge of clean or segregated ballast from oil tankers**

(Regs 34.2 and 34.4 of Annex I of MARPOL) (cf former Act s 8 (4) (j))

Division 1 does not apply to the discharge from the cargo area of an oil tanker of clean or segregated ballast.

**Division 3 Offence relating to oil residues**

**26 Failing to retain oil residues** (cf former Act s 9)

- (1) The master and the owner of a ship are each guilty of an offence if any oil residues that cannot be discharged from the ship into State waters without the commission of an offence against section 15 are not retained on board the ship while the ship is in State waters.

Maximum penalty:

- (a) in the case of an individual—\$500,000, or
- (b) in the case of a corporation—\$10,000,000.

**Example.** A ship leaves Port A with a quantity of oil residue held in a tank or space and, without leaving State waters, arrives at Port B with a lesser quantity in the tank or space. This subsection places an onus on the ship's master to explain why there is a discrepancy in the quantity.

- (2) Despite subsection (1), oil residues may be discharged from a ship to a reception facility provided in accordance with Regulation 38 of Annex I of MARPOL.

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## **Part 4 Prevention of pollution by noxious liquid substances**

### **Division 1 Offences relating to carrying uncategorised noxious liquid substances**

#### **27 Carrying uncategorised noxious liquid substances prohibited**

(Reg 13.1.3 of Annex II of MARPOL)

- (1) The master and the owner of an Australian ship are each guilty of an offence if an uncategorised noxious liquid substance is carried as cargo or part cargo in bulk on the ship in State waters.

Maximum penalty:

- (a) in the case of an individual—\$6,600, or  
(b) in the case of a corporation—\$33,000.

- (2) In proceedings for an offence against this section in relation to a ship it is sufficient for the prosecution to allege and prove that an uncategorised noxious liquid substance was carried as cargo or part cargo in bulk on the ship in State waters.

#### **28 Causing carriage of uncategorised noxious liquid substances prohibited**

(Reg 13.1.3 of Annex II of MARPOL)

A person is guilty of an offence if the person causes an uncategorised noxious liquid substance to be carried as cargo or part cargo in bulk on an Australian ship in State waters.

Maximum penalty:

- (a) in the case of an individual—\$22,000, or  
(b) in the case of a corporation—\$110,000.

### **Division 2 Offences relating to discharge of noxious liquid substances**

#### **29 Discharging noxious liquid substances into State waters from ship prohibited**

(Reg 13 of Annex II of MARPOL) (cf former Act s 18 (1))

- (1) The master and the owner of a ship that is subject to a chemical tanker construction certificate certifying the ship to carry noxious liquid substances in bulk are each guilty of an offence if any noxious liquid substance is discharged from the ship into State waters.

Maximum penalty:

- (a) in the case of an individual—\$500,000, or  
(b) in the case of a corporation—\$10,000,000.

- (2) In proceedings for an offence against this section in relation to a ship:
  - (a) it is sufficient for the prosecution to allege and prove that:
    - (i) the ship was a ship subject to a chemical tanker construction certificate certifying the ship to carry noxious liquid substances in bulk, and
    - (ii) a noxious liquid substance was discharged from the ship into State waters, but
  - (b) it is a defence if it is proved that, by virtue of Division 3, this section does not apply in relation to the discharge.

**30 Causing discharge of noxious liquid substances into State waters from ship prohibited** (Reg 13 of Annex II of MARPOL) (cf former Act s 18A (1))

- (1) A crew member of a ship that is subject to a chemical tanker construction certificate certifying the ship to carry noxious liquid substances in bulk is guilty of an offence if the crew member's act causes any noxious liquid substance to be discharged from the ship into State waters.  
Maximum penalty: \$500,000.
- (2) A person involved in the operation or maintenance of a ship that is subject to a chemical tanker construction certificate certifying the ship to carry noxious liquid substances in bulk is guilty of an offence if the person's act causes any noxious liquid substance to be discharged from the ship into State waters.  
Maximum penalty:
  - (a) in the case of an individual—\$500,000, or
  - (b) in the case of a corporation—\$10,000,000.
- (3) In proceedings for an offence against this section in relation to a ship:
  - (a) it is sufficient for the prosecution to allege and prove that:
    - (i) the ship was a ship subject to a chemical tanker construction certificate certifying the ship to carry noxious liquid substances in bulk, and
    - (ii) a noxious liquid substance was discharged from the ship into State waters, and
    - (iii) the crew member or person involved in the operation or maintenance of the ship committed an act that caused the discharge, but
  - (b) it is a defence if it is proved that, by virtue of Division 3, this section does not apply in relation to the discharge.

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**31 Offence of being responsible for discharge of noxious liquid substances into State waters from a ship** (Reg 13 of Annex II of MARPOL) (cf former Act s 18A (3))

A person responsible for the discharge of any noxious liquid substance into State waters from a ship that is subject to a chemical tanker construction certificate certifying the ship to carry noxious liquid substances in bulk is guilty of an offence.

Maximum penalty:

- (a) in the case of an individual—\$500,000, or
- (b) in the case of a corporation—\$10,000,000.

**Division 3 Defences**

**32 Defence if discharge was caused by damage to ship or equipment** (Reg 3.1.2 of Annex II of MARPOL) (cf former Act s 18 (2) (b) and (3))

Division 2 does not apply to the discharge of a noxious liquid substance from a ship if:

- (a) the noxious liquid substance escaped from the ship in consequence of unavoidable damage to the ship or its equipment, and
- (b) all reasonable precautions were taken after the occurrence of the damage or the discovery of the discharge for the purpose of preventing or minimising the escape of the noxious liquid substance.

**33 Defence if discharge was to secure safety or save life** (Reg 3.1.1 of Annex II of MARPOL) (cf former Act s 18 (2) (a))

Division 2 does not apply to the discharge of a noxious liquid substance from a ship for the purpose of securing the safety of a ship or saving life at sea.

**34 Defence if discharge was for purpose of combating pollution** (Reg 3.1.3 of Annex II of MARPOL) (cf former Act s 18 (2) (c))

Division 2 does not apply to the discharge of a noxious liquid substance from a ship if the discharge was for the purpose of combating specific pollution incidents in order to minimise the damage from pollution and was approved by an officer prescribed by the regulations for the purposes of this section.



**35 Defence for discharge of certain Category X substances** (Regs 13.2.1 and 13.6.1 of Annex II of MARPOL)

- (1) Division 2 does not apply to the discharge of water containing a prescribed residue from a ship if:
  - (a) the discharge of the water containing that residue occurs when the ship is proceeding en route at a speed of:
    - (i) at least 7 knots, if the ship is self-propelled, or
    - (ii) at least 4 knots, if the ship is not self-propelled, and
  - (b) the discharge occurs below the ship's waterline through the ship's underwater discharge outlets at a rate not exceeding the maximum rate for which each underwater discharge outlet is designed, and
  - (c) the discharge occurs when the ship is at least 12 nautical miles from the nearest land and is in water at least 25 metres deep.
- (2) This section does not apply in relation to a mixture that contains a liquid substance that is neither:
  - (a) a noxious liquid substance, nor
  - (b) a liquid substance referred to in Regulation 6.1.3 of Annex II of MARPOL.
- (3) In this section:

**inspector** includes a surveyor appointed or authorised by the Government of a country that is a party to MARPOL for the purpose of implementing Regulation 16 of Annex II of MARPOL.

**prescribed residue** means a residue remaining after:

  - (a) the tank of a ship that held a noxious liquid substance categorised as Category X under Regulation 6 of Annex II of MARPOL, or a mixture containing such a substance, has been:
    - (i) emptied to the maximum extent in accordance with procedures in the ship's procedures and arrangements manual, and
    - (ii) cleaned in accordance with regulations made for the purposes of section 42, and
  - (b) the resulting residues in the tank have been discharged to a reception facility until the concentration of that substance in the effluent to that facility is, in the opinion of an inspector, at or below the residual concentration prescribed for that substance in Regulation 13.6.1 of Annex II of MARPOL and until the tank is empty, and
  - (c) the residue remaining in the tank has been subsequently diluted with water.

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**36 Defence for discharge of certain high-viscosity or solidifying substances in Category Y** (Regs 13.2.1 and 13.7.1 of Annex II of MARPOL)

- (1) Division 2 does not apply to the discharge of water containing a prescribed residue into State waters from a ship if:
  - (a) the discharge occurs when the ship is proceeding en route at a speed of:
    - (i) at least 7 knots, if the ship is self-propelled, or
    - (ii) at least 4 knots, if the ship is not self-propelled, and
  - (b) the discharge occurs below the ship's waterline through the ship's underwater discharge outlets at a rate not exceeding the maximum rate for which each underwater discharge outlet is designed, and
  - (c) the discharge occurs when the ship is at least 12 nautical miles from the nearest land and is in water at least 25 metres deep.
- (2) This section does not apply in relation to a mixture that contains a liquid substance that is neither:
  - (a) a noxious liquid substance, nor
  - (b) a liquid substance referred to in Regulation 6.1.4 of Annex II of MARPOL.
- (3) In this section:

***prescribed residue*** means a residue remaining after:

  - (a) the tank of a ship that held:
    - (i) a high-viscosity or solidifying substance that is a noxious liquid substance categorised as Category Y under Regulation 6 of Annex II of MARPOL, or
    - (ii) a mixture containing a high-viscosity or solidifying substance that is a noxious liquid substance categorised as Category Y under Regulation 6 of Annex II of MARPOL (except a mixture containing a noxious liquid substance categorised as Category X under Regulation 6 of Annex II of MARPOL),

has been:

  - (iii) emptied to the maximum extent in accordance with procedures in the ship's procedures and arrangements manual, and
  - (iv) washed in accordance with regulations made for the purposes of section 42, and

- (b) the resulting residues in the tank have been discharged to a reception facility until the tank is empty, and
- (c) the residue then remaining in the tank has been subsequently diluted with water.

**37 Defence for discharge of certain other Category Y substances** (Regs 13.2.1 and 13.7.1 of Annex II of MARPOL)

- (1) Division 2 does not apply to the discharge into State waters from a ship of any residue of a prescribed discharge that has been emptied to the maximum extent in accordance with the procedures in the ship's procedures and arrangements manual, if:
  - (a) the discharge occurs when the ship is proceeding en route at a speed of:
    - (i) at least 7 knots, if the ship is self-propelled, or
    - (ii) at least 4 knots, if the ship is not self-propelled, and
  - (b) the discharge occurs below the ship's waterline through the ship's underwater discharge outlets at a rate not exceeding the maximum rate for which each underwater discharge outlet is designed, and
  - (c) the discharge occurs when the ship is at least 12 nautical miles from the nearest land and is in water at least 25 metres deep.
- (2) This section does not apply in relation to a mixture that contains a liquid substance that is neither:
  - (a) a noxious liquid substance, nor
  - (b) a liquid substance referred to in Regulation 6.1.4 of Annex II of MARPOL.
- (3) In this section:  
***prescribed discharge*** means:
  - (a) a noxious liquid substance categorised as Category Y under Regulation 6 of Annex II of MARPOL that is not a high-viscosity or solidifying substance, or
  - (b) a mixture containing a noxious liquid substance categorised as Category Y under Regulation 6 of Annex II of MARPOL that is not a high-viscosity or solidifying substance (except a mixture containing a high-viscosity or solidifying substance that is a noxious liquid substance categorised as Category X under Regulation 6 of Annex II of MARPOL).

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**38 Defence for discharge of Category Z substances from ships constructed before 1 January 2007** (Regs 13.2.1 and 13.2.2 of Annex II of MARPOL)

- (1) Division 2 does not apply to the discharge into State waters of any residue of a noxious liquid substance categorised as Category Z under Regulation 6 of Annex II of MARPOL, or a mixture containing such a substance, if:
- (a) the discharge is from a ship that was constructed before 1 January 2007, and
  - (b) the tank of the ship, which held the substance or mixture, has been emptied to the maximum extent in accordance with the procedures in the ship's procedures and arrangements manual, and
  - (c) the discharge occurs when the ship is proceeding en route at a speed of:
    - (i) at least 7 knots, if the ship is self-propelled, or
    - (ii) at least 4 knots, if the ship is not self-propelled, and
  - (d) the discharge occurs when the ship is at least 12 nautical miles from the nearest land and is in water at least 25 metres deep.
- (2) This section does not apply in relation to a mixture that contains a liquid substance that is neither:
- (a) a noxious liquid substance, nor
  - (b) a liquid substance referred to in Regulation 6.1.4 of Annex II of MARPOL.

**39 Defence for discharge of Category Z substances from ships constructed on or after 1 January 2007** (Regs 13.2.1 and 13.2.3 of Annex II of MARPOL)

- (1) Division 2 does not apply to the discharge into State waters of any residue of a noxious liquid substance categorised as Category Z under Regulation 6 of Annex II of MARPOL, or a mixture containing such a substance, if:
- (a) the discharge is from a ship that was constructed on or after 1 January 2007, and
  - (b) the tank of the ship, which held the substance or mixture, has been emptied to the maximum extent in accordance with the procedures in the ship's procedures and arrangements manual, and
  - (c) the discharge occurs when the ship is proceeding en route at a speed of:
    - (i) at least 7 knots, if the ship is self-propelled, or
    - (ii) at least 4 knots, if the ship is not self-propelled, and

- (d) the discharge occurs below the ship's waterline through the ship's underwater discharge outlets at a rate not exceeding the maximum rate for which each underwater discharge outlet is designed, and
  - (e) the discharge occurs when the ship is at least 12 nautical miles from the nearest land and the Minister has not waived that requirement under subsection (3), and
  - (f) the discharge occurs when the ship is in water at least 25 metres deep.
- (2) The master or owner of a ship may make an application to the Minister, in the form approved by the Minister, for the Minister to waive the requirement in subsection (1) (e).
  - (3) The Minister may, in accordance with the regulations, waive the requirement.
  - (4) The Minister must give written notice of a waiver to the applicant. The notice must specify the particular ship, noxious liquid substance categorised as Category Z under Regulation 6 of Annex II of MARPOL and voyage, for which the condition is waived.
  - (5) This section does not apply in relation to a mixture that contains a liquid substance that is neither:
    - (a) a noxious liquid substance, nor
    - (b) a liquid substance referred to in Regulation 6.1.4 of Annex II of MARPOL.

**40 Defence for discharge of bilge water** (Reg 6.1.4 of Annex II of MARPOL) (cf former Act s 18 (11))

Division 2 does not apply to the discharge from a ship of bilge water, or of a mixture resulting from tank cleaning or de-ballasting operations, that contains one or more noxious liquid substances referred to in Regulation 6.1.4 of Annex II of MARPOL but does not contain any other noxious liquid substance.

**41 Defence for discharge of clean ballast or segregated ballast** (Reg 13.7.2.3 of Annex II of MARPOL) (cf former Act s 18 (12))

- (1) Division 2 does not apply to the discharge from a ship of clean ballast or segregated ballast.
- (2) In this section, *clean ballast* and *segregated ballast* have the same meaning as in Annex II of MARPOL.

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## **Division 4      Cleaning of tanks of ships**

### **42    Regulations may make provision for cleaning of tanks of ships** (Regs 13 and 16 of Annex II of MARPOL) (cf former Act s 24)

The regulations may make provision for and in relation to giving effect to Regulations 13 and 16 of Annex II of MARPOL.

## **Part 5 Prevention of pollution by harmful substances in packaged form**

### **Division 1 Offences relating to carriage**

#### **43 Certain carriage of harmful substances in packaged form prohibited**

(Reg 1.2 of Annex III of MARPOL)

- (1) The master and the owner of a ship are each guilty of an offence if a harmful substance in packaged form is carried on the ship in State waters otherwise than in accordance with the regulations.

Maximum penalty:

- (a) in the case of an individual—\$2,200, or  
(b) in the case of a corporation—\$5,500.

- (2) In proceedings for an offence against this section in relation to a ship, it is sufficient for the prosecution to allege and prove that a harmful substance in packaged form was carried on the ship in State waters otherwise than in accordance with the regulations.

#### **44 Causing certain carriage of harmful substances in packaged form prohibited** (Reg 1.2 of Annex III of MARPOL)

A person is guilty of an offence if the person causes a harmful substance in packaged form to be carried on a ship in State waters otherwise than in accordance with the regulations.

Maximum penalty:

- (a) in the case of an individual—\$2,200, or  
(b) in the case of a corporation—\$5,500.

### **Division 2 Offences relating to jettisoning**

#### **45 Jettisoning of harmful substances in packaged form into State waters from ship prohibited** (Reg 7.1 of Annex III of MARPOL)

- (1) The master and the owner of a ship are each guilty of an offence if a harmful substance in packaged form carried on the ship is jettisoned from the ship into State waters.

Maximum penalty:

- (a) in the case of an individual—\$55,000, or  
(b) in the case of a corporation—\$275,000.

- (2) In proceedings for an offence against this section in relation to a ship:
  - (a) it is sufficient for the prosecution to allege and prove that a harmful substance in packaged form was jettisoned from the ship into State waters, but
  - (b) it is a defence if it is proved that, by virtue of Division 3, this section does not apply in relation to the jettisoning.

**46 Causing jettisoning of harmful substances in packaged form into State waters from ship prohibited** (Reg 7.1 of Annex III of MARPOL)

- (1) A crew member of a ship is guilty of an offence if the crew member's act causes any harmful substance in packaged form to be jettisoned from the ship into State waters.  
Maximum penalty: \$55,000.
- (2) A person involved in the operation or maintenance of a ship is guilty of an offence if the person's act causes any harmful substance in packaged form to be jettisoned from the ship into State waters.  
Maximum penalty:
  - (a) in the case of an individual—\$55,000, or
  - (b) in the case of a corporation—\$275,000.
- (3) In proceedings for an offence against this section in relation to a ship:
  - (a) it is sufficient for the prosecution to allege and prove that:
    - (i) a jettisoning of a harmful substance in packaged form occurred from a ship into State waters, and
    - (ii) the crew member or person involved in the operation or maintenance of the ship committed an act that caused the jettisoning, but
  - (b) it is a defence if it is proved that, by virtue of Division 3, this section does not apply in relation to the jettisoning.

**47 Offence of being responsible for jettisoning of harmful substances in packaged form into State waters from a ship** (Reg 7.1 of Annex III of MARPOL)

A person responsible for any harmful substance in packaged form being jettisoned from a ship into State waters is guilty of an offence.

Maximum penalty:

- (a) in the case of an individual—\$220,000, or
- (b) in the case of a corporation—\$1,100,000.



### **Division 3 Defences**

**48 Defence for jettisoning to secure safety or save life** (Reg 7.1 of Annex III of MARPOL)

Division 2 does not apply to the jettisoning of a harmful substance in packaged form from a ship for the purpose of securing the safety of a ship or saving life at sea.

**49 Defence for certain leakages causing substances to be washed overboard** (Reg 7.2 of Annex III of MARPOL)

Division 2 does not apply to the jettisoning of a harmful substance in packaged form from a ship because of a leakage of the substance if:

- (a) the substance was washed overboard from the ship in accordance with the regulations or any orders made pursuant to the regulations, or
- (b) the substance was washed overboard from the ship otherwise than in accordance with such regulations or orders in circumstances where compliance with such regulations or orders would have impaired the safety of the ship or of persons on board the ship.

### **Division 4 Miscellaneous**

**50 Part does not apply to stores or equipment** (Reg 1.5 of Annex III of MARPOL)

This Part does not apply to a ship's stores or equipment.

**51 Leakages taken to be jettisoned** (Reg 1 of Annex III of MARPOL)

A harmful substance in packaged form is, for the purposes of this Act, taken to have been jettisoned from a ship into State waters if there was a leakage of the substance.

**52 Empty packaging** (Reg 1.4 of Annex III of MARPOL)

For the purposes of this Part, empty packaging that has been used previously for the carriage of harmful substances is itself taken to be a harmful substance unless the precautions required by the regulations have been taken to ensure that the packaging contains no residue that is harmful to the marine environment.

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## Part 6 Prevention of pollution by sewage

### Division 1 Offences relating to discharge of sewage

**53 Discharge of sewage into State waters from ship prohibited** (Reg 11 of Annex IV of MARPOL)

- (1) The master and the owner of a large ship are each guilty of an offence if any sewage is discharged from the ship into State waters.

Maximum penalty:

- (a) in the case of an individual—\$55,000, or  
(b) in the case of a corporation—\$275,000.

- (2) In proceedings for an offence against this section in relation to a ship:

- (a) it is sufficient for the prosecution to allege and prove that sewage was discharged from the ship into State waters, but  
(b) it is a defence if it is proved that, by virtue of Division 2, this section does not apply in relation to the discharge.

**54 Causing discharge of sewage into State waters from ship prohibited** (Reg 11 of Annex IV of MARPOL)

- (1) A crew member of a large ship is guilty of an offence if the crew member's act causes any sewage to be discharged from the ship into State waters.

Maximum penalty: \$55,000.

- (2) A person involved in the operation or maintenance of a large ship is guilty of an offence if the person's act causes any sewage to be discharged from the ship into State waters.

Maximum penalty:

- (a) in the case of an individual—\$55,000, or  
(b) in the case of a corporation—\$275,000.

- (3) In proceedings for an offence against this section, it is sufficient for the prosecution to allege and prove that:

- (a) a discharge of sewage occurred from a ship into State waters, and  
(b) the crew member or person involved in the operation or maintenance of the ship committed an act that caused the discharge.

**55 Offence of being responsible for discharge of sewage into State waters from a ship** (Reg 11 of Annex IV of MARPOL)

A person responsible for the discharge of any sewage from a large ship into State waters is guilty of an offence.

Maximum penalty:

- (a) in the case of an individual—\$220,000, or
- (b) in the case of a corporation—\$1,100,000.

**Division 2 Defences**

**56 Defence for discharge caused by damage to ship or equipment**

(Reg 3.1.2 of Annex IV of MARPOL)

Division 1 does not apply to the discharge of sewage from a large ship if:

- (a) the sewage escaped from the ship in consequence of unavoidable damage to the ship or its equipment, and
- (b) all reasonable precautions were taken before and after the occurrence of the damage for the purpose of preventing or minimising the escape of the sewage.

**57 Defence for discharge to secure safety or save life** (Reg 3.1.1 of Annex IV of MARPOL)

Division 1 does not apply to the discharge of sewage from a large ship for the purpose of securing the safety of a ship or saving life at sea.

**58 Defence for discharge of comminuted and disinfected sewage not less than 3 nautical miles from the nearest land** (Reg 11.1.1 of Annex IV of MARPOL)

Division 1 does not apply to the discharge of sewage from a large ship if:

- (a) the sewage has been comminuted and disinfected using a system approved in accordance with the regulations, or orders made pursuant to the regulations, giving effect to Regulation 9.1.2 of Annex IV of MARPOL, and
- (b) the discharge occurs when the ship is at a distance of not less than 3 nautical miles from the nearest land (within the meaning of Annex IV of MARPOL), and
- (c) if the sewage has been stored in holding tanks or originates from spaces containing living animals—the sewage is not discharged instantaneously but is discharged at a rate prescribed by the regulations when the ship is proceeding en route at a speed of not less than 4 knots.

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**59 Defence of discharge of treated sewage** (Reg 11.1.2 of Annex IV of MARPOL)

- (1) Division 1 does not apply to the discharge of sewage from a large ship engaged in overseas voyages if both of the following apply:
  - (a) the sewage has been treated in a sewage treatment plant on the ship, being a plant:
    - (i) that an inspector has certified meets the requirements of the regulations giving effect to Regulation 9.1.1 of Annex IV of MARPOL, and
    - (ii) the test results of which are laid down in the ship's sewage certificate within the meaning of Division 12C of Part IV of the *Navigation Act 1912* of the Commonwealth,
  - (b) the effluent does not produce visible floating solids in State waters and does not cause discolouration of State waters or other surrounding waters.
- (2) However, the defence created by subsection (1) does not apply to a discharge into a zone prescribed by the regulations for the purposes of this section.

## **Part 7 Prevention of pollution by garbage**

### **Division 1 Offences relating to discharge of garbage**

**60 Discharging of garbage into State waters from ship prohibited** (Regs 3.1 and 5.2 of Annex V of MARPOL)

- (1) The master and the owner of a ship are each guilty of an offence if any garbage is discharged from the ship into State waters.

Maximum penalty:

- (a) in the case of an individual—\$55,000, or  
(b) in the case of a corporation—\$275,000.

- (2) In proceedings for an offence against this section in relation to a ship:

- (a) it is sufficient for the prosecution to allege and prove that garbage was discharged from the ship into State waters, but  
(b) it is a defence if it is proved that, by virtue of Division 2, this section does not apply in relation to the discharge.

**61 Causing discharge of garbage into State waters from ship prohibited** (Regs 3.1 and 5.2 of Annex V of MARPOL)

- (1) A crew member of a ship is guilty of an offence if the crew member's act causes any garbage to be discharged from the ship into State waters.  
Maximum penalty: \$55,000.

- (2) A person involved in the operation or maintenance of a ship is guilty of an offence if the person's act causes any garbage to be discharged from the ship into State waters.

Maximum penalty:

- (a) in the case of an individual—\$55,000, or  
(b) in the case of a corporation—\$275,000.

- (3) In proceedings for an offence against this section, it is sufficient for the prosecution to allege and prove that:

- (a) a discharge of garbage occurred from a ship into State waters, and  
(b) the crew member or person involved in the operation or maintenance of the ship committed an act that caused the discharge.

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**62 Offence of being responsible for discharge of garbage into State waters from a ship** (Regs 3.1 and 5.2 of Annex V of MARPOL)

A person responsible for the discharge of any garbage from a ship into State waters is guilty of an offence.

Maximum penalty:

- (a) in the case of an individual—\$220,000, or
- (b) in the case of a corporation—\$1,100,000.

**Division 2 Defences****63 Defence if discharge was caused by damage to ship or equipment**

(Reg 6 (b) of Annex V of MARPOL)

Division 1 does not apply to the discharge of garbage from a ship if:

- (a) the garbage escaped from the ship in consequence of unavoidable damage to the ship or its equipment, and
- (b) all reasonable precautions were taken before and after the occurrence of the damage for the purpose of preventing or minimising the escape of the garbage.

**64 Defence if discharge was to secure safety or save life** (Reg 6 (a) of Annex V of MARPOL)

Division 1 does not apply to the discharge of garbage from a ship for the purpose of securing the safety of a ship or saving life at sea.

**65 Defence if accidental loss of nets and other materials** (Reg 6 (c) of Annex V of MARPOL)

Division 1 does not apply to the accidental loss of a synthetic fishing net, or synthetic material used in the repair of such a net, on a ship if all reasonable precautions were taken to prevent the loss.

**66 Defence in relation to certain dunnage, lining or packing materials that will float** (Regs 3.1 (b) (i), 4.1 and 5.2 (a) (ii) of Annex V of MARPOL)

- (1) Division 1 does not apply to the disposal of dunnage, lining or packing materials that will float, from a ship into State waters if:
  - (a) the disposal occurs when the ship is not within a special area, and
  - (b) the disposal occurs when the ship is as far as practicable from, and is not less than 25 nautical miles from, the nearest land, and

Section 66 Marine Pollution Act 2012 No 5

Part 7 Prevention of pollution by garbage

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- (c) the disposal occurs when the ship is not alongside, or within 500 metres of, a fixed or floating platform engaged in the exploration, exploitation and associated off-shore processing of seabed mineral resources.
- (2) This section does not apply to plastics.

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## **Part 8 Prevention of pollution from transfer operations**

### **Division 1 Application of Part**

#### **67 Meaning of “prescribed marine pollutant”**

In this Part:

*prescribed marine pollutant* means any one, or any combination, of the following substances (whether in bulk, packaged or another form):

- (a) oil,
- (b) a noxious liquid substance.

### **Division 2 Offences relating to transfer operations**

#### **68 Discharge of prescribed marine pollutant from ship in transfer operation prohibited** (cf former Act s 27)

- (1) A person must not deliberately, recklessly or negligently cause a prescribed marine pollutant to be discharged from a ship in, or in connection with, a transfer operation.

Maximum penalty:

- (a) in the case of an individual—\$500,000, or
- (b) in the case of a corporation—\$10,000,000.

- (2) Each prescribed person in relation to a ship is guilty of an offence if a prescribed marine pollutant is discharged from a ship in, or in connection with, a transfer operation.

Maximum penalty:

- (a) in the case of an individual—\$500,000, or
- (b) in the case of a corporation—\$10,000,000.

- (3) In this section:

*prescribed person* means any of the following:

- (a) the owner of the ship,
- (b) the master of the ship,
- (c) the person in charge of the transfer operation of the ship.



**69 Discharge of prescribed marine pollutant from place on land in transfer operation prohibited** (cf former Act s 27)

- (1) A person must not deliberately, recklessly or negligently cause a prescribed marine pollutant to be discharged from a place on land in, or in connection with, a transfer operation.

Maximum penalty:

- (a) in the case of an individual—\$500,000, or
- (b) in the case of a corporation—\$10,000,000.

- (2) The occupier of land is guilty of an offence if a prescribed marine pollutant is discharged from a place on the land in, or in connection with, a transfer operation.

Maximum penalty:

- (a) in the case of an individual—\$500,000, or
- (b) in the case of a corporation—\$10,000,000.

**70 Discharge of prescribed marine pollutant from apparatus on a ship used in transfer operation prohibited** (cf former Act s 27)

- (1) A person must not deliberately, recklessly or negligently cause a prescribed marine pollutant to be discharged from an apparatus on a ship in, or in connection with, a transfer operation.

Maximum penalty:

- (a) in the case of an individual—\$500,000, or
- (b) in the case of a corporation—\$10,000,000.

- (2) Each of the prescribed persons in relation to a ship is guilty of an offence if any prescribed marine pollutant is discharged from any apparatus on the ship used in, or in connection with, a transfer operation, whether or not it is being so used.

Maximum penalty:

- (a) in the case of an individual—\$500,000, or
- (b) in the case of a corporation—\$10,000,000.

- (3) In this section:

***prescribed person*** means any of the following:

- (a) the owner of the ship,
- (b) the master of the ship,
- (c) the owner of the apparatus,
- (d) the person in charge of the apparatus.

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**71 Discharge of prescribed marine pollutant from apparatus on a place on land used in transfer operation prohibited** (cf former Act s 27)

- (1) A person must not deliberately, recklessly or negligently cause a prescribed marine pollutant to be discharged from an apparatus on a place on land in, or in connection with, a transfer operation.

Maximum penalty:

- (a) in the case of an individual—\$500,000, or
- (b) in the case of a corporation—\$10,000,000.

- (2) Each of the prescribed persons in relation to a transfer operation is guilty of an offence if any prescribed marine pollutant is discharged from any apparatus on a place on land used in, or in connection with, a transfer operation, whether or not it is being so used.

Maximum penalty:

- (a) in the case of an individual—\$500,000, or
- (b) in the case of a corporation—\$10,000,000.

- (3) In this section:

*prescribed person* means any of the following:

- (a) the occupier of the land,
- (b) the owner of the apparatus,
- (c) the person in charge of the apparatus.

**72 Offence of causing discharge of prescribed marine pollutant from pipeline in connection with transfer operation** (cf former Act s 27)

- (1) A person must not deliberately, recklessly or negligently cause a prescribed marine pollutant to be discharged from a purpose-built pipeline in, or in connection with, a transfer operation.

Maximum penalty:

- (a) in the case of an individual—\$500,000, or
- (b) in the case of a corporation—\$10,000,000.

- (2) Each of the prescribed persons in relation to a purpose-built pipeline is guilty of an offence if any prescribed marine pollutant is discharged from the pipeline in, or in connection with, a transfer operation, whether or not it is being so used.

Maximum penalty:

- (a) in the case of an individual—\$500,000, or
- (b) in the case of a corporation—\$10,000,000.

- (3) In this section:  
***prescribed person*** means any of the following:
- (a) the occupier of the land,
  - (b) the owner of the pipeline,
  - (c) the person in charge of the pipeline.

**73 Discharge of prescribed marine pollutant from pipeline in connection with transfer operation prohibited** (cf former Act s 27)

Each of the following persons is guilty of an offence if any prescribed marine pollutant is discharged from a purpose-built pipeline used in, or in connection with, a transfer operation, whether or not it is being so used:

- (a) the occupier of the land on which the pipeline is situated,
- (b) any lessee, licensee or user of any lease, licence or right of user for the use of the pipeline for the carriage of oil,
- (c) the person in charge of the pipeline,
- (d) each other person responsible for the discharge.

Maximum penalty:

- (a) in the case of an individual—\$500,000, or
- (b) in the case of a corporation—\$10,000,000.

**74 Transfer of prescribed marine pollutant at night** (cf former Act s 32)

- (1) The master and the owner of a ship in State waters are each guilty of an offence if a prescribed marine pollutant is transferred from the ship between sunset and sunrise and:
- (a) prior written notice of the transfer has not been given to the harbour master or other person in charge of the waters or the Minister, or
  - (b) permission in writing has not been obtained from the harbour master or other person, or
  - (c) the pollutant is transferred in contravention of a condition attached to a permission.

Maximum penalty: \$55,000.

- (2) The occupier of land from which a prescribed marine pollutant is transferred to a ship in State waters, or to which a prescribed marine pollutant is transferred from a ship in State waters, is guilty of an

offence if a prescribed marine pollutant is transferred to or from the ship between sunset and sunrise and:

- (a) prior written notice of the transfer has not been given to the harbour master or other person in charge of the waters or the Minister, or
- (b) permission in writing has not been obtained from the harbour master or other person, or
- (c) the pollutant is transferred in contravention of a condition attached to a permission.

Maximum penalty: \$55,000.

- (3) In the case of a transfer to be carried out at a place where transfers are frequently and regularly carried out:

- (a) the notice may be a general notice that transfers will be carried out within a period specified in the notice, and
- (b) the permission may be general and subject to such conditions as the harbour master, other person in charge of the State waters or Minister thinks fit.

- (4) In this section:

*harbour master* has the same meaning it has in the *Marine Safety Act 1998*.

### **Division 3 Discharges to which Division 2 does not apply**

#### **75 Division 2 does not apply to certain discharges** (cf former Act s 26 (c))

Division 2 does not apply to a discharge that occurs on the landward side of the first isolating valve on land of any apparatus or purpose-built pipeline used in, or in connection with, a transfer operation, whether or not it is being so used, or at any other place prescribed by the regulations for the purposes of this section.

#### **76 Division 2 does not apply to discharge for purposes of combating pollution incidents** (cf former Act s 27 (2) (a))

Division 2 does not apply to a discharge if the discharge was for the purpose of combating specific pollution incidents in order to minimise the damage from pollution and was approved by an officer prescribed by the regulations.

#### **77 Division 2 does not apply to certain licensed discharges** (cf former Act s 27 (2) (b))

Division 2 does not apply to a discharge if the discharge was carried out by the holder of a licence under the *Protection of the Environment Operations Act 1997* in accordance with that licence.

#### **Division 4 Record keeping relating to transfer operations**

**78 Keeping of records relating to transfer** (cf former Act s 29 (2))

- (1) The responsible person in relation to a transfer operation must keep the records that the person is required to keep by the regulations, in the form in which the records are required to be kept.

Maximum penalty: \$22,000.

- (2) In this section:

*responsible person*, in relation to a transfer operation, means:

- (a) the owner or the master of a ship or the occupier of a place on land to or from which a prescribed marine pollutant is transferred, and
- (b) the person in charge of an apparatus or a purpose-built pipeline used in, or in connection with, a transfer operation, and
- (c) the occupier of a purpose-built pipeline used in, or in connection with, a transfer operation.

**79 Entries required to be made** (cf former Act s 29 (4))

A person must, without delay, make the appropriate entry in the record prescribed by the regulations if the regulations require a specified occurrence relating to a transfer operation to be recorded by the person.

Maximum penalty: \$22,000.

**80 Transmission of records relating to transfer operation** (cf former Act s 29 (5))

A person must not fail to transmit the records relating to a transfer operation that are required to be kept by this Division to the place or person, or in the manner, prescribed by the regulations.

Maximum penalty:

- (a) in the case of an individual—\$22,000, or
- (b) in the case of a corporation—\$110,000.

**81 Disposal of records relating to transfer operation** (cf former Act s 29 (3) (d))

A person must not dispose of records relating to a transfer operation that are required to be kept by this Division except in the manner and after the period required by the regulations.

Maximum penalty:

- (a) in the case of an individual—\$22,000, or
- (b) in the case of a corporation—\$110,000.

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**82 False or misleading entries prohibited** (cf former Act s 29 (6))

A person must not make an entry that is false or misleading in a material particular in a record required to be kept by this Division.

Maximum penalty: \$22,000.

**Division 5 Miscellaneous**

**83 Several liability** (cf former Act s 31)

If a prescribed marine pollutant is discharged into State waters from 2 or more ships in, or in connection with, a transfer operation, and it is not reasonably practicable to identify the pollutant that has discharged from a particular ship, all of the pollutant discharged is taken, for the purposes of this Part, to have been discharged from each of those ships.

**84 Multiple offenders** (cf former Act s 25 (3))

For the avoidance of doubt, more than one person may be found guilty of an offence under this Part in relation to a single discharge.

**85 Prohibitions on discharges from ships still apply**

- (1) To avoid doubt, this Part applies to a discharge whether or not it is a discharge prohibited by Part 3 or 4 (and whether or not a defence is available under those Parts for a discharge of the substance in those circumstances).
- (2) However, a person is not liable to be convicted in respect of the same discharge of both an offence under Part 3 or 4 and this Part.

## Part 9 Reporting of pollution incidents

### Division 1 Meaning of “reportable incident”

#### 86 Meaning of “reportable incident”

In this Part:

*reportable incident*, in relation to a ship, means any of the following:

- (a) a discharge or probable discharge into State waters from the ship of oil other than a discharge of the kind or in the circumstances specified in sections 22–25,
- (b) a discharge or probable discharge into State waters from the ship of a noxious liquid substance (other than a substance referred to in Regulation 6.1.4 of Annex II of MARPOL) other than of the kind or in the circumstances specified in sections 35–41,
- (c) a jettisoning or probable jettisoning from the ship into State waters of a harmful substance in packaged form including a substance in a freight container, portable tank, road and rail vehicle or shipborne barge,
- (d) in relation to a ship of 15 metres in length or above that is carrying oil or a noxious liquid substance:
  - (i) any damage, failure or breakdown of the ship that affects the safety of the ship, including but not limited to any collision, grounding, fire, explosion, structural failure, flooding or cargo shifting, or
  - (ii) any damage, failure or breakdown of the ship that results in impairment of the safety of navigation, including but not limited to, failure or breakdown of steering gear, propulsion plant, electrical generating system, and essential shipborne navigational aids,
- (e) in relation to a large ship that has on board a sewage treatment system, any damage, failure or breakdown of the ship’s sewage treatment system that could result in the discharge of untreated or inadequately treated sewage.

### Division 2 Master’s obligations

#### 87 Master must report reportable incident (Article I (1) of Protocol I of MARPOL) (cf former Act ss 10 (1) and 20 (1))

- (1) The master of a ship must, without delay, report any reportable incident that occurs in State waters in relation to the ship to the Minister in the manner prescribed by the regulations.  
Maximum penalty: \$121,000.

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- (2) In a prosecution of a person for an offence against subsection (1), it is a defence if the person proves that the person was unable to comply with that subsection.

**88 Master must provide supplementary report if Minister requires it** (Article IV (b) of Protocol I of MARPOL) (cf former Act ss 10 (6) and 20 (6))

The master of a ship must provide a supplementary report to the Minister in relation to the reportable incident within the time prescribed by the regulations and in accordance with the regulations if the Minister requests such a report.

Maximum penalty: \$121,000.

**89 Master must provide supplementary report if further developments arise** (Article IV (b) of Protocol I of MARPOL)

The master of the ship must provide a further supplementary report to the Minister within the time prescribed by the regulations and in accordance with the regulations if any significant further developments arise in relation to the reportable incident after a report or supplementary report was required under this Division.

Maximum penalty: \$121,000.

### Division 3 Obligations of other persons

**90 Duty of other persons to report if ship abandoned or report cannot be obtained** (Article I (2) of Protocol I of MARPOL) (cf former Act ss 10 (3) and 20 (3))

- (1) The owner, charterer, manager or operator of an abandoned ship in relation to which a reportable incident has occurred in State waters, and any agent of the owner, charterer, manager or operator of the ship, are each guilty of an offence if the reportable incident is not reported to the Minister, without delay, in the manner prescribed by the regulations.

Maximum penalty:

- (a) in the case of an individual—\$121,000, or  
(b) in the case of a corporation—\$2,750,000.

- (2) The owner, charterer, manager or operator of a ship in relation to which a reportable incident has occurred in State waters in other circumstances in which a notification cannot be obtained from the master of the ship under Division 2, and any agent of the owner, charterer, manager or operator of the ship are each guilty of an offence if the reportable



incident is not reported to the Minister, without delay, in the manner prescribed by the regulations.

Maximum penalty:

- (a) in the case of an individual—\$121,000, or
  - (b) in the case of a corporation—\$2,750,000.
- (3) In a prosecution of a person for an offence against this section in relation to a reportable incident, it is a defence if the person proves:
- (a) that the person was not aware of the incident, or
  - (b) that the person neither knew nor suspected that the ship was abandoned or the circumstances that meant that a report could not be obtained.
- (4) Subsection (3) does not limit any defence that would, but for that subsection, be available to a person charged with an offence under this section.

**91 Duty of other persons to report if report incomplete** (Article I (2) of Protocol I of MARPOL) (cf former Act ss 10 (3) and 20 (3))

- (1) The owner, charterer, manager or operator of a ship and any agent of the owner, charterer, manager or operator of the ship are each guilty of an offence if a notification provided under Division 2 is provided in an incomplete form and the missing particulars are not reported to the Minister without delay.

Maximum penalty:

- (a) in the case of an individual—\$121,000, or
  - (b) in the case of a corporation—\$2,750,000.
- (2) In a prosecution of a person for an offence against this section in relation to a reportable incident, it is a defence if the person proves that the person was not aware of the incident.
- (3) Subsection (2) does not limit any defence that would, but for that subsection, be available to a person charged with an offence under this section.

**92 Duty of other persons to provide supplementary report** (Article IV (b) of Protocol I of MARPOL) (cf former Act ss 10 (7) and 20 (7))

- (1) A person who has reported the occurrence of a reportable incident to the Minister pursuant to this Division must provide the Minister with a supplementary report in relation to the reportable incident if the Minister requests the supplementary report.

Maximum penalty: \$121,000.

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- (2) A person who has reported the occurrence of a reportable incident to the Minister pursuant to this Division must provide a further supplementary report to the Minister about any further developments that arise in relation to the reportable incident after a report or supplementary report was required under this Division, within the time prescribed by the regulations and in accordance with the regulations.

Maximum penalty: \$121,000.

#### **Division 4      Miscellaneous**

**93    False or misleading reports** (cf former Act ss 10 (8) and 20 (8))

A person must not, in a report or supplementary report required by this Part, make a statement that is false or misleading in a material particular.

Maximum penalty: \$121,000.

**94    Inadmissibility of certain evidence** (cf former Act ss 10 (9) and 20 (9))

A report or supplementary report given to the Minister pursuant to this Part is not admissible in evidence in a prosecution of an individual for an offence against section 15–17, 27–31, 43–47, 53–55 or 60–62 without the consent of the person charged.

## Part 10 Emergency plans and other plans

### Division 1 Shipboard oil pollution emergency plan

**95 Obligation to carry shipboard oil pollution emergency plan** (Reg 37.1 of Annex I of MARPOL)

- (1) The master and the owner of a prescribed ship that is in State waters are each guilty of an offence if an approved shipboard oil pollution emergency plan is not carried on board the ship.

Maximum penalty: \$55,000.

- (2) In proceedings for an offence against this section in relation to a ship, it is sufficient for the prosecution to allege and prove:

- (a) that the ship is a prescribed ship, and  
(b) that the ship was in State waters without an approved shipboard oil pollution emergency plan on board.

- (3) In this section:

**approved**, in relation to a shipboard oil pollution emergency plan, means approved by:

- (a) the Minister under this Division, or  
(b) an Administration, within the meaning of Article 2 of the Protocol to MARPOL.

**prescribed ship** means a ship:

- (a) that is an oil tanker that has a gross tonnage of 150 or more, or  
(b) that is not an oil tanker and that has a gross tonnage of 400 or more.

**96 Approval of shipboard oil pollution emergency plan** (Reg 37.1 of Annex I of MARPOL)

The Minister may, on application by a master of a ship, approve the shipboard oil pollution emergency plan for the ship if, in the opinion of the Minister, it complies with this Division.

**97 Contents of shipboard oil pollution emergency plan** (Reg 37.2 of Annex I of MARPOL)

- (1) A shipboard oil pollution emergency plan must contain the matter prescribed by the regulations.

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- (2) A shipboard oil pollution emergency plan must set out, but is not limited to, the following particulars:
- (a) the procedure to be followed by the master, any crew member, or any other person having charge of the ship in reporting a reportable incident in relation to the ship,
  - (b) a list of the authorities or persons that are to be notified by persons on the ship if such a reportable incident occurs in relation to the ship,
  - (c) a detailed description of the action to be taken immediately after a reportable incident by persons on board the ship to reduce or control any discharge from the ship resulting from the incident,
  - (d) the procedures to be followed for co-ordinating with the authorities or persons that have been contacted (whether in Australia or in a country near to the place where the incident occurred) any action taken in combating the pollution caused by the incident and, in particular, the person on board the ship through whom all communications are to be made,
  - (e) any action to be taken in combating the pollution caused by the incident and, in particular, the person on board the ship through whom all communications are to be made.
- (3) The procedure referred to in subsection (2) (a) must be in accordance with the procedure prescribed by the regulations under section 87 as the manner in which a reportable incident is to be reported under Part 9.
- (4) In this section, *reportable incident* has the same meaning as in section 86.

**98 Language of shipboard oil pollution emergency plan** (Reg 37.2 of Annex I of MARPOL)

The shipboard oil pollution emergency plan on a ship must be written in the working language of the master of, and the crew on board, the ship.

**99 Plans may be combined**

A ship complies with both sections 95 and 100 if it has on board a plan called a “shipboard marine pollution emergency plan” that complies with this Division and with Division 2.

## **Division 2 Shipboard marine pollution emergency plan for noxious liquid substances**

### **100 Obligation to carry shipboard marine pollution emergency plan for noxious liquid substances** (Reg 17.1 of Annex II of MARPOL)

- (1) The master and the owner of a prescribed ship that is in State waters are each guilty of an offence if there is not a shipboard marine pollution emergency plan for noxious liquid substances that complies with this Division, and is approved by the Minister, on board the ship.

Maximum penalty: \$55,000.

- (2) In proceedings for an offence against this section in relation to a ship, it is sufficient for the prosecution to allege and prove that a ship is a prescribed ship and that it was in State waters without a shipboard marine pollution emergency plan for noxious liquid substances that complies with this Division on board.

- (3) In this section:

*prescribed ship* means an Australian ship:

- (a) that has a gross tonnage of 150 or more, and
- (b) that is certified to carry noxious liquid substances in bulk.

### **101 Approval of shipboard marine pollution emergency plan for noxious liquid substances** (Reg 17.1 of Annex II of MARPOL)

The Minister may, on application by a master of a ship, approve the shipboard marine pollution emergency plan for noxious liquid substances for the ship if, in the opinion of the Minister, it complies with this Division.

### **102 Contents of shipboard marine pollution emergency plan for noxious liquid substances** (Reg 17.2 of Annex II of MARPOL)

- (1) A shipboard marine pollution emergency plan for noxious liquid substances must contain the matter prescribed by the regulations.
- (2) A shipboard marine pollution emergency plan for noxious liquid substances must set out, but is not limited to, the following particulars:
- (a) the procedure to be followed by the master, or any other person having charge, of the ship in reporting a reportable incident in relation to the ship,
  - (b) a list of the authorities or persons that are to be notified by persons on the ship if a reportable incident occurs in relation to the ship,

- 
- (c) a detailed description of the action to be taken, immediately after a reportable incident, by persons on board the ship to reduce or control any discharge from the ship resulting from the incident,
  - (d) the procedures to be followed for co-ordinating with the authorities or persons that have been contacted (whether in Australia or in a country near to the place where the incident occurred) any action taken in combating the pollution caused by the incident and, in particular, the person on board the ship through whom all communications are to be made,
  - (e) any action to be taken in combating the pollution caused by the incident and, in particular, the person on board the ship through whom all communications are to be made.
- (3) The procedure referred to in subsection (2) (a) must be in accordance with the procedure prescribed by the regulations under section 87 as the manner in which a reportable incident is to be reported under Part 9.
- (4) In this section, *reportable incident* has the same meaning as in section 86.

**103 Language of shipboard marine pollution emergency plan for noxious liquid substances** (Reg 17.2 of Annex II of MARPOL)

The shipboard marine pollution emergency plan for noxious liquid substances on a ship must be written in the working language of the master of, and the officers on board, the ship.

**Division 3 Procedures and arrangements manual**

**104 Procedures and arrangements manual required** (Reg 14.1 of Annex II of MARPOL)

The master and the owner of a ship in State waters are each guilty of an offence if:

- (a) a chemical tanker construction certificate under Division 12A of Part IV of the *Navigation Act 1912* of the Commonwealth is in force in respect of the ship, and
- (b) the ship does not have on board a copy of the ship's procedures and arrangements manual that complies with this Division.

Maximum penalty: \$6,600.

**105 Form and content of procedures and arrangements manual** (Reg 14.2 of Annex II of MARPOL)

A procedures and arrangements manual for a ship complies with this Division if:

- (a) it contains the physical arrangements and all the operational procedures with respect to cargo handling, tank cleaning, slops handling and cargo tank ballasting that must be followed in order to comply with the requirements of Annex II of MARPOL, and
- (b) it is in accordance with the form approved by the Minister.

**106 Language of procedures and arrangements manual** (Reg 14.1 of Annex II of MARPOL)

- (1) The procedures and arrangements manual for an Australian ship must be written in the English language.
- (2) The procedures and arrangements manual for a foreign ship must be written in the official language of the country whose flag the ship is entitled to fly, or in one of the official languages of that country.
- (3) However, if that official language is not English, French or Spanish, the procedures and arrangements manual must also be translated into English, French or Spanish.

#### **Division 4 Shipboard garbage management plan**

**107 Obligation to carry shipboard garbage management plan** (Reg 9 of Annex V of MARPOL)

- (1) The master and the owner of a large ship that is in State waters are each guilty of an offence if there is not a shipboard garbage management plan that complies with this Division on board the ship.  
Maximum penalty: \$5,500.
- (2) In proceedings for an offence against this section in relation to a ship, it is sufficient for the prosecution to allege and prove that a ship is a large ship and that it was in State waters without a shipboard garbage management plan that complies with this Division on board.

**108 Contents of shipboard garbage management plan** (Reg 9 (2) of Annex V of MARPOL)

- (1) A shipboard garbage management plan must be in writing and must contain the matters prescribed by the regulations.

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- (2) A shipboard garbage management plan must set out, but is not limited to, the following particulars:
- (a) the procedures for collecting, storing, processing and disposing of garbage, including the use of the equipment on board the ship for carrying out those procedures,
  - (b) the person who is in charge of carrying out the plan.

**109 Language of shipboard garbage management plan** (Reg 9 (2) of Annex V of MARPOL)

- (1) The shipboard garbage management plan on an Australian ship must be written in the English language.
- (2) The shipboard garbage management plan on a foreign ship must be written in the official language of the country whose flag the ship is entitled to fly, or in one of the official languages of that country.
- (3) The shipboard garbage management plan on any ship must also be written in the working language of the master of, and the majority of officers on board, the ship.

**Division 5 Placards relating to garbage disposal requirements**

**110 Placards relating to requirements for disposal of garbage** (Reg 9 (1) (a) of Annex V of MARPOL)

- (1) The master and the owner of a ship of 12 metres or more in length that is in State waters are each guilty of an offence if at least one garbage disposal requirements placard that complies with this Division is not displayed on board the ship in a position where it can be easily read by any crew member or any passenger of the ship.  
Maximum penalty: \$5,500.
- (2) In proceedings for an offence against this section in relation to a ship, it is sufficient for the prosecution to allege and prove:
  - (a) that the ship was of 12 metres or more in length and was in State waters, and
  - (b) that a garbage disposal requirements placard that complies with this Division was not displayed on board the ship.



**111 Content of garbage disposal requirements placard** (Reg 9 (1) (a) of Annex V of MARPOL)

A garbage disposal requirements placard must describe:

- (a) the kinds of garbage that may not be disposed of from the ship under this Act and MARPOL, and
- (b) the kinds of garbage that may be disposed of from the ship and the circumstances in which it is not an offence to dispose of garbage of that kind under this Act and MARPOL.

**112 Language of garbage disposal requirements placards** (Reg 9 (1) (b) of Annex V of MARPOL)

The garbage disposal requirements placard or each placard on a ship must be written in the working language of the ship's crew.

## Part 11 Record keeping

### Division 1 Requirement to carry oil record book

- 113 Requirement to carry an oil record book** (Regs 17.1 and 36.1 of Annex I of MARPOL) (cf former Act s 11 (2) and (4))
- (1) The master and the owner of a prescribed ship are each guilty of an offence if the ship does not carry on board an oil record book that complies with this Division.  
Maximum penalty:
    - (a) in the case of an individual—\$22,000, or
    - (b) in the case of a corporation—\$110,000.
  - (2) In proceedings for an offence against this section in relation to a ship, it is sufficient for the prosecution to allege and prove that the ship is a prescribed ship and that it was in State waters without an oil record book that complies with this Division on board.
  - (3) In this section:  
*prescribed ship* means an oil tanker, or a ship that has a gross tonnage of 400 or more, that is:
    - (a) a trading ship proceeding on an intra-state voyage, or
    - (b) an Australian fishing vessel proceeding on a voyage other than an overseas voyage, or
    - (c) a pleasure vessel.
- 114 Form of oil record book** (Regs 17.4 and 36.5 of Annex I of MARPOL) (cf former Act s 11 (3))
- (1) An oil record book must contain the matters prescribed by the regulations.
  - (2) An oil record book must make provision for:
    - (a) a signature in relation to each entry made in it, and
    - (b) a signature on each page of it.
- 115 Language of oil record book** (Regs 17.4 and 36.5 of Annex I of MARPOL) (cf former Act s 11 (6) (a))
- (1) The oil record book on an Australian ship must be written in the English language.
  - (2) The oil record book on a foreign ship must be written in the official language of the country whose flag the ship is entitled to fly, or in one of the official languages of that country.

- (3) However, if that official language is not English, French or Spanish, the oil record book must also be translated into English, French or Spanish.

**116 Master must sign completed page of oil record book** (cf former Act s 11 (7))

The master of the ship must sign each page of the ship's oil record book as soon as possible after it is completed.

Maximum penalty: \$22,000.

**117 Entries in relation to prescribed operations or occurrences** (Regs 17.4 and 36.5 of Annex I of MARPOL) (cf former Act s 11 (5))

- (1) The master of a ship in relation to which an operation or occurrence prescribed by the regulations occurs:
- (a) must make appropriate entries in the English language in the ship's oil record book without delay, on the date of the event, or
  - (b) must cause appropriate entries to be made without delay in the English language in the ship's oil record book on the date of the event.

Maximum penalty: \$22,000.

- (2) The master of the ship must ensure that any entry made in relation to an operation or occurrence prescribed by the regulations is signed by the officer or other person in charge of the operation on the date of the operation or occurrence.

Maximum penalty: \$22,000.

- (3) In this section:

*appropriate entry* means an entry prescribed by the regulations.

**118 Entries in relation to inspections** (Regs 17.1 and 36.8 of Annex I of MARPOL)

An inspector who inspects a ship must, without delay, make entries prescribed by the regulations in the ship's oil record book in the English language.

**119 False entries in oil record book** (Regs 17.7 and 36.8 of Annex I of MARPOL) (cf former Act s 12)

A person must not make an entry that is false or misleading in a material particular in the oil record book of a ship.

Maximum penalty: \$22,000.

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**120 Oil record book to be retained on ship for one year** (Regs 17.6 and 36.7 of Annex I of MARPOL) (cf former Act s 13)

The owner of a ship is guilty of an offence if the ship's oil record book:

- (a) is not retained on the ship until at least the expiration of a period of one year after the day on which the last entry was made in the book, and
- (b) is not made readily available for inspection at all reasonable times until at least the expiration of that period.

Maximum penalty:

- (a) in the case of an individual—\$22,000, or
- (b) in the case of a corporation—\$110,000.

**121 Oil record book to be retained** (Regs 17.6 and 36.7 of Annex I of MARPOL) (cf former Act s 13)

- (1) The owner of a ship must ensure that the ship's oil record book is, at least until the expiration of a period of two years after the day on which the last entry was made in the book:

- (a) retained:
  - (i) on the ship, or
  - (ii) at the registered office in the State of the owner, or
- (b) if the owner does not reside in the State and does not have an office or agent in the State, deposited with an officer prescribed by the regulations for the purposes of this section.

Maximum penalty:

- (a) in the case of an individual—\$22,000, or
- (b) in the case of a corporation—\$110,000.

- (2) The owner of a ship must ensure that the ship's oil record book is made readily available for inspection at all reasonable times at least until the expiration of the period referred to in subsection (1).

Maximum penalty:

- (a) in the case of an individual—\$22,000, or
- (b) in the case of a corporation—\$110,000.

- (3) The owner of a ship who resides in the State, or has an office or agent in the State, may from time to time furnish to an officer prescribed by the regulations for the purposes of this section notice, in writing, of an address, being the address of:

- (a) the place in the State at which the owner so resides, or
- (b) the office in the State or, if there is more than one office in the State, the principal office in the State of the owner, or

- (c) the office or place of residence in the State of the owner's agent or, if the agent has more than one office in the State, the principal office in the State of the agent.
- (4) For the purposes of this section, the *registered office* of an owner of a ship is the place or office of which an address is furnished for the time being under subsection (3) as the registered office in the State of the owner of the ship.

**122 Master may be required to certify entry in oil record book** (Regs 17.7 and 36.8 of Annex I of MARPOL)

The master of a ship must, if required to do so by an inspector:

- (a) provide the inspector with a copy of any entry in the oil record book for the ship specified by the inspector, and
- (b) certify that the copy of the entry is a true copy, in the manner required by the regulations.

Maximum penalty: \$22,000.

**123 Admissibility of certified entry in oil record book** (Regs 17.7 and 36.8 of Annex I of MARPOL)

An entry in an oil record book certified by the master of a ship is admissible in any proceedings for an offence under this Act as evidence of the facts stated in the entry.

## Division 2 Requirement to carry cargo record book

**124 Requirement to carry cargo record book** (Reg 15.1 of Annex II of MARPOL) (cf former Act s 21 (2) and (4))

The master and the owner of a ship that is certified to carry noxious liquid substances in bulk are each guilty of an offence if the ship does not carry a cargo record book that complies with this Division.

Maximum penalty:

- (a) in the case of an individual—\$22,000, or
- (b) in the case of a corporation—\$110,000.

**125 Form of cargo record book** (Reg 15.1 of Annex II of MARPOL) (cf former Act s 21 (3))

- (1) A cargo record book must contain the matters prescribed by the regulations.
- (2) A cargo record book must make provision for:
  - (a) a signature in relation to each entry made in it, and
  - (b) a signature on each page of it.

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- 126 Language of cargo record book** (Reg 15.4 of Annex II of MARPOL) (cf former Act s 21 (7) (a))
- (1) The cargo record book on an Australian ship must be written in the English language.
  - (2) The cargo record book on a foreign ship must be written in the official language of the country whose flag the ship is entitled to fly, or in one of the official languages of that country.
  - (3) However, if that official language is not English, French or Spanish, the cargo record book must also be translated into English, French or Spanish.
- 127 Master must sign completed page of cargo record book** (Reg 15.4 of Annex II of MARPOL) (cf former Act s 21 (8))
- The master of a ship must sign each page of the ship's cargo record book as soon as possible after it is completed.
- Maximum penalty: \$22,000.
- 128 Entries in relation to prescribed operations or occurrences** (Reg 15.2 of Annex II of MARPOL) (cf former Act s 21 (5))
- (1) The master of a ship in relation to which an operation prescribed by the regulations is carried out, or an occurrence prescribed by the regulations occurs, must:
    - (a) make appropriate entries in the English language in the ship's cargo record book, without delay, on the date of the operation or occurrence, or
    - (b) cause appropriate entries to be made in the English language in the ship's cargo record book, without delay, on the date of the operation or occurrence.Maximum penalty: \$22,000.
  - (2) The master of a ship must ensure that, if an entry is made in relation to an operation or occurrence prescribed by the regulations, the entry is signed by the officer or other person in charge of the operation on the date of the operation or occurrence.  
Maximum penalty: \$22,000.
  - (3) In this section:  
*appropriate entry* means an entry prescribed by the regulations.
- 129 Entries in relation to inspections** (Reg 15.6 of Annex II of MARPOL) (cf former Act s 21 (6))
- An inspector who inspects a ship must, without delay, make appropriate entries in the ship's cargo record book in the English language.

**130 False entries in cargo record book** (Reg 15.6 of Annex II of MARPOL) (cf former Act s 22)

A person must not make an entry that is false or misleading in a material particular in the cargo record book of a ship.

Maximum penalty: \$22,000.

**131 Cargo record book to be retained on ship for one year** (Reg 15.5 of Annex II of MARPOL) (cf former Act s 23)

The master and the owner of a ship are each guilty of an offence if the ship's cargo record book:

- (a) is not retained on the ship at least until the expiration of a period of one year after the day on which the last entry was made in the book, and
- (b) is not made readily available for inspection at all reasonable times at least until the expiration of that period.

Maximum penalty:

- (a) in the case of an individual—\$22,000, or
- (b) in the case of a corporation—\$110,000.

**132 Cargo record book to be retained for two years** (Reg 15.5 of Annex II of MARPOL) (cf former Act s 23)

- (1) The owner of a ship must ensure that the ship's cargo record book is, at least until the expiration of a period of two years after the day on which the last entry was made in the book:

- (a) retained:
  - (i) on the ship, or
  - (ii) at the registered office in the State of the owner, or
- (b) if the owner does not reside in the State and does not have an office or agent in the State, deposited with an officer prescribed by the regulations for the purposes of this section.

Maximum penalty:

- (a) in the case of an individual—\$22,000, or
- (b) in the case of a corporation—\$110,000.

- (2) The owner of a ship must ensure that the ship's cargo record book is made readily available for inspection at all reasonable times at least until the expiration of the period referred to in subsection (1).

Maximum penalty:

- (a) in the case of an individual—\$22,000, or
- (b) in the case of a corporation—\$110,000.

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- (3) The owner of a ship who resides in the State, or has an office or agent in the State, may from time to time furnish to an officer prescribed by the regulations for the purposes of this section notice, in writing, of an address, being the address of:
- (a) the place in the State at which the owner so resides, or
  - (b) the office in the State or, if there is more than one office in the State, the principal office in the State of the owner, or
  - (c) the office or place of residence in the State of the owner's agent or, if the agent has more than one office in the State, the principal office in the State of the agent.
- (4) For the purposes of this section, the *registered office* of an owner of a ship is the place or office for which an address is furnished for the time being under subsection (3) as the registered office in the State of the owner of the ship.

**133 Master may be required to certify entry in cargo record book** (Reg 15.6 of Annex II of MARPOL)

The master of a ship must, if required to do so by an inspector:

- (a) provide the inspector with a copy of any entry in the cargo record book for the ship specified by the inspector, and
- (b) certify that the copy of the entry is a true copy, in the manner required by the regulations.

Maximum penalty: \$8,800.

**134 Admissibility of certified entry in cargo record book** (Reg 15.6 of Annex II of MARPOL)

An entry in a cargo record book certified by the master of a ship is admissible in any proceedings for an offence under this Act as evidence of the facts stated in the entry.

### **Division 3 Requirement to carry garbage record book**

**135 Requirement to carry garbage record book on board ship** (Reg 9.3 of Annex V of MARPOL)

- (1) The master and the owner of a large ship are each guilty of an offence if the ship does not carry a garbage record book that complies with this Division.

Maximum penalty:

- (a) in the case of an individual—\$5,500, or
- (b) in the case of a corporation—\$22,000.



- (2) However, the master and the owner of a ship the subject of a waiver under section 137 do not commit an offence in relation to a voyage by the ship of one hour or less in duration.

**136 Requirement to carry garbage record book on platform** (Reg 9.3 of Annex V of MARPOL)

The owner of a platform must ensure that a garbage record book that complies with this Division is carried on the platform.

Maximum penalty:

- (a) in the case of an individual—\$5,500, or  
(b) in the case of a corporation—\$22,000.

**137 Minister may waive requirement to carry garbage record book** (Reg 9.4 of Annex V of MARPOL)

The Minister may, on application in writing from the master or the owner of a large ship that is certified to carry more than 15 persons, waive the requirement to carry a garbage record book in relation to any voyage by the ship of one hour or less in duration.

**138 Form of garbage record book** (Reg 9.3 of Annex V of MARPOL)

- (1) A garbage record book must contain the matters prescribed by the regulations.
- (2) A garbage record book must make provision for:
- (a) a signature in relation to each entry made in it, and  
(b) a signature on each page of it.

**139 Language of garbage record book** (Reg 9.3.a of Annex V of MARPOL)

- (1) The garbage record book on an Australian ship must be written in the English language.
- (2) The garbage record book on a foreign ship must be written in the official language of the country whose flag the ship is entitled to fly, or in one of the official languages of that country.
- (3) However, if that official language is not English, French or Spanish, the garbage record book must also be translated into English, French or Spanish.

**140 Master must sign completed page of garbage record book** (Reg 9.3.a of Annex V of MARPOL)

The master of a ship must sign each page of the ship's garbage record book as soon as possible after it is completed.

Maximum penalty: \$5,500.

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- 141 Entries in relation to prescribed operations or occurrences** (Reg 9.3 of Annex V of MARPOL)
- (1) The master of a ship in relation to which an operation prescribed by the regulations is carried out, or an occurrence prescribed by the regulations occurs, must:
- (a) make appropriate entries in the English language in the ship's garbage record book, without delay, on the date of the operation or occurrence, or
  - (b) cause appropriate entries to be made without delay in the English language in the ship's garbage record book on the date of the operation or occurrence.
- Maximum penalty: \$22,000.
- (2) The master of a ship must ensure that any entry made in relation to an operation or occurrence prescribed by the regulations is signed by the officer or other person in charge of the operation on the date of the operation or occurrence.
- Maximum penalty: \$22,000.
- (3) In this section:  
*appropriate entry* means an entry prescribed by the regulations.
- 142 Entries in relation to inspections** (Reg 9.5 of Annex V of MARPOL)
- An inspector who inspects a ship must, without delay, make appropriate entries in the English language in the ship's garbage record book.
- 143 False entries in garbage record book** (Reg 9.5 of Annex V of MARPOL)
- A person must not make an entry that is false or misleading in a material particular in a garbage record book of a ship or platform.
- Maximum penalty: \$22,000.
- 144 Garbage record book to be retained on ship for one year** (Reg 9.3.c of Annex V of MARPOL)
- The master and the owner of a ship are each guilty of an offence if the ship's garbage record book:
- (a) is not retained on the ship at least until the expiration of a period of one year after the day on which the last entry was made in the book, and

- (b) is not made readily available for inspection at all reasonable times at least until the expiration of that period.

Maximum penalty:

- (a) in the case of an individual—\$5,500, or
- (b) in the case of a corporation—\$22,000.

**145 Garbage record book to be retained** (Reg 9.3.c of Annex V of MARPOL)

- (1) The owner of a ship must ensure that the ship's garbage record book is, at least until the expiration of a period of one year after the day on which the last entry was made in the book:

- (a) retained:
  - (i) on the ship, or
  - (ii) at the registered office in the State of the owner, or
- (b) if the owner does not reside in the State and does not have an office or agent in the State, deposited with an officer prescribed by the regulations for the purposes of this section.

Maximum penalty:

- (a) in the case of an individual—\$5,500, or
- (b) in the case of a corporation—\$22,000.

- (2) The owner of a ship must ensure that the ship's garbage record book is made readily available for inspection at all reasonable times at least until the expiration of the period referred to in subsection (1).

Maximum penalty:

- (a) in the case of an individual—\$5,500, or
- (b) in the case of a corporation—\$22,000.

- (3) The owner of a ship who resides in the State, or has an office or agent in the State, may from time to time furnish to an officer prescribed by the regulations for the purposes of this section notice, in writing, of an address, being the address of:

- (a) the place in the State at which the owner so resides, or
- (b) the office in the State or, if there is more than one office in the State, the principal office in the State of the owner, or
- (c) the office or place of residence in the State of the owner's agent or, if the agent has more than one office in the State, the principal office in the State of the agent.

- (4) For the purposes of this section, the *registered office* of an owner of a ship is the place or office for which an address is furnished for the time being under subsection (3) as the registered office in the State of the owner of the ship.

**146 Master may be required to certify entry in garbage record book** (Reg 9.5 of Annex V of MARPOL)

The master of a ship must, if required to do so by an inspector:

- (a) provide the inspector with a copy of any entry in the garbage record book for the ship specified by the inspector, and
- (b) certify that the copy of the entry is a true copy, in the manner required by the regulations.

Maximum penalty: \$8,800.

**147 Admissibility of certified entry in garbage record book** (Reg 9.5 of Annex V of MARPOL)

An entry in a garbage record book certified by the master of a ship is admissible in any proceedings for an offence under this Act as evidence of the facts stated in the entry.

## **Part 12 Certification of construction of ships**

### **Division 1 Regulations relating to construction of ships**

- 148 Regulations relating to construction of ships** (Chapters 3 and 4 of Annex I, Regulations 11 and 12 of Annex II, Regulations 1.3 and 2–6 of Annex III and Regulations 2.2, 4 and 11 of Annex IV, of MARPOL) (cf former Act ss 35 and 40)
- (1) The regulations may make provision for and in relation to giving effect to any of the following:
    - (a) Chapters 3 and 4 of Annex I of MARPOL,
    - (b) Regulations 11 and 12 of Annex II of MARPOL,
    - (c) Regulations 1.3 and 2–6 of Annex III of MARPOL,
    - (d) Regulations 2.2, 4 and 11 of Annex IV of MARPOL.
  - (2) Without limiting the generality of subsection (1), regulations made for the purposes of that subsection may empower the Minister to make orders with respect to any matter for or in relation to which provision may be made by the regulations by virtue of this section.
- 149 References to compliance with Annexes of MARPOL** (cf former Act s 33 (3))
- For the purposes of this Part:
- (a) a ship is taken to comply with the provisions of Annex I of MARPOL only if it complies with the regulations and orders referred to in section 148 (1) (a), and
  - (b) a ship is taken to comply with the provisions of Annex II of MARPOL only if it complies with the regulations and orders referred to in section 148 (1) (b), and
  - (c) a ship is taken to comply with the provisions of Annex IV of MARPOL only if it complies with the regulations and orders referred to in section 148 (1) (d).

### **Division 2 Requirement for certification of certain ships**

- 150 Requirement for ship construction certificate** (Chapter 2 of Annex I of MARPOL) (cf former Act s 39)
- (1) The master of a prescribed ship must not begin a voyage unless there is a ship construction certificate in force in respect of the ship.  
Maximum penalty: \$11,000 or imprisonment for 4 years, or both.

- (2) The owner of a prescribed ship must not permit the ship to begin a voyage unless a ship construction certificate is in force in respect of the ship.

Maximum penalty:

- (a) in the case of an individual—\$11,000 or imprisonment for 4 years, or both, or  
 (b) in the case of a corporation—\$55,000.

- (3) The owner of a prescribed ship in respect of which a ship construction certificate is in force must ensure that the certificate is carried on board the ship.

Maximum penalty: \$1,100.

- (4) In this section:

**prescribed ship** means an oil tanker that has a gross tonnage of 150 or more, or that is a ship, other than an oil tanker, that has a gross tonnage of 400 or more, that is:

- (a) a trading ship proceeding on an intra-state voyage, or  
 (b) an Australian fishing vessel proceeding on a voyage other than an overseas voyage, or  
 (c) a pleasure vessel.

**ship construction certificate** means:

- (a) a NSW ship construction certificate, or  
 (b) a ship construction certificate issued under section 267B of the *Navigation Act 1912* of the Commonwealth, or  
 (c) a ship construction certificate issued under a law of another State or the Northern Territory and being a certificate of a kind prescribed by the regulations as acceptable for the purposes of this Part, or  
 (d) an International Oil Pollution Prevention Certificate issued to a foreign ship under section 267C of the *Navigation Act 1912* of the Commonwealth, or  
 (e) an International Oil Pollution Prevention Certificate issued to an Australian ship under the law of a country other than Australia giving effect to Regulation 8 of Annex I of MARPOL.

**151 Requirement for chemical tanker construction certificate** (Reg 9.1 of Annex II of MARPOL) (cf former Act s 44)

- (1) The master of a prescribed ship must not begin a voyage unless there is a chemical tanker construction certificate in force in respect of the ship.  
 Maximum penalty: \$11,000 or imprisonment for 4 years, or both.

- (2) The owner of a prescribed ship must not permit the ship to begin a voyage unless a chemical tanker construction certificate is in force in respect of the ship.

Maximum penalty:

- (a) in the case of an individual—\$11,000 or imprisonment for 4 years, or both, or  
(b) in the case of a corporation—\$55,000.

- (3) The owner of a prescribed ship in respect of which a chemical tanker construction certificate is in force must ensure that the certificate is carried on board the ship.

Maximum penalty: \$1,100.

- (4) In this section:

***chemical tanker construction certificate*** means:

- (a) a NSW chemical tanker construction certificate, or  
(b) a chemical tanker construction certificate issued under section 267Q of the *Navigation Act 1912* of the Commonwealth, or  
(c) a chemical tanker construction certificate issued under a law of another State or the Northern Territory and being a certificate of a kind prescribed by the regulations as acceptable for the purposes of this Part, or  
(d) an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk issued to a foreign ship under section 267R of the *Navigation Act 1912* of the Commonwealth.

***prescribed ship*** means:

- (a) a trading ship proceeding on an intra-state voyage, or  
(b) an Australian fishing vessel proceeding on a voyage other than an overseas voyage, or  
(c) a pleasure vessel,

that is:

- (d) carrying noxious liquid substances in bulk, and  
(e) engaged in a voyage to a port or terminal in the State.

**152 Requirement for sewage pollution prevention certificate** (Reg 5 of Annex IV of MARPOL)

- (1) The master of a large ship must not begin a voyage unless there is a sewage pollution prevention certificate in force in respect of the ship.  
Maximum penalty: \$11,000 or imprisonment for 4 years, or both.

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- (2) The owner of a large ship must not permit the ship to begin a voyage unless a sewage pollution prevention certificate is in force in respect of the ship.

Maximum penalty:

- (a) in the case of an individual—\$11,000 or imprisonment for 4 years, or both, or
- (b) in the case of a corporation—\$55,000.

- (3) The owner of a large ship in respect of which a sewage pollution prevention certificate is in force must ensure that the certificate is carried on board the ship.

Maximum penalty: \$1,100.

- (4) In this section:

***sewage pollution prevention certificate*** means:

- (a) a NSW sewage pollution prevention certificate, or
- (b) an International Sewage Pollution Prevention Certificate for Australian ships issued under section 267ZG of the *Navigation Act 1912* of the Commonwealth, or
- (c) a sewage pollution prevention certificate issued under a law of another State or the Northern Territory and being a certificate of a kind prescribed by the regulations as acceptable for the purposes of this Part, or
- (d) an International Sewage Pollution Prevention Certificate issued to a foreign ship under section 267ZH of the *Navigation Act 1912* of the Commonwealth, or
- (e) an International Sewage Pollution Prevention Certificate issued to an Australian ship under the law of a country other than Australia giving effect to Regulation 5 of Annex IV of MARPOL.

### **Division 3 Local certification**

#### **153 Application for NSW certificate**

The master or owner of a ship may apply to the Minister for a NSW certificate.



**154 Ship to be surveyed** (Reg 6.1.1 of Annex I, Reg 8.1.1 of Annex II, and Reg 4.1.1 of Annex IV, of MARPOL)

The master or owner of a ship who has made an application for a NSW certificate to be issued under this Part must:

- (a) cause the structure, equipment, systems, fittings, arrangements and materials of the ship to be surveyed by the Minister for the purpose of ensuring its compliance with the relevant provisions of MARPOL, or
- (b) provide the Minister with declarations of survey of the structure, equipment, systems, fittings, arrangements and materials of the ship conducted by another Administration (within the meaning of the relevant provisions of MARPOL) or by a survey authority.

**155 Issue of NSW certificates** (Reg 7.1 of Annex I, Reg 8.1 of Annex II and Reg 6.1 of Annex IV, of MARPOL) (cf former Act ss 36 and 41)

- (1) The Minister may issue a NSW ship construction certificate in relation to a ship only if:
  - (a) the Minister receives declarations of survey in respect of the ship (whether conducted under section 154 or provided under that section), and
  - (b) the Minister is satisfied that the ship is constructed in accordance with Annex I of MARPOL and the ship's structure, equipment, systems, fittings, arrangements and material fully comply with the relevant provisions of MARPOL.
- (2) The Minister may issue a NSW chemical tanker construction certificate in relation to a ship only if:
  - (a) the Minister receives declarations of survey in respect of the ship (whether conducted under section 154 or provided under that section), and
  - (b) the Minister is satisfied that the ship is constructed in accordance with Annex II of MARPOL and the ship's structure, equipment, systems, fittings, arrangements and material fully comply with the relevant provisions of MARPOL.
- (3) The Minister may issue a NSW sewage pollution prevention certificate in relation to a ship only if:
  - (a) the Minister receives declarations of survey in respect of the ship (whether conducted under section 154 or provided under that section), and
  - (b) the Minister is satisfied that the ship is constructed in accordance with Annex IV of MARPOL and the ship's structure, equipment,

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systems, fittings, arrangements and material fully comply with the relevant provisions of MARPOL.

- (4) The Minister may issue a NSW certificate in relation to the ship whether or not the ship is required by the relevant provisions of MARPOL to be constructed in accordance with those provisions.

**156 Duration of NSW certificate** (Reg 10.1 of Annex I, Reg 10 of Annex II and Reg 8 of Annex IV, of MARPOL)

A NSW certificate has force for 5 years, unless it is cancelled sooner.

#### **Division 4 Surveys after accident or discovery of defect**

**157 Duty of master and owner to notify Minister of certain accidents** (Reg 6.4.3 of Annex I, Reg 8.3.3 of Annex II and Reg 4.9 of Annex IV, of MARPOL)

The master and the owner of a ship in respect of which a NSW certificate is in force that is involved in an accident that substantially affects the integrity of the ship or the efficiency or completeness of its equipment must notify the Minister of the accident without delay and in the manner prescribed by the regulations.

Maximum penalty:

- (a) in the case of an individual—\$1,100, or  
(b) in the case of a corporation—\$5,500.

**158 Duty of master and owner to notify Minister of certain defects** (Reg 6.4.3 of Annex I, Reg 8.3.3 of Annex II and Reg 4.9 of Annex IV, of MARPOL)

The master and the owner of a ship in respect of which a NSW certificate is in force that is discovered to have a defect that substantially affects the integrity of the ship or the efficiency or completeness of its equipment must notify the Minister of the defect without delay and in the manner prescribed by the regulations.

Maximum penalty:

- (a) in the case of an individual—\$1,100, or  
(b) in the case of a corporation—\$5,500.

**159 Minister may investigate ship or require survey after notifiable accident or defect** (Reg 6.4.3 of Annex I, Reg 8.3.3 of Annex II and Reg 4.9 of Annex IV, of MARPOL)

- (1) The Minister may investigate a ship, to determine whether or not a survey is necessary, if the Minister is notified of an accident or defect under this Division, or otherwise becomes aware of such an accident or defect.

- (2) The Minister may direct the owner of a ship to cause the ship to be surveyed if the Minister determines that a survey is required.

**160 Ships to be surveyed after accident or discovery of defect** (Reg 6.4.3 of Annex I, Reg 8.3.3 of Annex II and Reg 4.9 of Annex IV, of MARPOL)

The owner of a ship in relation to which the Minister has made a direction under section 159 must cause the structure, equipment, systems, fittings, arrangements and material of the ship to be surveyed for the purpose of ensuring its compliance with the relevant provisions of MARPOL.

Maximum penalty:

- (a) in the case of an individual—\$2,200, or  
(b) in the case of a corporation—\$11,000.

**Division 5 Approval of major changes to NSW certified ship**

**161 Changes to construction of ships must be notified and pre-approved** (Reg 6.4.2 of Annex I, Reg 8.3.2 of Annex II and Reg 4.1.3 of Annex IV, of MARPOL)

- (1) The master and the owner of a ship in respect of which a NSW certificate is in force are each guilty of an offence if the structure, equipment, systems, fittings, arrangements or material covered by a previous survey is changed in any way unless:
- (a) notice was given in writing, in the form approved by the regulations, of the change to the person prescribed by the regulations, and  
(b) the Minister approved the change before it was made.

Maximum penalty:

- (a) in the case of an individual—\$2,200, or  
(b) in the case of a corporation—\$11,000.

- (2) This section does not apply to a change that involves the direct replacement of any equipment or fittings.

**162 Minister may investigate ship or require survey after notice of proposed change** (Reg 6.4.3 of Annex I, Reg 8.3.3 of Annex II and Reg 4.1.3 of Annex IV, of MARPOL)

- (1) The Minister may investigate to determine whether or not a survey is necessary if the Minister is notified of a proposed change under section 161, or otherwise becomes aware of such a change.
- (2) The Minister may direct the owner of a ship to cause the ship to be surveyed if the Minister determines that a survey is required.

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**163 Ships to be surveyed after notice given of proposed change** (Reg 6.4.3 of Annex I, Reg 8.3.3 of Annex II and Reg 4.1.3 of Annex IV, of MARPOL)

The owner of a ship in relation to which the Minister has made a direction under section 162 must cause the structure, equipment, systems, fittings, arrangements and material of the ship to be surveyed for the purpose of ensuring its compliance with the relevant provisions of MARPOL.

Maximum penalty:

- (a) in the case of an individual—\$2,200, or
- (b) in the case of a corporation—\$11,000.

**Division 6 Annual surveying of ships**

**164 Ships to be surveyed annually** (Reg 6.1.4 of Annex I and Reg 8.1.4 of Annex II of MARPOL) (cf former Act s 38)

The owner of a ship in respect of which a NSW certificate issued under this Part is in force must cause the structure, equipment, systems, fittings, arrangements and material of the ship to be surveyed for the purpose of ensuring its compliance with the relevant provisions of MARPOL at least once every 12 months.

Maximum penalty:

- (a) in the case of an individual—\$2,200, or
- (b) in the case of a corporation—\$11,000.

**Division 7 Renewal of local certification**

**165 Application for renewal of NSW certificate**

The master or owner of a ship may apply to the Minister for the renewal of a NSW certificate in force in relation to the ship.

**166 Ship to be surveyed before renewal** (Reg 6.1.2 of Annex I, Reg 8.1.2 of Annex II and Reg 4.1.2 of Annex IV, of MARPOL)

The master or owner of a ship who has made an application for the renewal of a NSW certificate must:

- (a) cause the structure, equipment, systems, fittings, arrangements and material of the ship to be surveyed by the Minister for the purpose of ensuring its compliance with the provisions of Annex I of MARPOL, or
- (b) provide the Minister with declarations of survey of the structure, equipment, systems, fittings, arrangements and material of the ship conducted by another Administration (within the meaning of Article 2 of the Protocol to MARPOL) or by a survey authority.

**167 Renewal of NSW certificates** (Reg 6.1.2 of Annex I, Reg 8.1.2 of Annex II and Reg 8 of Annex IV, of MARPOL)

- (1) The Minister may renew a NSW certificate in relation to a ship only if:
  - (a) the Minister receives declarations of survey in respect of a ship (whether conducted under section 166 or provided for under that section), and
  - (b) the Minister is satisfied that the ship is constructed in accordance with the relevant provisions of MARPOL and the ship's structure, equipment, systems, fittings, arrangements and material fully comply with the relevant provisions of MARPOL.
- (2) The Minister may renew a NSW ship construction certificate in relation to the ship whether or not the ship is required by the relevant provisions of MARPOL to be constructed in accordance with those provisions.

**168 Extension of NSW certificates** (Reg 10.5 of Annex I, Reg 10.5 of Annex II and Reg 8.5 of Annex IV, of MARPOL)

- (1) If a ship in respect of which a NSW certificate is in force is not in a port in which it is to be surveyed at the time when the certificate expires, the Minister may extend the period of validity of the certificate by notice in writing.
- (2) The Minister must only extend the period for the purpose of allowing the ship to complete its voyage to the port in which it is to be surveyed, and then only in cases where it appears proper and reasonable to do so.
- (3) Without limiting subsection (2), a certificate must not be extended for a period longer than 3 months.
- (4) An extension under this section ceases to apply once the ship arrives at the port at which it is to be surveyed.

## **Division 8 Cancellation of local certification**

**169 Cancellation of NSW certificate** (Reg 10.9 of Annex I, Reg 10.9 of Annex II and Reg 8.8 of Annex IV, of MARPOL)

The Minister may, by instrument in writing, cancel a NSW certificate for a ship if the Minister has reason to believe that:

- (a) the report of a surveyor concerning the ship was fraudulently or erroneously made or obtained, or
- (b) a NSW certificate has been issued in respect of the ship based on false or erroneous information, or
- (c) the construction of the ship has been altered, or the ship has been damaged, in a manner that affects its compliance with the relevant provisions of MARPOL, or

- (d) the owner of a ship in respect of which a NSW certificate is in force has failed to comply with section 154, 160 or 163 in respect of the ship.

**170 Cancelled NSW certificate has no effect**

A NSW certificate that has been cancelled is of no effect after the Minister has given notice in writing of the cancellation addressed to the owner, agent or master of the ship and that notice is served in accordance with the regulations.

**171 Surrender of cancelled NSW certificate**

The notice given under section 170 may require the NSW certificate to be delivered to the Minister or to any other person whom the Minister specifies, and the Minister may detain the ship until that requirement is complied with.

**172 Detained ship must not leave port**

- (1) The master and the owner of a ship detained under this Division are each guilty of an offence if the ship departs the port or other place at which it is detained before it is released from detention.  
Maximum penalty:
  - (a) in the case of an individual—\$55,000, or
  - (b) in the case of a corporation—\$110,000.
- (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.

## **Part 13 Ships must be insured against damage by discharge of oil**

### **173 Application of Part** (cf former Act s 13A (1))

This Part does not apply to:

- (a) the following ships unless the regulations declare otherwise:
  - (i) a ship that has a gross tonnage of 400 or more,
  - (ii) a ship used wholly for the purpose of recreational or sporting activities and not for hire or reward,
  - (iii) a ship less than 30 metres in length,
  - (iv) a seaplane,
  - (v) a Government ship, other than a Government ship that is being used for commercial purposes, or
- (b) a ship of any class declared by the regulations to be a class of exempt ship for the purposes of this Part, or
- (c) a particular ship declared to be an exempt ship for the purposes of this Part by written notice of the Minister given to the owner or master of the ship.

### **174 Ships must be insured against oil pollution** (cf former Act s 13B (2) and (3))

- (1) The master and the owner of a ship are each guilty of an offence if the ship is in State waters without having adequate insurance.

Maximum penalty:

- (a) in the case of an individual—\$55,000, or
- (b) in the case of a corporation—\$110,000.

- (2) In this section:

**adequate insurance** in relation to a ship means:

- (a) such insurance or financial security against damage that may be caused by a discharge of oil or a mixture containing oil as the Minister:
  - (i) determines, by order, is adequate in relation to a particular ship or class of ships, or
  - (ii) approves in relation to a particular ship, and notifies in writing to the owner or master of the ship, or
- (b) if a ship is required by the *Protection of the Sea (Civil Liability) Act 1981* of the Commonwealth to carry a relevant insurance certificate on board, such a certificate in respect of the ship that is in force.

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*relevant insurance certificate* has the same meaning as in the *Protection of the Sea (Civil Liability) Act 1981* of the Commonwealth.

**175 Ships must carry evidence of insurance** (cf former Act s 13B (2) and (3))

The master and the owner of a ship are each guilty of an offence if the ship is in State waters without carrying on board evidence of the insurance required by section 174.

Maximum penalty:

- (a) in the case of an individual—\$55,000, or
- (b) in the case of a corporation—\$110,000.

**176 Ship may be detained** (cf former Act s 13B (4))

An inspector may detain a ship in a port or at some other place if the inspector believes on reasonable grounds that the ship does not have adequate insurance as required by section 174, or is not carrying on board evidence of that insurance as required by section 175.

**177 Detained ship must not leave port** (cf former Act s 13B (5) and (6))

- (1) The master and the owner of a ship detained under this Part are each guilty of an offence if the ship departs the port or other place at which it is detained before it is released from detention.

Maximum penalty:

- (a) in the case of an individual—\$55,000, or
  - (b) in the case of a corporation—\$110,000.
- (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.



## **Part 14 Reception facilities for collecting waste**

### **Division 1 Minister may provide reception facilities**

**178 Minister may arrange for provision of reception facilities** (cf former Act s 45)

The Minister may provide, join with any other person (including the Crown) in providing, arrange for the provision of, or direct the provision of:

- (a) reception facilities for oil residues, and mixtures containing oil or oil residues, in accordance with Regulation 38 of Annex I of MARPOL, and
- (b) reception facilities for residues of noxious liquid substances, and mixtures containing residues of noxious liquid substances, in accordance with Regulation 18 of Annex II of MARPOL, and
- (c) reception facilities for sewage, and mixtures containing sewage, in accordance with Regulation 12 of Annex IV of MARPOL, and
- (d) reception facilities for garbage, and mixtures containing garbage in accordance with Regulation 7 of Annex V of MARPOL.

**179 Regulations concerning reception facilities** (cf former Act s 45 (2))

The regulations may fix charges and impose conditions for the use of reception facilities provided or arranged under this Part.

### **Division 2 Minister may direct persons to provide reception facilities**

**180 Minister may require person to provide, maintain and make available reception facilities** (cf former Act s 45 (4))

- (1) The Minister may serve a written notice on the owner or occupier of a reception facility prescribed by the regulations, requiring that owner or occupier:
  - (a) provide facilities of a standard satisfactory to the Minister for the reception or disposal, or both, of waste prescribed by the regulations from or by ships berthed, docked or otherwise being at the establishment, and
  - (b) maintain the facilities in good order and condition, and
  - (c) make the facilities available to enable ships to dispose of the waste prescribed by the regulations.

(2) In this section:

***prescribed waste*** means any of the following:

- (a) oil or residues of oil,
- (b) noxious liquid substances or residues of noxious liquid substances,
- (c) sewage or residues of sewage,
- (d) garbage or residues of garbage.

***reception facility*** means any of the following:

- (a) an oil terminal, oil depot, oil installation or other establishment used for the loading or unloading of oil or oil residues,
- (b) a terminal, depot, installation or other establishment used for the loading or unloading of other prescribed waste,
- (c) any establishment at which ships are repaired or other work is performed relating to ships and involving the disposal of prescribed waste.

**181 Owner or occupier must comply with requirement relating to reception facilities** (cf former Act s 45 (6))

An owner or occupier of a reception facility prescribed by the regulations under section 180 must comply with a requirement made by a notice served on the owner or occupier under this Part.

Maximum penalty: \$110,000.

**182 Notices** (cf former Act s 45 (5))

A notice served under this Part:

- (a) must be served on the owner or occupier of the reception facility prescribed by the regulations under section 180 to which it relates:
  - (i) in any manner in which a summons or other process for an offence against this Act may be served, or
  - (ii) by delivering it to the owner or the occupier or the person appearing to be in charge of the prescribed reception facility, and
- (b) may specify a time within which the requirement is to be complied with, and
- (c) may be revoked or varied by a further written notice.

## Part 15 Minister may take action to prevent or clean up pollution

### 183 Minister may take action to prevent or clean up marine pollution (cf former Act ss 46 (1) and 47 (1))

- (1) The Minister may take any preventative or clean-up action that the Minister thinks fit, or cause any preventative or clean-up action that the Minister thinks fit to be taken, if the Minister is of the opinion that:
  - (a) a relevant discharge of a marine pollutant has occurred or is occurring, or
  - (b) there is a probability of a relevant discharge of a marine pollutant occurring.
- (2) For this purpose, an inspector, officer, employee or agent of the Minister, using such force as is necessary, may:
  - (a) enter, take and retain possession of any ship, place, apparatus, facility or pipeline, and
  - (b) take and retain possession of any substance or thing, and
  - (c) use and operate any apparatus or machinery, and
  - (d) do all such things as are necessary for the purpose of causing a marine pollution prevention notice to be complied with.
- (3) In this section:

***preventative or clean-up action*** means action:

  - (a) to prevent or limit a discharge, or
  - (b) to disperse or contain any marine pollutant that has been discharged, or
  - (c) to remove any marine pollutant from waters or land affected by any discharge, or
  - (d) to minimise the damage from pollution resulting from or likely to result from any discharge.

***relevant discharge of a marine pollutant*** means:

  - (a) a discharge of oil:
    - (i) from a ship, or
    - (ii) from a place on land in, or in connection with, a transfer operation, or
    - (iii) from any apparatus or purpose-built pipeline used in, or in connection with, a transfer operation, whether or not it is being so used, or

- (b) a discharge of a noxious liquid substance:
  - (i) from a ship, or
  - (ii) from a place on land in, or in connection with, a transfer operation, or
  - (iii) from any apparatus or purpose-built pipeline used in, or in connection with, a transfer operation, whether or not it is being so used, or
- (c) the jettisoning of a harmful substance in packaged form from a ship, or
- (d) a discharge of sewage from a large ship, or
- (e) a discharge of garbage from a ship.

**184 Recovery of costs and expenses of preventative action or clean-up action** (cf former Act ss 46 (2) and 47 (2))

- (1) The Minister may recover all costs and expenses incurred by the Minister in respect of action taken by or on behalf of the Minister under this Part from:
  - (a) in the case of a discharge or probable discharge of a marine pollutant from a ship:
    - (i) the owner or master of the ship concerned, or
    - (ii) any other person whose act caused the discharge or probable discharge, or
  - (b) in the case of a discharge or probable discharge of oil or a noxious liquid substance from an apparatus on a ship in, or in connection with, a transfer operation:
    - (i) the owner of the ship, or
    - (ii) the master of the ship, or
    - (iii) the owner of the apparatus, or
    - (iv) the person in charge of the apparatus, or
    - (v) any other person whose act caused the discharge or probable discharge, or
  - (c) in the case of a discharge or probable discharge of oil or a noxious liquid substance from a ship in, or in connection with, a transfer operation:
    - (i) the owner of the ship, or
    - (ii) the master of the ship, or
    - (iii) the person in charge of the transfer operation of the ship, or
    - (iv) any other person whose act caused the discharge or probable discharge, or

- (d) in the case of a discharge or probable discharge of oil or a noxious liquid substance from an apparatus on a place on land in, or in connection with, a transfer operation:
    - (i) the occupier of the land, or
    - (ii) the owner of the apparatus, or
    - (iii) the person in charge of the apparatus, or
    - (iv) any other person whose act caused the discharge or probable discharge, or
  - (e) in the case of a discharge or probable discharge of oil or a noxious liquid substance from a place on land in, or in connection with, a transfer operation:
    - (i) the occupier of the land, or
    - (ii) any other person whose act caused the discharge or probable discharge, or
  - (f) in the case of a discharge or probable discharge of oil or a noxious liquid substance from a purpose-built pipeline in, or in connection with, a transfer operation:
    - (i) the occupier of the land on which the pipeline is situated, or
    - (ii) the person in charge of the pipeline, or
    - (iii) the owner of the pipeline, or
    - (iv) any other person whose act caused the discharge or probable discharge.
- (2) The costs and expenses referred to in subsection (1):
- (a) may be awarded in the course of proceedings for an offence in respect of a discharge, whether or not the owner, master or person is convicted of an offence, or
  - (b) may be recovered as a debt due in a court of competent jurisdiction, despite the fact that proceedings have not been taken for an offence in respect of the discharge.

**185 Costs and expenses incurred by Minister are charges on ship** (cf former Act s 52 (1))

The amount of any costs and expenses incurred by the Minister in respect of action taken by or on behalf of the Minister under this Part that relates to a ship is a charge on the ship.

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**186 Detention of ship until recovery of costs and expenses or giving of security** (cf former Act s 52 (2))

A ship may be detained by a person authorised by the Minister for the purposes of this section until the amount of any costs and expenses incurred by the Minister in respect of action taken by or on behalf of the Minister under this Part is paid or security for the payment of the amount is provided in accordance with Part 18.

**187 Detained ship must not leave port**

- (1) The master and the owner of a ship detained under this Part are each guilty of an offence if the ship departs the port or other place at which it is detained before it is released from detention.

Maximum penalty:

- (a) in the case of an individual—\$55,000, or
- (b) in the case of a corporation—\$110,000.

- (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.

**188 Obstruction of officers is an offence** (cf former Act s 50)

- (1) A person must not wilfully obstruct a person who is taking action on behalf of the Minister under this Part.

Maximum penalty: \$220,000.

- (2) This section does not apply to a person who obstructs a person:
- (a) for the purpose of securing the safety of a ship or saving life at sea, or
  - (b) with the approval of an officer prescribed by the regulations for the purposes of this section, for the purpose of combating specific pollution incidents in order to minimise the damage from pollution.

**189 Oiled Wildlife Care Network**

- (1) The Minister is to establish an Oiled Wildlife Care Network.
- (2) The network is to consist of representatives of organisations that have an interest or involvement in the protection of wildlife contaminated by oil or any other marine pollutant, which may include, but are not limited to, representatives of:
- (a) wildlife care or rehabilitation providers,
  - (b) zoological parks,
  - (c) emergency services,

Section 189 Marine Pollution Act 2012 No 5

Part 15 Minister may take action to prevent or clean up pollution

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- (d) regulatory agencies,
  - (e) academic institutions.
- (3) The Minister is to determine the constitution and procedure of the network.
  - (4) The function of the network is to act as a consultative committee to advise on marine pollution response preparedness.
  - (5) Any expenditure under this section is to be paid out of money to be provided by Parliament.

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## Part 16 Marine environment protection notices

### Division 1 Preliminary

#### 190 Definitions

In this Part:

***clean-up action***, in relation to a marine pollution incident, includes:

- (a) action to prevent, minimise, remove, disperse, destroy or mitigate any pollution resulting or likely to result from the incident, and
- (b) ascertaining the nature and extent of the pollution incident and of the actual or likely resulting pollution, and
- (c) preparing and carrying out a remedial plan of action.

***marine environment protection notice***—see section 191.

***marine pollution clean-up notice*** means a notice under Division 2.

***marine pollution compliance cost notice*** means a notice under Division 6.

***marine pollution incident*** means:

- (a) the discharge of oil into State waters:
  - (i) from a ship, or
  - (ii) from a place on land in, or in connection with, a transfer operation, or
  - (iii) from any apparatus or purpose-built pipeline used in, or in connection with, a transfer operation, whether or not it is being so used, or
- (b) the discharge of a noxious liquid substance into State waters:
  - (i) from a ship that is subject to a chemical tanker construction certificate certifying the ship to carry noxious liquid substances in bulk, or
  - (ii) from a place on land in, or in connection with, a transfer operation, or
  - (iii) from any apparatus or purpose-built pipeline used in, or in connection with, a transfer operation, whether or not it is being so used, or
- (c) the jettisoning of a harmful substance in packaged form from a ship into State waters, or
- (d) the discharge of sewage from a large ship into State waters, or
- (e) the discharge of garbage from a ship into State waters.

***marine pollution prevention notice*** means a notice under Division 3.

***marine pollution prohibition notice*** means a notice under Division 4.



***responsible person*** means:

- (a) in the case of a discharge or probable discharge of a marine pollutant from a ship:
  - (i) the owner or master of the ship concerned, or
  - (ii) any other person whose act caused the discharge or probable discharge, or
- (b) in the case of a discharge or probable discharge of oil or a noxious liquid substance from an apparatus on a ship in, or in connection with, a transfer operation:
  - (i) the owner of the ship, or
  - (ii) the master of the ship, or
  - (iii) the owner of the apparatus, or
  - (iv) the person in charge of the apparatus, or
  - (v) any other person whose act caused the discharge or probable discharge, or
- (c) in the case of a discharge or probable discharge of oil or a noxious liquid substance from a ship in, or in connection with, a transfer operation:
  - (i) the owner of the ship, or
  - (ii) the master of the ship, or
  - (iii) the person in charge of the transfer operation of the ship, or
  - (iv) any other person whose act caused the discharge or probable discharge, or
- (d) in the case of a discharge or probable discharge of oil or a noxious liquid substance from an apparatus on a place on land in, or in connection with, a transfer operation:
  - (i) the occupier of the land, or
  - (ii) the owner of the apparatus, or
  - (iii) the person in charge of the apparatus, or
  - (iv) any other person whose act caused the discharge or probable discharge, or
- (e) in the case of a discharge or probable discharge of oil or a noxious liquid substance from a place on land in, or in connection with, a transfer operation:
  - (i) the occupier of the land, or
  - (ii) any other person whose act caused the discharge or probable discharge, or

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- (f) in the case of a discharge or probable discharge of oil or a noxious liquid substance from a purpose-built pipeline in, or in connection with, a transfer operation:
    - (i) the occupier of the land on which the pipeline is situated, or
    - (ii) the person in charge of the pipeline, or
    - (iii) the owner of the pipeline, or
    - (iv) any other person whose act caused the discharge or probable discharge.

#### **191 Classification of marine environment protection notices**

*Marine environment protection notices* are of the following kinds:

- (a) marine pollution clean-up notices,
- (b) marine pollution prevention notices,
- (c) marine pollution prohibition notices.

#### **192 Marine environment protection notices may be given orally**

- (1) The Minister may, instead of giving a marine environment protection notice by notice in writing, give the notice orally.
- (2) A notice that can be given orally under this Part by the Minister can be given orally by a person who is acting under delegated or other authority from the Minister.
- (3) A notice given orally to a person ceases to have effect on the expiration of 72 hours from the time it was given unless confirmed by the Minister by a written marine environment protection notice given to the person.
- (4) A notice given orally has the same effect as a notice given in writing, and is taken to be a marine environment protection notice of the relevant type.

### **Division 2 Marine pollution clean-up notices**

#### **193 Clean-up by polluters**

- (1) The Minister may, by notice in writing, do either or both of the following:
  - (a) direct the responsible person for a marine pollution incident that the Minister reasonably suspects has occurred or is occurring,
  - (b) direct a person who is reasonably suspected by the Minister of causing or having caused a marine pollution incident,to take such clean-up action as is specified in the notice and within such period as is specified in the notice.

- (2) The marine pollution clean-up notice may require the person to whom the notice is given to furnish reports to the Minister regarding progress on the carrying out of the clean-up action.
- (3) If the person given a marine pollution clean-up notice complies with the notice but was not the person who caused the marine pollution incident, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who caused the marine pollution incident.
- (4) A person who, without reasonable excuse, does not comply with a marine pollution clean-up notice given to the person is guilty of an offence.  
Maximum penalty:
  - (a) in the case of a corporation—\$1,000,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
  - (b) in the case of an individual—\$250,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.

#### **194 Clean-up by public authorities**

- (1) If the Minister reasonably suspects that a marine pollution incident has occurred or is occurring, the Minister may, by notice in writing, direct a public authority to take such clean-up action as is specified in the notice. The public authority is authorised and required to take that action.
- (2) If a public authority reasonably suspects that a marine pollution incident has occurred or is occurring, the public authority may take such clean-up action as it considers necessary. The public authority is authorised to take that action, whether or not it is directed to take clean-up action under subsection (1).
- (3) Notices may be given, and action may be taken, under this section whether or not a marine pollution clean-up notice has been given under section 193, and (if such a notice has been given) whether or not the period specified in the notice under that section has ended.
- (4) A public authority may take clean-up action under this section by itself or by its employees, agents or contractors.
- (5) In this section:  
**public authority** means a public or local authority constituted by or under an Act, and includes:
  - (a) a government department, and

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- (b) a local council, and
  - (c) a member of staff or other person who exercises functions on behalf of a public authority.

**195 Fee**

- (1) The purpose of this section is to enable the Minister to recover the administrative costs of preparing and giving marine pollution clean-up notices.
- (2) A person who is given a marine pollution clean-up notice by the Minister must within 30 days pay the fee prescribed by the regulations to the Minister.
- (3) A fee is not payable for the variation of a marine pollution clean-up notice.
- (4) The Minister may:
  - (a) extend the time for payment of the fee, on the application of a person to whom subsection (2) applies, or
  - (b) waive payment of the whole or any part of the fee, on the Minister's own initiative or on the application of a person to whom subsection (2) applies.
- (5) A person who does not pay the fee within the time provided under this section is guilty of an offence.  
Maximum penalty: \$22,000.

**Division 3 Marine pollution prevention notices****196 Meaning of environmentally unsatisfactory manner**

For the purposes of this Division an activity is carried on in an *environmentally unsatisfactory manner* if:

- (a) it is carried on in contravention of, or in a manner that is likely to lead to a contravention of, this Act or the regulations or an exemption given under this Act or the regulations, or
- (b) it causes, or is likely to cause, a marine pollution incident, or
- (c) it is not carried on by such practicable means as may be necessary to prevent, control or minimise a marine pollution incident.

**197 Preventative action**

- (1) This section applies when the Minister reasonably suspects that an activity has been or is being carried on in an environmentally unsatisfactory manner on any ship or at any place on land or by any person (otherwise than on a ship or place on land).

- (2) The Minister may, by notice in writing, do either or both of the following:
- (a) direct the master or owner of a ship, or responsible person for the relevant apparatus or place on land,
  - (b) direct the person carrying on the activity (whether or not on a ship or place on land),
- to take such action, as is specified in the notice and within such period (if any) as is specified in the notice, to ensure that the activity is carried on in future in a lawful and environmentally satisfactory manner.
- (3) The action to be taken may (without limitation) include any of the following:
- (a) installing, repairing, altering, replacing, maintaining or operating control equipment or other plant,
  - (b) modifying, or carrying out any work on, plant,
  - (c) ceasing to use plant or altering the way plant is used,
  - (d) ceasing to carry on or not commencing to carry on an activity,
  - (e) carrying on an activity in a particular manner,
  - (f) carrying on an activity only during particular times,
  - (g) monitoring, sampling or analysing any pollution or otherwise ascertaining the nature and extent of pollution or the risk of pollution,
  - (h) action with respect to the transportation, collection, reception, re-use, recovery, recycling, processing, storage or disposal of any waste or other substance,
  - (i) preparing and carrying out a plan of action to control, prevent or minimise pollution or waste,
  - (j) reviewing the carrying out of an activity.
- (4) If the person who is given a notice is not the person carrying on the activity, the notice is taken to require the person to take all available steps to cause the action to be taken.
- (5) A marine pollution prevention notice may require the person to whom the notice is given to furnish reports to the Minister regarding progress on carrying out the action required to be taken by the notice.

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**198 Offence**

A person who does not comply with a marine pollution prevention notice given to the person is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—\$1,000,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) in the case of an individual—\$250,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.

**199 Commencement of operation of marine pollution prevention notices or variations**

A marine pollution prevention notice, or a variation of a marine pollution prevention notice, operates from the day the notice or notice of the variation is given or from such later day as the notice specifies.

**200 Fee**

- (1) The purpose of this section is to enable the Minister to recover the administrative costs of preparing and giving marine pollution prevention notices.
- (2) A person who is given a marine pollution prevention notice by the Minister must within 30 days pay the fee prescribed by the regulations to the Minister.
- (3) The Minister may:
  - (a) extend the time for payment of the fee, on the application of a person to whom subsection (2) applies, or
  - (b) waive payment of the whole or any part of the fee, on the Minister's own initiative or on the application of a person to whom subsection (2) applies.
- (4) A fee is not payable for the variation of a marine pollution prevention notice.
- (5) A person who does not pay the fee within the time provided under this section is guilty of an offence.  
Maximum penalty: \$22,000.

## **Division 4 Marine pollution prohibition notices**

### **201 Prohibition on activities**

- (1) This section applies where the Minister is of the opinion that the discharge of marine pollutants from (or within) any ship or place on land in which any activity is carried on is causing or is likely to cause a marine pollution incident and that the giving of the notice is warranted.
- (2) The Minister may, by notice in writing, do either or both of the following:
  - (a) direct the master of the ship or the responsible person,
  - (b) direct the person carrying on the activity,to cease carrying on the activity, or any specified aspect of it, for such period as is specified in the notice.
- (3) If the person who is given a notice is not the person carrying on the activity, the notice is taken to require the person to take all available steps to cause the activity to cease.
- (4) The Minister may give further notices on the expiry of the period of the earlier notice.

### **202 Offence**

A person who, without reasonable excuse, does not comply with a marine pollution prohibition notice given to the person is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—\$1,000,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) in the case of an individual—\$250,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.

## **Division 5 Minister may take action if marine environment protection notice not complied with**

### **203 Minister may take action in event of failure to comply** (cf former Act s 50 (4))

- (1) The Minister may cause any requirement made by a marine environment protection notice that is not being complied with to be complied with by an inspector or other officer, employee or agent of the Minister or any other person authorised by the Minister for the purposes of this section.

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- (2) For this purpose, such an inspector, officer, employee, agent or person, using such force as is necessary, may:
- (a) enter, take and retain possession of any ship, place, apparatus, facility or pipeline, and
  - (b) take and retain possession of any substance or thing, and
  - (c) use and operate any apparatus or machinery, and
  - (d) do all such things as are necessary for the purpose of causing a marine pollution prevention notice to be complied with.

**204 Obstruction of persons acting in compliance with notice is an offence**

(cf former Act s 50)

- (1) A person must not wilfully obstruct a person who is acting in compliance with a marine environment protection notice under section 203.  
Maximum penalty: \$220,000.
- (2) This section does not apply to a person who obstructs a person:
- (a) for the purpose of securing the safety of a ship or saving life at sea, or
  - (b) with the approval of an officer prescribed by the regulations for the purposes of this section, for the purpose of combating specific pollution incidents in order to minimise the damage from pollution.

**Division 6 Compliance costs**

**205 Marine pollution compliance cost notices**

- (1) If the Minister has given a marine pollution clean-up notice or marine pollution prevention notice to a person, the Minister may, by notice in writing, require the person to pay all or any reasonable costs and expenses incurred by the Minister in connection with:
- (a) monitoring action under the notice, and
  - (b) ensuring that the notice is complied with, and
  - (c) any other associated matters.
- (2) A public authority that takes clean-up action under section 194 may, by notice in writing, require:
- (a) the occupier of the premises at or from which the authority reasonably suspects that the marine pollution incident occurred, or



- (b) the person who is reasonably suspected by the authority of having caused the marine pollution incident,  
or both, to pay all or any reasonable costs and expenses incurred by it in connection with the clean-up action.
- (3) If the Minister takes action under section 203 because a marine environment protection notice is not complied with, the Minister may, by notice in writing, require the person to whom the notice was given to pay all or any reasonable costs and expenses incurred by the Minister in taking the action.

**206 Recovery of amounts**

- (1) The Minister or a public authority may recover any unpaid amounts specified in a marine pollution compliance cost notice as a debt in a court of competent jurisdiction.
- (2) If the person given a marine pollution compliance cost notice complies with the notice but was not the person who caused the pollution or marine pollution incident, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who caused the pollution or marine pollution incident.

**Division 7 Recovery of costs and expenses if the Minister takes action**

**207 Costs and expenses incurred by Minister are charges on ship** (cf former Act s 52 (1))

The amount of any costs and expenses incurred by the Minister in respect of action taken by or on behalf of the Minister under this Part that relates to a ship is a charge on the ship.

**208 Detention of ship until recovery of costs and expenses or giving of security** (cf former Act s 52 (2))

A ship may be detained by a person authorised by the Minister for the purposes of this section until the amount of any costs and expenses incurred by the Minister in respect of action taken by or on behalf of the Minister under this Part is paid or security for the payment of the amount is provided in accordance with Part 18.

**209 Detained ship must not leave port**

- (1) The master and the owner of a ship detained under this Division are each guilty of an offence if the ship departs the port or other place at which it is detained before it is released from detention.

Maximum penalty:

- (a) in the case of an individual—\$55,000, or
  - (b) in the case of a corporation—\$110,000.
- (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.

**Division 8 Miscellaneous**

**210 Minister's other preventative powers not affected**

This Part does not limit the generality of the Minister's power to take action under Part 15.

**211 Multiple notices**

More than one notice under a provision of this Part may be given to the same person.

**212 Extraterritorial application**

A notice may be given under this Part to a person in respect of a matter or thing even though the person is outside the State or the matter or thing occurs or is located outside the State, so long as the matter or thing affects the environment of this State.

**213 Revocation or variation**

- (1) A notice given under this Part may be revoked or varied by a subsequent notice or notices given by the Minister.
- (2) A notice may be varied by modification of, or addition to, its terms and specifications.
- (3) Without limiting the above, a notice may be varied by extending the time for complying with the notice.
- (4) A fee is not payable for the variation of a marine environment protection notice under this Part.

**214 Power to enter land**

- (1) The Minister or a public authority may, by the Minister's or the authority's employees, agents or contractors, enter any premises at any

reasonable time for the purpose of exercising the Minister's or the public authority's functions under this Part.

- (2) For the purpose of entering or leaving any such premises, the power conferred by this section extends to entering other premises.
- (3) A power to enter premises conferred by this section authorises entry by foot or by means of a motor vehicle or other vehicle, or in any other manner.
- (4) Entry may be effected under this section by the Minister or a public authority with the aid of such authorised officers or police officers as the Minister or authority considers necessary and with the use of reasonable force.

#### **215 Obstruction of persons**

A person who wilfully delays or obstructs:

- (a) a person who is carrying out any action in compliance with a marine environment protection notice, or another person authorised by the person to carry it out, or
- (b) a public authority that is taking clean-up action under Division 2, or another person authorised by the authority to carry it out, or
- (c) a person who is taking action under section 203,

is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—\$1,000,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) in the case of an individual—\$250,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.

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## Part 17 Recovery of costs, expenses and damages

### Division 1 Recovery of costs, expenses and damages by Minister or any other person

#### 216 Recovery of damages, costs or expenses relating to discharge prohibited by Act (cf former Act s 51)

- (1) This section applies to any of the following discharges, whether or not there would be a lawful defence or excuse to a charge for an offence relating to the discharge:
  - (a) a discharge of oil into State waters:
    - (i) from a ship, or
    - (ii) from a place on land in, or in connection with, a transfer operation, or
    - (iii) from any apparatus or purpose-built pipeline used in, or in connection with, a transfer operation, whether or not it is being so used,
  - (b) a discharge of a noxious liquid substance into State waters:
    - (i) from a ship that is subject to a chemical tanker construction certificate certifying the ship to carry noxious liquid substances in bulk, or
    - (ii) from a place on land in, or in connection with, a transfer operation, or
    - (iii) from any apparatus or purpose-built pipeline used in, or in connection with, a transfer operation, whether or not it is being so used,
  - (c) the jettisoning of a harmful substance in packaged form from a ship into State waters,
  - (d) a discharge of sewage from a large ship into State waters,
  - (e) a discharge of garbage from a ship into State waters.
- (2) A person who suffers loss of or damage to property because of a discharge to which this section applies, or who incurs costs or expenses in preventing or mitigating or in attempting to prevent or mitigate any loss of or damage to property (including the property of another) as a result of such a discharge, may recover the amount of the loss or damage and the costs or expenses incurred from:
  - (a) in the case of a discharge or probable discharge of a marine pollutant from a ship:
    - (i) the owner or master of the ship concerned, or

- (ii) any other person whose act caused the discharge or probable discharge, or
- (b) in the case of a discharge or probable discharge of oil or a noxious liquid substance from an apparatus on a ship in, or in connection with, a transfer operation:
  - (i) the owner of the ship, or
  - (ii) the master of the ship, or
  - (iii) the owner of the apparatus, or
  - (iv) the person in charge of the apparatus, or
  - (v) any other person whose act caused the discharge or probable discharge, or
- (c) in the case of a discharge or probable discharge of oil or a noxious liquid substance from a ship in, or in connection with, a transfer operation:
  - (i) the owner of the ship, or
  - (ii) the master of the ship, or
  - (iii) the person in charge of the transfer operation of the ship, or
  - (iv) any other person whose act caused the discharge or probable discharge, or
- (d) in the case of a discharge or probable discharge of oil or a noxious liquid substance from an apparatus on a place on land in, or in connection with, a transfer operation:
  - (i) the occupier of the land, or
  - (ii) the owner of the apparatus, or
  - (iii) the person in charge of the apparatus, or
  - (iv) any other person whose act caused the discharge or probable discharge, or
- (e) in the case of a discharge or probable discharge of oil or a noxious liquid substance from a place on land in, or in connection with, a transfer operation:
  - (i) the occupier of the land, or
  - (ii) any other person whose act caused the discharge or probable discharge, or
- (f) in the case of a discharge or probable discharge of oil or a noxious liquid substance from a purpose-built pipeline in, or in connection with, a transfer operation:
  - (i) the occupier of the land on which the pipeline is situated, or
  - (ii) the person in charge of the pipeline, or

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- (iii) the owner of the pipeline, or
  - (iv) any other person whose act caused the discharge or probable discharge.

**217 Recovery of loss, damage, costs or expenses** (cf former Act s 51)

The person may recover the amount of the loss or damage and the costs or expenses incurred as a debt in a court of competent jurisdiction from the person specified in section 216.

**Division 2 Joint liability for damage relating to transfer operations**

**218 Joint and several liability where oil or noxious liquid substance is discharged from pipeline** (cf former Act s 30)

The following persons are, for the purposes of this Part, jointly and severally liable if oil or a noxious liquid substance is discharged into State waters from a pipeline used in, or in connection with, a transfer operation, whether or not it is being so used:

- (a) the owner of the pipeline,
- (b) any lessee, licensee or user of any lease, licence or right of user for the use of the pipeline for the carriage of oil or a noxious liquid substance.

**219 Several liability where oil or noxious liquid substance is discharged from 2 or more ships** (cf former Act s 31)

If oil or a noxious liquid substance is discharged into State waters from 2 or more ships in, or in connection with, a transfer operation, and it is not reasonably practicable to identify the oil or noxious liquid substance that has discharged from a particular ship, all of the oil or noxious liquid substance is taken, for the purposes of this Part, to have been discharged from each of those ships.

**Division 3 Rights of recovery not affected**

**220 Rights of recovery not affected** (cf former Act s 47 (5))

Except as provided by this Part, nothing in this Act affects or qualifies any rights of the Minister or of any other person to recover damages in respect of the consequences of any discharge from a ship or otherwise.

## Part 18 Detention of ships and taking of securities

### 221 Ships that are believed to have discharged marine pollutants may be detained (cf former Act s 52A)

- (1) This section applies to any of the following discharges, whether or not there would be a lawful defence or excuse to a charge for an offence relating to the discharge:
  - (a) a discharge of oil into State waters,
  - (b) a discharge of a noxious liquid substance into State waters (but only where it occurs from a ship that is subject to a chemical tanker construction certificate certifying the ship to carry noxious liquid substances in bulk),
  - (c) the jettisoning of a harmful substance in packaged form from a ship into State waters,
  - (d) a discharge of sewage from a large ship into State waters,
  - (e) a discharge of garbage from a ship into State waters.
- (2) A ship in State waters may be detained by a person authorised by the Minister for the purposes of this section if the Minister has reasonable cause to believe:
  - (a) that a discharge to which this section applies has occurred from the ship, and
  - (b) that, if the Minister were to establish that the discharge had occurred from the ship, the Minister could take proceedings to recover the costs and expenses incurred by the Minister in taking action in relation to that discharge under this Act, and
  - (c) that the ship will depart from State waters before the completion of the Minister's investigation into the source of the discharge.

### 222 Detained ships must not depart (cf former Act s 52C)

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

Maximum penalty:

  - (a) in the case of an individual—\$22,000, or
  - (b) in the case of a corporation—\$110,000.
- (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.

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**223 Security may be required to be provided** (cf former Act s 52A (3))

Security may be required to be provided for the payment of:

- (a) any amount that might, in the opinion of the Minister, be recoverable by the Minister under this Act from the owner or master of a ship in relation to a discharge, and
- (b) the maximum amount of penalties that can be imposed under this Act against the owner or master of the ship in relation to the discharge.

**224 Detained ships must be released if security provided or no liability** (cf former Act s 52A (2))

A ship that has been detained must be immediately released:

- (a) if security is provided in accordance with section 223, 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 Minister has sought to recover costs and expenses incurred by the Minister as a debt due and the amount has been paid, or
- (f) if the Minister forms the belief that the discharge did not occur from the ship, or
- (g) if the Minister determines for any other reason that the ship should be released.

**225 Security taken by Minister** (cf former Act s 52B)

- (1) Any security taken by the Minister under this Act must be in a form acceptable to the Minister.
- (2) The amount available under any security taken by the Minister under this Act is to be applied only as follows:
  - (a) in payment of any costs or expenses that have been ordered to be paid by the master or owner of a ship in the course of proceedings for an offence in respect of the discharge or that are recoverable



Section 225 Marine Pollution Act 2012 No 5

Part 18 Detention of ships and taking of securities

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- under this Act against the master or owner of the ship 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.

## **Part 19 Enforcement**

### **Division 1 Appointment of inspectors and authorised persons**

#### **226 Appointment of inspectors**

The Minister may appoint any person to be an inspector for the purposes of this Act.

#### **227 Identity cards for inspectors and authorised persons**

- (1) The Minister is required to give an identity card:
  - (a) to each inspector the Minister appoints, and
  - (b) to each person whom the Minister authorises for the purposes of a section of this Act.
- (2) An inspector or person whom the Minister authorises for the purposes of a section of this Act is required to produce his or her identity card if requested to do so by an affected person in the course of exercising functions under this Act. This subsection does not apply to a direction given by radio or other communication device.
- (3) A person who has been issued with an identity card must return it to the Minister, or the person who provided it, on demand.  
Maximum penalty (subsection (3)): \$1,100.

### **Division 2 Powers of inspectors and authorised persons**

#### **228 Powers of inspectors and authorised persons** (cf former Act s 53 (1))

- (1) The powers in this section may be exercised for the purposes of ascertaining:
  - (a) whether a provision of this Act that is applicable in relation to a ship has been complied with in respect of the ship, or
  - (b) whether there is a probability of, or has been, a discharge into State waters in contravention of this Act.
- (2) An inspector, or other person authorised by the Minister for the purposes of this section, may do any of the following:
  - (a) go on board the ship with such assistants and equipment as the inspector or person considers necessary,
  - (b) require the master of the ship to take such steps as the inspector or person directs to facilitate the boarding,
  - (c) inspect and test any machinery or equipment of the ship,

- (d) require the master of the ship to take such steps as the inspector or person directs to facilitate the inspection or testing of any machinery or equipment of the ship,
- (e) open, or require the master of the ship to cause to be opened, any hold, bunker, tank, compartment or receptacle in or on board the ship and inspect the contents of any hold, bunker, tank, compartment or receptacle in or on board the ship,
- (f) require the master of the ship to produce a record book required by this Act or the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* of the Commonwealth to be carried in the ship or any other books, documents or records relating to the ship or its cargo that are carried in the ship,
- (g) make copies of, or take extracts from, any such books, documents or records,
- (h) require the master of the ship or other person to certify that a true copy of an entry in a record book required by this Act to be carried in the ship or kept by the person, made by the inspector or person whom the Minister authorises for the purposes of a section of this Act is a true copy of such an entry,
- (i) examine, and take samples of, any substances being in, on, or in the vicinity of, a ship, purpose-built pipeline or place on land in respect of which an investigation of a discharge or suspected discharge in breach of a provision of this Act is being made,
- (j) require the master of the ship or the owner or occupier of the pipeline or place, or any person representing the master, owner or occupier, to certify the taking of the samples,
- (k) require the testing of any apparatus in or on the ship, pipeline or place, the condition or efficiency of which is, in the opinion of the inspector or person, relevant to the probability of a discharge, a discharge or a suspected discharge into State waters in breach of a provision of this Act,
- (l) require a person to answer questions.

**229 Inspectors and authorised persons may enter or inspect place on land**

(cf former Act s 53 (2))

For the purposes of investigating the probability of a discharge, a discharge or a suspected discharge into State waters in contravention of a provision of this Act, an inspector or other person authorised by the Minister for the purposes of section 228, may enter and inspect any place on land, other than a place being used for residential purposes.

**230 Inspector and authorised persons must not unnecessarily delay ships**

(cf former Act s 53 (4))

An inspector or person whom the Minister authorises for the purposes of a section of this Act must not, in exercising powers under this Part, unnecessarily delay a ship from beginning a voyage.

**231 Obstruction of inspectors and authorised persons** (cf former Act s 53 (3))

A person must not:

- (a) wilfully delay or obstruct an inspector or person whom the Minister authorises for the purposes of a section of this Act in the exercise of the inspector's or authorised person's functions under this Act, or
- (b) fail to comply with a requirement under this Part to produce a document, record or other thing in the person's possession, custody, or control or to answer a question.

Maximum penalty: \$22,000.

**Note.** It is an offence under section 307B of the *Crimes Act 1900* to give false or misleading information to a person exercising a power, authority or duty under, or in connection with, a law of the State.

**232 Inspectors and certain other persons have no personal liability** (cf former Act s 60)

A matter or thing done or omitted to be done by an inspector, a person whom the Minister authorises for the purposes of a section of this Act or any person acting with the authority or on the direction of an inspector or the Minister does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject the inspector or person so acting personally to any action, liability, claim or demand.

## **Part 20 Proceedings for enforcement**

### **Division 1 Proceedings for enforcement**

**233 Time within which proceedings may be commenced** (cf former Act s 54)

A prosecution for an offence against this Act in the Local Court must be brought within 2 years of the alleged commission of the offence.

**234 Proceedings for offences** (cf former Act s 55)

- (1) Proceedings for an offence against this Act or the regulations may be dealt with summarily before:
  - (a) the Local Court, or
  - (b) the Land and Environment Court in its summary jurisdiction.
- (2) In proceedings for an offence against this Act or the regulations brought in the Local Court, the maximum penalty that the Court may impose is, notwithstanding any other provision of this Act:
  - (a) \$55,000 or 2 years imprisonment, or both, or
  - (b) the maximum penalty provided by this Act or the regulations for the offence,whichever is the lesser.

**235 Offences by corporations** (cf former Act s 56)

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

### **Division 2 Penalties are charges on ship**

**236 Penalties are charges on ship** (cf former Act s 52 (1))

The amount of any penalty that can be imposed under this Act against the owner or master of a ship in relation to a discharge is a charge on the ship.

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**237 Detention of ship until recovery of penalty or provision of security** (cf former Act s 52 (2))

A ship may be detained by a person authorised by the Minister for the purposes of this section until the amount of any penalty that can be imposed under this Act is paid or security for the payment of the amount is provided in accordance with Part 18.

**Division 3 Evidence****238 Records are admissible as evidence** (cf former Act s 58)

In any proceedings for an offence against a provision of this Act:

- (a) any record kept in compliance with an obligation under this Act is admissible as evidence (until evidence is given to the contrary) of the facts stated in the record, and
- (b) a copy of an entry in such a record, being a copy certified by the person by whom the record is required to be kept to be a true copy of the entry, is admissible as evidence (until evidence is given to the contrary) of the facts stated in the entry, and
- (c) a document purporting to be a record kept in pursuance of this Act, or purporting to be a copy certified by the person by whom the record is required to be kept to be a true copy of the record, is (until evidence is given to the contrary) taken to be such a record or certified copy, as the case may be.

**239 Proof of certain matters not required** (cf former Act s 58 (d) and (e))

In any legal proceedings for an offence under this Act, proof is not required (until evidence is given to the contrary) of the following:

- (a) the giving of a notice by the Minister,
- (b) the appointment of a person as an inspector.

**240 Evidence of analysts** (cf former Act s 59)

- (1) The Minister may, by instrument in writing, appoint appropriately qualified persons to be analysts for the purposes of this Act.
- (2) Subject to subsection (4), a certificate of such an analyst stating that the analyst has analysed or examined a substance and stating the result of the analysis or examination is admissible (until evidence is given to the contrary) in evidence in any proceedings for an offence against a provision of this Act as evidence of the facts stated in the certificate and of the correctness of the result of the analysis or examination.
- (3) For the purposes of this section, a document purporting to be a certificate under this section is, unless the contrary is proved, taken to be such a certificate.

- (4) A certificate under this section must not be received in evidence in pursuance of this section unless the person charged has been given a copy of the certificate together with reasonable notice of the intention of the prosecution to produce the certificate as evidence in the proceedings.
- (5) Where, in pursuance of this section, a certificate of an analyst is admitted in evidence, the person charged may require the analyst to be called as a witness for the prosecution and the analyst may be cross-examined as if the analyst had given evidence of the matters stated in the certificate.

#### **Division 4 Miscellaneous**

##### **241 No double jeopardy**

- (1) A prosecution of a person under section 16 or 17 does not affect the prosecution of the master or owner of a ship (or both of them) under section 15.
- (2) However, a person is not liable to be convicted in respect of the same discharge of both an offence:
  - (a) under sections 15 and 16, or
  - (b) under sections 15 and 17, or
  - (c) under sections 16 and 17.
- (3) A prosecution of a person under section 28 does not affect the prosecution of the master or owner of a ship (or both of them) under section 27.
- (4) However, a person is not liable to be convicted in respect of the same discharge of both an offence under sections 27 and 28.
- (5) A prosecution of a person under section 30 or 31 does not affect the prosecution of the master or owner of a ship (or both of them) under section 29.
- (6) However, a person is not liable to be convicted in respect of the same discharge of both an offence:
  - (a) under sections 29 and 30, or
  - (b) under sections 29 and 31, or
  - (c) under sections 30 and 31.
- (7) A prosecution of a person under section 44 does not affect the prosecution of the master or owner of a ship (or both of them) under section 43.

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- (8) However, a person is not liable to be convicted in respect of the same carriage of both an offence under sections 43 and 44.
  - (9) A prosecution of a person under section 54 or 55 does not affect the prosecution of the master or owner of a ship (or both of them) under section 53.
  - (10) However, a person is not liable to be convicted in respect of the same discharge of both an offence:
    - (a) under sections 53 and 54, or
    - (b) under sections 53 and 55, or
    - (c) under sections 54 and 55.
  - (11) A prosecution of a person under section 61 or 62 does not affect the prosecution of the master or owner of a ship (or both of them) under section 60.
  - (12) However, a person is not liable to be convicted in respect of the same discharge of both an offence:
    - (a) under sections 60 and 61, or
    - (b) under sections 60 and 62, or
    - (c) under sections 61 and 62.

**242 Defences operate separately**

- (1) Nothing in sections 18–25 limits the generality of any other of those sections.
- (2) Nothing in sections 32–41 limits the generality of any other of those sections.
- (3) Nothing in sections 48 and 49 limits the generality of the other of those sections.
- (4) Nothing in sections 56–59 limits the generality of any other of those sections.
- (5) Nothing in sections 63–66 limits the generality of any other of those sections.



## Part 21 Regulations and orders

### 243 Regulations (cf former Act s 61)

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, regulations may be made for or with respect to any of the following:
  - (a) giving effect to MARPOL, other than provisions of MARPOL to which effect is given by a provision of this Act,
  - (b) empowering the Minister to make orders for and in relation to:
    - (i) giving effect to MARPOL, other than provisions of MARPOL to which effect is given by a provision of this Act, and
    - (ii) the fixing of fees to be paid in respect of any matters under the orders,
  - (c) preventing or regulating the pollution of State waters or other waters by vessels or by facilities used for loading, unloading, berthing or other operations of vessels,
  - (d) the installation and operation on vessels in particular State waters or other waters of toilet and other waste control facilities,
  - (e) the form in which records must be kept and the nature of the entries to be made in them,
  - (f) requiring the person keeping the records to retain them for a prescribed period and in a prescribed place,
  - (g) requiring the records, at the end of that period, to be transmitted to a place or person determined by or under the regulations,
  - (h) providing for the custody or disposal of the records after their transmission,
  - (i) fixing fees to be paid in respect of any matters under this Act,
  - (j) prescribing penalties, not exceeding \$11,000, for a contravention of a provision of the regulations or of any of the orders made in pursuance of the regulations,
  - (k) exempting, either absolutely or subject to conditions, a prescribed ship or person, or ships or persons included in a prescribed class of ships or persons, from all or any of the provisions of this Act or of the regulations.

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- (3) Regulations may apply:
- (a) generally or in a particular class of case or in particular classes of case, and
  - (b) throughout the State and all State waters or in a part or parts of the State or State waters prescribed by the regulations.

**244 Regulations may prescribe decisions that are to be reviewable by Administrative Decisions Tribunal**

- (1) The regulations may authorise a person to apply to the Administrative Decisions Tribunal for a review of a decision, of a class prescribed by the regulations, that is made under this Act or the regulations.

**Note.** Section 38 (1) of the *Administrative Decisions Tribunal Act 1997* provides that the Tribunal has jurisdiction to review a decision (or a class of decisions) if an Act or statutory rule provides that applications may be made to it for a review of any such decision (or class of decisions). However, section 38 (2) of that Act provides that nothing in section 38 (1) of that Act enables jurisdiction to review a decision to be conferred on the Tribunal by a statutory rule unless the conferral of jurisdiction by such means is expressly authorised by an Act.

- (2) Any such regulation cannot be made without the concurrence of the Minister administering the *Administrative Decisions Tribunal Act 1997*.

**245 Orders** (cf former Act s 62)

- (1) The following sections of the *Interpretation Act 1987* apply to an order made under this Act, or in pursuance of the regulations, in the same way as they apply to a statutory rule:
- (a) section 30 (Effect of amendment or repeal of Acts and statutory rules),
  - (b) section 39 (The making of statutory rules),
  - (c) section 40 (Notice of statutory rules to be tabled),
  - (d) section 41 (Disallowance of statutory rules).
- (2) Unless the contrary intention appears, expressions used in orders made under this Act, or in pursuance of the regulations, have the same meanings as in this Act.
- (3) Orders made in pursuance of the regulations are to be read subject to this Act and the regulations and so as not to exceed the power conferred by this Act and the regulations to the intent that, where such orders would, but for this subsection, have been construed as being in excess of the power conferred by this Act and the regulations, they are taken to be valid orders to the extent to which they are not in excess of the power conferred by this Act and the regulations.

- (4) Where an order made in pursuance of the regulations is inconsistent with a provision of this Act or the regulations, the latter is to prevail and the former is, to the extent of the inconsistency, of no force or effect.

**246 Prescribing matters by reference to other instruments** (cf former Act s 63)

- (1) The regulations or orders under this Act may make provision for or in relation to a matter by applying, adopting, or incorporating either wholly or in part or with modifications, any regulations, rules, codes, orders, instructions or other subordinate legislation made, determined or issued under any other Act or under any Act of the Parliament of the Commonwealth.
- (2) The regulations made under this Act may make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in the orders made in pursuance of the regulations.
- (3) Nothing in this section affects the operation of section 42 of the *Interpretation Act 1987*.

## Part 22 Miscellaneous

### 247 Delegation

- (1) The Minister may delegate the exercise of any function of the Minister under this Act (other than this power of delegation) to any approved person.
- (2) An approved person may sub-delegate to another approved person any function delegated by the Minister (other than this power of sub-delegation) if the delegate is authorised in writing to do so by the Minister.
- (3) In this section:  
**approved person** means:
  - (a) Roads and Maritime Services or a member of staff of Roads and Maritime Services, or
  - (b) Transport for NSW or a member of staff of the Transport Service, or
  - (c) the Newcastle Port Corporation, Port Kembla Port Corporation or Sydney Ports Corporation or a member of the staff of any of those port corporations, or
  - (d) a person appointed as, or exercising functions of, a harbour master under the *Marine Safety Act 1998*, or
  - (e) a member of the Government Service, or
  - (f) any person of a class prescribed by the regulations.

### 248 Service of instruments (except in proceedings for offences)

- (1) Any notice or other instrument issued, made or given for the purposes of this Act may be served:
  - (a) by delivering it personally to the person to whom it is addressed, or
  - (b) by delivering it to the place of residence or business of the person to whom it is addressed and by leaving it there with some person for him or her, or
  - (c) by posting it to the person addressed to the place last shown in the records of the Minister as his or her place of residence or business, or

- (d) in any manner in which any court attendance notice or other process in any proceedings for an offence under the marine legislation may be served, or
  - (e) if it is to be served on a person on board a vessel—by transmitting its contents to the master of the vessel in any manner or by any other manner authorised by this section.
- (2) For the purposes of this section, a person's place of residence or business includes a vessel on which the person resides or works.
  - (3) This section does not apply to the service of any court attendance notice or other process in any proceedings for an offence under the marine legislation or to the service of any notice or other instrument for which provision is specifically made in the marine legislation.

**249 Act to bind Crown** (cf former Act s 4)

- (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
- (2) Nothing in this Act renders the Commonwealth or a State or Territory of the Commonwealth liable to be prosecuted for an offence.
- (3) Subsection (2) does not affect any liability of any servant or agent of the Commonwealth or of a State or Territory of the Commonwealth to be prosecuted for an offence.

**250 Repeal**

The *Marine Pollution Act 1987* is repealed.

**251 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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## **Schedule 1      Amendment of other Acts**

### **1.1    Fire Brigades Act 1989 No 192**

#### **[1]    Section 4 Application of Act**

Omit “*Marine Pollution Act 1987*” from section 4 (2).

Insert instead “*Marine Pollution Act 2012*”.

#### **[2]    Section 20A Hazardous material incidents outside area to which Act applies**

Omit “*Marine Pollution Act 1987*” from the definition of *State waters* in section 20A (4).

Insert instead “*Marine Pollution Act 2012*”.

### **1.2    Land and Environment Court Act 1979 No 204**

#### **Section 21 Class 5—environmental planning and protection summary enforcement**

Insert before section 21 (i):

(he) proceedings for an offence under the *Marine Pollution Act 2012*,

### **1.3    Marine Safety Act 1998 No 121**

#### **[1]    Section 4 Definitions**

Omit “*Marine Pollution Act 1987*” from the definition of *marine legislation* in section 4 (1).

Insert instead “*Marine Pollution Act 2012*”.

#### **[2]    Section 4 (1), definition of “State waters”**

Omit “*Marine Pollution Act 1987*” from the note to the definition.

Insert instead “*Marine Pollution Act 2012*”.

#### **[3]    Section 114 Application of Division**

Omit “*Marine Pollution Act 1987*” from section 114 (3).

Insert instead “*Marine Pollution Act 2012*”.

## **1.4 Ports and Maritime Administration Act 1995 No 13**

### **[1] Section 3 Definitions**

Omit “*Marine Pollution Act 1987*” from the definition of *marine legislation* in section 3 (1).

Insert instead “*Marine Pollution Act 2012*”.

### **[2] Section 24 Marine safety functions generally**

Omit “*Marine Pollution Act 1987*” from section 24 (c).

Insert instead “*Marine Pollution Act 2012*”.

### **[3] Section 25 Particular marine safety functions**

Omit “*Marine Pollution Act 1987*” from section 25 (c).

Insert instead “*Marine Pollution Act 2012*”.

## **1.5 Protection of the Environment Operations Act 1997 No 156**

### **[1] Section 7 General relationship with other Acts**

Omit section 7 (3). Insert instead:

#### **(3) Marine Pollution Act 2012 prevails**

The provisions of, or made under, the *Marine Pollution Act 2012* (except Part 8), in their application to State waters within the meaning of that Act, prevail over this Act, to the extent of any inconsistency.

### **[2] Section 146F**

Insert after section 146E:

#### **146F Application of Part to State waters**

This Part extends to State waters within the meaning of the *Marine Pollution Act 2012*, but not so as to make a person liable to be punished for both:

- (a) an offence under this Part, and
- (b) an offence under the *Marine Pollution Act 2012* or the regulations under that Act.

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## **Schedule 2 Savings, transitional and other provisions**

### **Part 1 Regulations**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **Part 2 Savings and transitional provisions consequent on enactment of this Act**

#### **2 Definition**

In this Part:

*former Act* means the *Marine Pollution Act 1987*.

#### **3 Former Act continues to apply**

Despite the repeal of the former Act, the provisions of the former Act continue to apply, after the commencement of this clause, in relation to any discharge or transfer of oil or a noxious liquid substance, that occurred before the commencement of this clause as if the former Act had not been repealed.

#### **4 Notices relating to pollution**

Nothing in this Act affects any notice issued under section 48 of the former Act before the commencement of section 191 of this Act and the provisions of the former Act are to continue to apply in respect of any such notice as if the former Act were still in force.



**5 Notices relating to oil transfer restrictions**

A permission granted under section 32 of the former Act is taken to have been granted under section 74 of this Act.

**6 Inspector**

A person appointed as an inspector under the former Act is taken to have been appointed as an inspector under section 226 of this Act.

**7 Certificates relating to construction of ships**

- (1) A ship construction certificate issued under section 36 of the former Act is taken to be a NSW ship construction certificate issued under section 155 (1) of this Act.
- (2) A chemical tanker construction certificate issued under section 41 of the former Act is taken to be a NSW chemical tanker construction certificate issued under section 155 (2) of this Act.

[Second reading speech made in Legislative Council on 14 February 2012  
Agreement in principle speech made in Legislative Assembly on 7 March 2012]

BY AUTHORITY