TASMANIA

ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL AMENDMENT BILL 2012

CONTENTS

PART 1 – PRELIMINARY

- 1. Short title
- 2. Commencement

PART 2 – ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL ACT 1994 AMENDED

- 3. Principal Act
- 4. Section 3 amended (Interpretation)
- 5. Section 9 amended (Interaction with other Acts)
- 6. Section 22 amended (Registers of environmental management and enforcement instruments)
- 7. Section 24 amended (Assessment of permissible level 1 activities)
- 8. Section 25 amended (Assessment of permissible level 2 activities)
- 9. Section 25A amended (Assessment of applications for permits under Division 2A of Part 3 of the *Land Use Planning and Approvals Act 1993*)
- 10. Section 27A substituted 27A. Classes of assessment
- 11. Section 27B amended (Notice of intent)

12.	Section	27C	amended	(Board	to	advise	of	proposed	class	of
	assessm	ent)								

- 13. Section 27E amended (Board may require further information)
- 14. Section 27I amended (Additional information)
- 15. Section 28 amended (Environmental agreements)
- 16. Section 32 amended (Notification of incidents)
- 17. Section 35 amended (Financial assurance to secure compliance with Act)
- 18. Section 43A inserted 43A. False or misleading statements
- 19. Section 43B inserted43B. Interpretation of Division
- 20. Section 44 amended (Environment protection notices)
- 21. Section 44A inserted 44A. Correction of mistakes
- 22. Section 45 amended (Duties arising under environment protection notice)
- 23. Section 45A inserted45A. Transfer of environment protection notice
- 24. Section 46 amended (Registration of environment protection notices)
- 25. Section 51B inserted51B. Offence of contravening permit conditions
- 26. Section 55A amended (General environmental duty defence)
- 27. Section 70 repealed
- 28. Section 74D amended (Content of notices generally)
- 29. Section 74T substituted 74T. Action if person to be served cannot be found
- 30. Section 92 amended (Powers of authorized officers and council officers)
- 31. Section 95A inserted 95A. Self-incrimination
- 32. Section 100A amended (*Listening Devices Act 1991* not to apply)
- 33. Section 102 amended (Regulations)

- 34. Schedule 2 amended (Level 2 Activities)
- 35. Schedule 3 amended (Provisions with respect to Membership of the Board)
- 36. Schedule 5 inserted

SCHEDULE 5 – CHARACTERISTICS TO BE CONSIDERED IN DETERMINING CLASS OF ASSESSMENT

37. Schedule 6 amended (Transitional and Miscellaneous Provisions)

PART 3 – POLLUTION OF WATERS BY OIL AND NOXIOUS SUBSTANCES ACT 1987 AMENDED

- 38. Principal Act
- 39. Section 8 substituted
 - 8. Prohibition of discharge of oil or oily mixtures into State waters

PART 4 – REPEAL OF ACT

40. Repeal of Act

ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL AMENDMENT BILL 2012

(Brought in by the Minister for Environment, Parks and Heritage, the Honourable Brian Neal Wightman)

A BILL FOR

An Act to amend the Environmental Management and Pollution Control Act 1994 and the Pollution of Waters by Oil and Noxious Substances Act 1987

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Environmental Management and Pollution Control Amendment Act* 2012.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

[Bill 38] 5

Environmental Management and Pollution Control Amendment Act 2012

Act No. of

s. 3

Part 2 – Environmental Management and Pollution Control Act 1994 Amended

PART 2 – ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL ACT 1994 AMENDED

3. Principal Act

In this Part, the *Environmental Management and* Pollution Control Act 1994* is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- by inserting ", discharge, depositing or (a) disturbance" after "emission" in paragraph (a) of the definition of environmental nuisance;
- by inserting ", discharge, depositing or (b) disturbance" after "emission" in paragraph (b) of the definition of environmental nuisance;
- by inserting the following definition after the definition of *State Policy*:

threatened species means a taxon of flora or fauna listed in Schedule 3. 4 or 5 to the Threatened *Species Protection Act 1995*;

Part 2 – Environmental Management and Pollution Control Act 1994 Amended

5. Section 9 amended (Interaction with other Acts)

Section 9 of the Principal Act is amended by omitting subsection (2).

6. Section 22 amended (Registers of environmental management and enforcement instruments)

Section 22(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (f) "notice." and substituting "notice; and";
- (b) by inserting the following paragraph after paragraph (f):
 - (g) any notice issued under Part 5A in respect of a contaminated site, and any amendment or revocation of any such notice.

7. Section 24 amended (Assessment of permissible level 1 activities)

Section 24(4) of the Principal Act is amended as follows:

- (a) by inserting "if it were" after "under this Act as";
- (b) by omitting "if it were".

Part 2 – Environmental Management and Pollution Control Act 1994 Amended

8. Section 25 amended (Assessment of permissible level 2 activities)

Section 25 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2)(e) "until the completion of the Board's assessment of the activity" after "apply";
- (b) by omitting from subsection (5) "Act" first occurring and substituting "section".

9. Section 25A amended (Assessment of applications for permits under Division 2A of Part 3 of the Land Use Planning and Approvals Act 1993)

Section 25A(4) of the Principal Act is amended by omitting "Subsections (6)" and substituting "Division 1A of this Part and subsections (6)".

10. Section 27A substituted

Section 27A of the Principal Act is repealed and the following section is substituted:

27A. Classes of assessment

- (1) An assessment by the Board of an activity, pursuant to section 25 or 27, is to be one of the following classes:
 - (a) class 2A;

Part 2 – Environmental Management and Pollution Control Act 1994 Amended

(b) class 2B;

- (c) class 2C.
- (2) In determining a class of assessment under this Part, the Board is to take into consideration the characteristics set out in Schedule 5.
- (3) The Minister, by order, may amend Schedule 5 by doing any one or more of the following:
 - (a) inserting a characteristic in the Schedule;
 - (b) omitting a characteristic from the Schedule;
 - (c) omitting a characteristic from the Schedule and substituting another characteristic.
- (4) The provisions of section 47(3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply to an order under this section as if the order were regulations within the meaning of that Act.
- (5) An order under this section is not an instrument of a legislative character for the purposes of the *Subordinate Legislation Act* 1992.

Part 2 – Environmental Management and Pollution Control Act 1994 Amended

11. Section 27B amended (Notice of intent)

Section 27B(2) of the Principal Act is amended by inserting "in sufficient detail to enable the Board to determine the appropriate class of assessment" after "information".

12. Section 27C amended (Board to advise of proposed class of assessment)

Section 27C(a) of the Principal Act is amended by inserting "that is acceptable to the Board under section 27B(2)" after "intent".

13. Section 27E amended (Board may require further information)

Section 27E(2) of the Principal Act is amended by omitting "in respect of a class 2C assessment".

14. Section 27I amended (Additional information)

Section 27I(1) of the Principal Act is amended by inserting ", after the expiration of the relevant period for representations under section 27G," after "The Board".

15. Section 28 amended (Environmental agreements)

Section 28 of the Principal Act is amended by omitting subsection (6).

Part 2 – Environmental Management and Pollution Control Act 1994 Amended s. 16

16. Section 32 amended (Notification of incidents)

Section 32 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:
 - (1) A person responsible for
 - (a) a level 1 activity, other than an activity in relation to which a determination has been made in accordance with section 24(4A); or
 - (b) an activity that is not a level 2 activity or a level 3 activity, and that has not been assessed and approved by the Board under section 27 –

must notify the relevant council, as soon as reasonably practicable but not later than 24 hours, after becoming aware of the release of a pollutant occurring as the result of any incident in relation to that activity, including an emergency, accident or malfunction, if this release causes or may cause an environmental nuisance.

Part 2 – Environmental Management and Pollution Control Act 1994 Amended

- (b) by inserting in subsection (2) "an activity that is to be treated as if it were a level 2 activity in accordance with section 24(4A), or" after "for";
- (c) by inserting the following subsection after subsection (7):
 - (8) In this section –

release includes the emission, discharge, depositing or disturbance of a pollutant.

17. Section 35 amended (Financial assurance to secure compliance with Act)

Section 35(1) of the Principal Act is amended as follows:

- (a) by inserting ", or a site in respect of which a notice issued under Part 5A has been issued," after "activity";
- (b) by omitting from paragraph (c)(ii) "section 44." and substituting "section 44; or";
- (c) by inserting the following paragraphs after paragraph (c):
 - (d) in the case of a notice issued under Part 5A, complying with any requirements specified in the notice; or

Part 2 – Environmental Management and Pollution Control Act 1994 Amended

s. 18

(e) complying with any conditions or restrictions required by the Board under section 60L(8) of the *Land Use Planning and Approvals Act 1993* to be contained in a special permit granted under section 60T of that Act.

18. Section 43A inserted

After section 43 of the Principal Act, the following section is inserted in Division 1:

43A. False or misleading statements

A person must not, in providing any information or answering any question under this Act –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is false or misleading.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 250 penalty units; and

Part 2 – Environmental Management and Pollution Control Act 1994 Amended

(b) a natural person, a fine not exceeding 100 penalty units.

19. Section 43B inserted

Before section 44 of the Principal Act, the following section is inserted in Division 2:

43B. Interpretation of Division

For the purposes of this Division –

environmentally relevant activity includes an activity that is no longer being carried out.

20. Section 44 amended (Environment protection notices)

Section 44 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(d) "or restrictions" after "conditions":
- (b) by inserting in subsection (2)(d) "or restrictions" after "conditions";
- (c) by inserting in subsection (8) "or restrictions" after "If the conditions";
- (d) by inserting in subsection (8)(a) "or restrictions" after "conditions";

Part 2 – Environmental Management and Pollution Control Act 1994 Amended

s. 20

- (e) by inserting in subsection (8)(b) "or restrictions" after "conditions";
- (f) by inserting the following subsections after subsection (8):
 - Where the Director or, in the case (9) of an environment protection notice issued subsection (2), a council officer considers that 2 or more environmentally relevant activities that are subject to permits, and in respect of which separate environment protection notices could be issued to vary the conditions or restrictions of those permits, can be viewed as forming one integrated activity, the Director or council officer may issue a single environment protection notice to vary those conditions or restrictions.

(10) In this section –

conditions the vary or restrictions of a permit includes change existing conditions or restrictions add and or remove conditions or restrictions, provided that the fundamental use or

Part 2 – Environmental Management and Pollution Control Act 1994 Amended

> development authorised by the permit is not changed.

21. Section 44A inserted

After section 44 of the Principal Act, the following section is inserted in Division 2:

44A. Correction of mistakes

The Director may correct an environment protection notice issued, or caused to be issued, by him or her, and a council officer may correct an environment protection notice issued by him or her, if the notice contains –

- (a) a clerical mistake or an error arising from any accidental slip or omission; or
- (b) an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the notice.

Part 2 – Environmental Management and Pollution Control Act 1994 Amended s. 22

22. Section 45 amended (Duties arising under environment protection notice)

Section 45 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsections:

- (1) A person who is responsible for an environmentally relevant activity who, having been served with an environment protection notice, intends to cease to be responsible for or, in any event, to cease to conduct, the activity in respect of which the notice was served must, before that cessation
 - (a) notify the Director or, in the case of an environment protection notice served by a council officer, the council in writing of that intention; and
 - (b) where there is an intention to cease to be responsible for the activity, provide the Director or the council with full particulars in writing of any person succeeding him or her as the person responsible.

Penalty: Fine not exceeding 10 penalty units.

(2) Where a person who has ceased to conduct an environmentally relevant

Part 2 – Environmental Management and Pollution Control Act 1994 Amended

> activity, respect of which in an environment protection notice was served upon him or her, intends to resume conduct of the activity, he or she must, not less than 30 days before that resumption, notify the Director or, in the case of an environment protection notice served by a council officer, the council in writing of that intention.

Penalty: Fine not exceeding 10 penalty units.

23. Section 45A inserted

After section 45 of the Principal Act, the following section is inserted in Division 2:

45A. Transfer of environment protection notice

- (1) On receipt of notification from a person under section 45(1)(a) and particulars from that person under section 45(1)(b), the Director or, in the case of an environment protection notice served by a council officer, the council officer may amend the environment protection notice by substituting the name of that person with the name of the person identified in the particulars.
- (2) On the amendment of an environment protection notice under subsection (1) –

Part 2 – Environmental Management and Pollution Control Act 1994 Amended s. 24

- (a) the amended notice must be served on any person whose name has been inserted in the notice in substitution for another name in accordance with that subsection; and
- (b) any such person is not, in respect of the service of the amended notice, a person to whom section 44(6) applies; and
- (c) the person whose name has been omitted in accordance with subsection (1) is no longer bound by the notice, notwithstanding section 45(4).
- (3) On service being effected under subsection (2)(a), the person served is, subject to subsection (2)(b), taken to have been served with an environment protection notice under section 44(1) or (2), as the case may be.

24. Section 46 amended (Registration of environment protection notices)

Section 46 of the Principal Act is amended as follows:

(a) by omitting from subsection (3) "subsection (1)(b)" and substituting "subsection (2)(b)";

Part 2 – Environmental Management and Pollution Control Act 1994 Amended

- (b) by inserting the following subsection after subsection (5):
 - (5A) An environment protection notice that is registered under subsection (2) binds, to the extent specified in the notice, any person who
 - (a) is the owner or occupier of the relevant area of land when the notice is registered; and
 - (b) becomes the owner or occupier of the relevant area of land after the notice has been registered –

as if the notice were served on that person.

25. Section 51B inserted

After section 51A of the Principal Act, the following section is inserted in Division 4:

51B. Offence of contravening permit conditions

A person must not conduct an activity to which a permit, granted by a planning authority pursuant to a planning scheme or order or to a determination of the

Part 2 – Environmental Management and Pollution Control Act 1994 Amended s. 26

Appeal Tribunal, relates in such a way that constitutes a breach of a condition or restriction of the permit that –

- (a) the Board has required under section 25(5); or
- (b) the Director has caused to be varied under section 44(1)(d).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
- (b) a natural person, a fine not exceeding 500 penalty units.

26. Section 55A amended (General environmental duty defence)

Section 55A(1) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) "or a special permit, within the meaning of the *Land Use Planning and Approvals Act 1993*" after "permit";
- (b) by omitting from paragraph (b)(i) "or permit" and substituting ", permit or a special permit, within the meaning of the

Part 2 – Environmental Management and Pollution Control Act 1994 Amended

Land Use Planning and Approvals Act 1993,".

27. Section 70 repealed

Section 70 of the Principal Act is repealed.

28. Section 74D amended (Content of notices generally)

Section 74D(2) of the Principal Act is amended as follows:

- (a) by inserting "or action" after "work";
- (b) by inserting "or actions" after "works".

29. Section 74T substituted

Section 74T of the Principal Act is repealed and the following section is substituted:

74T. Action if person to be served cannot be found

- (1) If the Director, after reasonable enquiry, cannot determine
 - (a) the whereabouts of the person on whom the notice is to be served; or
 - (b) on whom to serve a notice –

Part 2 – Environmental Management and Pollution Control Act 1994 Amended s. 30

the Director, by his or her agent, may do any work or take any action that could be required by the notice.

(2) For the purposes of subsection (1)(a), "reasonable inquiry" includes advertising in a daily newspaper circulating in the relevant region.

30. Section 92 amended (Powers of authorized officers and council officers)

Section 92(1)(j) of the Principal Act is amended by inserting "or special permit" after "permit".

31. Section 95A inserted

After section 95 of the Principal Act, the following section is inserted in Division 1:

95A. Self-incrimination

- (1) A person is not excused from a requirement under this Division to provide information or answer a question, or to produce or provide any record, document or thing, on the ground that to do so might incriminate the person or make the person liable to a penalty.
- (2) However, any information provided or answer given, or record, document or thing produced or provided, by a natural person in compliance with such a

Part 2 – Environmental Management and Pollution Control Act 1994 Amended

requirement is not admissible in evidence against that person in proceedings for an offence under this Act or for the imposition of a penalty under this Act (other than proceedings for an offence against section 43A, 92A or 95).

32. Section 100A amended (Listening Devices Act 1991 not to apply)

Section 100A of the Principal Act is amended by inserting "audio or" after "use of".

33. Section 102 amended (Regulations)

Section 102(7)(d) of the Principal Act is amended as follows:

- (a) by omitting "100" and substituting "1 000";
- (b) by omitting "10" and substituting "100".

34. Schedule 2 amended (Level 2 Activities)

Schedule 2 to the Principal Act is amended as follows:

- (a) by omitting from clause 1(b) "gaseous" and substituting "gaseous,";
- (b) by omitting from clause 3(d)(ii) "period." and substituting "period; or";

Part 2 – Environmental Management and Pollution Control Act 1994

Amended

(c) by inserting the following subparagraph after subparagraph (ii) in clause 3(d):

- (iii) anaerobic digesters with a production capacity of 100 or more tonnes per year of solid or liquid fertiliser product.
- (d) by inserting in clause 4(d) ", evaporated milk" after "skimmed milk";
- (e) by omitting paragraph (e) from clause 7 and substituting the following paragraph:
 - (e) Conduct of Certain Activities in Waters Within the Limits of the State: the dumping of dredge spoil or the dumping or sinking of boats, aircraft, platforms or other man-made structures and the placement of artificial reefs in waters within the limits of the State.

35. Schedule 3 amended (Provisions with respect to Membership of the Board)

Clause 6(1) of Schedule 3 to the Principal Act is amended by omitting "an appointed" and substituting "a".

Part 2 – Environmental Management and Pollution Control Act 1994 Amended

36. Schedule 5 inserted

After Schedule 4 to the Principal Act, the following Schedule is inserted:

SCHEDULE 5 – CHARACTERISTICS TO BE CONSIDERED IN DETERMINING CLASS OF ASSESSMENT

Section 27A

Class of assessment	Characteristics
1. Class 2A	Small-scale projects with environmental impacts that –
	(a) are minor in scale or consequence; and
	(b) are local in extent; and
	(c) may be readily avoided or mitigated through appropriate management; and
	(d) are unlikely to generate significant public interest.
2. Class 2B	Any activity that is not included in Class 2A or Class 2C
3. Class 2C	Projects that –

Part 2 – Environmental Management and Pollution Control Act 1994 Amended

Class of assessment	Characteristics			
	(a) are projects of regional significance within the meaning of Part 4 of the Land Use Planning and Approvals Act 1993; or			
	(b) have a reasonable likelihood of –			
	(i) requiring approval from the Commonwealth Government under the Environment Protection and Biodiversity Conservation Ac 1999 of the Commonwealth; or			
	(ii) generating a very high level of public interest; or			
	(c) possess more than one of the following characteristics:			
	(i) a high level o public interest;			

27

Part 2 – Environmental Management and Pollution Control Act 1994 Amended

Class of assessment	Characteristics			
	(ii) very large scale of development or potential for environmental impacts across a wide area;			
	(iii) potential to significantly increase pressure on a threatened species;			
	(iv) are subject to unusual or complex factors that are likely to demand additional time during the environmental impact assessment process.			

37. Schedule 6 amended (Transitional and Miscellaneous Provisions)

Clause 3(4)(a) of Schedule 6 to the Principal Act is amended by omitting "Director of

Part 2 – Environmental Management and Pollution Control Act 1994 Amended

Environmental Management" and substituting "Director, Environmental Protection Authority".

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Part 3 – Pollution of Waters by Oil and Noxious Substances Act 1987 Amended

PART 3 – POLLUTION OF WATERS BY OIL AND NOXIOUS SUBSTANCES ACT 1987 AMENDED

38. Principal Act

In this Part, the *Pollution of Waters by Oil and Noxious Substances Act 1987** is referred to as the Principal Act.

39. Section 8 substituted

Section 8 of the Principal Act is repealed and the following section is substituted:

8. Prohibition of discharge of oil or oily mixtures into State waters

(1) Subject to subsections (3) and (6), if oil or an oily mixture is discharged from a ship into State waters, the master and the owner of the ship are each guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 10 000 penalty units; or
- (b) an individual, a fine not exceeding 2 500 penalty units or imprisonment for

Part 3 – Pollution of Waters by Oil and Noxious Substances Act 1987 Amended

s. 39

a term not exceeding 4 years.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) Subsection (1) does not apply to the discharge of oil or of an oily mixture from a ship
 - (a) for the purpose of securing the safety of a ship or saving life at sea; or
 - (b) if the oil or oily mixture, as the case may be, escaped from the ship in consequence of non-intentional damage to the ship or its equipment, and 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 oil or oily mixture, as the case may be; or
 - (c) in the case of an oily mixture, if the discharge was for the purpose of combating specific pollution incidents in order to minimise the damage from pollution and was approved by a prescribed officer and, where the discharge

Part 3 – Pollution of Waters by Oil and Noxious Substances Act 1987 Amended

occurred in the jurisdiction of the government of a country other than Australia, by that government.

- (4) For the purposes of subsection (3)(b), damage to a ship or to its equipment is not non-intentional damage if the damage
 - (a) arose in circumstances where the master or owner of the ship
 - (i) acted with intent to cause the damage; or
 - (ii) acted recklessly and with knowledge that the damage would probably result; or
 - (b) arose as a result of the negligence of the master or owner of the ship.
- (5) For the purposes of this section, damage to a ship or to its equipment does not include
 - (a) deterioration resulting from failure to maintain the ship or equipment; or

Part 3 – Pollution of Waters by Oil and Noxious Substances Act 1987 Amended

(b) defects that develop during the normal operation of the ship or

normal operation of the ship or equipment.

- (6) Without limiting the generality of subsection (3) but subject to subsection (7), subsection (1) does not apply to
 - (a) the discharge of oil or an oily mixture from a ship that is not within a special area, if the following conditions are satisfied:
 - (i) the ship has a gross tonnage equal to or greater than 400 tonnes;
 - (ii) the ship is proceeding en route;
 - (iii) the oily mixture is processed using oil-filtering equipment meeting the requirements set out by regulations made under section 42 or under section 267A of the Navigation Act;
 - (iv) the oil content of the effluent without dilution does not exceed 15 parts in 1 000 000 parts;

Part 3 – Pollution of Waters by Oil and Noxious Substances Act 1987 Amended

- (v) if the ship is an oil tanker, the oily mixture does not originate from the cargo pump room bilges of the ship and is not mixed with oil cargo residues; or
- (b) the discharge of oil or an oily mixture from a ship that is within a special area other than the Antarctic area, if the following conditions are satisfied:
 - (i) the ship has a gross tonnage equal to or greater than 400 tonnes;
 - (ii) the ship is proceeding en route;
 - (iii) the oily mixture is processed using oil-filtering equipment meeting the requirements set out by regulations made under section 42 or under section 267A of the Navigation Act;
 - (iv) the oil content of the effluent without dilution does not exceed 15 parts per 1 000 000 parts;

Part 3 – Pollution of Waters by Oil and Noxious Substances Act 1987 Amended

- (v) if the ship is an oil tanker, the oily mixture does not originate from the cargo pump room bilges of the ship and is not mixed with oil cargo residues; or
- (c) the discharge of oil or an oily mixture within an area other than the Antarctic area from a ship, if the following conditions are satisfied:
 - (i) the ship has a gross tonnage of less than 400;
 - (ii) the ship is proceeding en route;
 - (iii) the ship has in operation equipment, of a kind that meets the requirements set out by regulations made under section 42 or under section 267A of the **Navigation** Act, that ensures that the oil content of the effluent without dilution does not exceed 15 parts in 1 000 000 parts;
 - (iv) if the ship is an oil tanker, the oily mixture does not

Part 3 – Pollution of Waters by Oil and Noxious Substances Act 1987 Amended

> originate from the cargo pump room bilges of the ship and is not mixed with oil cargo residues; or

- (d) the discharge of oil or an oily mixture (other than washings contaminated with oil) from the cargo area of an oil tanker that is not within a special area, if the following conditions are satisfied:
 - (i) the tanker has a gross tonnage of 150 or more tonnes;
 - (ii) the tanker is more than 50 nautical miles from the nearest land;
 - (iii) the tanker is proceeding en route;
 - (iv) the instantaneous rate of discharge of oil content does not exceed 30 litres per nautical mile;
 - (v) if the tanker was delivered on or before 31 December 1979, the total quantity of oil discharged into the sea does not exceed one part in 15 000 parts of the total

Part 3 – Pollution of Waters by Oil and Noxious Substances Act 1987 Amended s. 39

quantity of the cargo of oil of which oil discharged formed a part;

- (vi) if the tanker was delivered after 31 December 1979, the total quantity of oil discharged into the sea does not exceed one part in 30 000 parts of the total quantity of the cargo of oil of which oil discharged formed a part;
- (vii) the tanker has in operation an oil discharge monitoring and control system and a slop tank arrangement as required by regulations made under section 42 or under section 267A of the Navigation Act; or
- (e) the discharge of washings contaminated with oil from an oil tanker that is not within a special area, if the following conditions are satisfied:
 - (i) the tanker is more than 50 nautical miles from the nearest land;

Part 3 – Pollution of Waters by Oil and Noxious Substances Act 1987 Amended

- (ii) the tanker is proceeding en route;
- (iii) the instantaneous rate of discharge of oil content does not exceed 30 litres per nautical mile;
- if the tanker was delivered (iv) on before or 31 December 1979, the total quantity oil discharged into the sea does not exceed one part in 15 000 parts of the total quantity of the cargo of which oil of discharged formed a part;
- (v) if the tanker was delivered after 31 December 1979, the total quantity of oil discharged into the sea does not exceed one part in 30 000 parts of the total quantity of the cargo of oil of which oil discharged formed a part;
- (vi) the tanker has in operation an oil discharge monitoring and control system and a slop tank arrangement as required

Part 3 – Pollution of Waters by Oil and Noxious Substances Act 1987 Amended

s. 39

by regulations made under section 42 or under section 267A of the Navigation Act;

- (vii) the discharge of oil or an oily mixture from the cargo area of an oil tanker, either within or outside a special area, if the discharge is of clean or segregated ballast.
- (7) A reference to an oily mixture in subsection (6) is to be read as not including a reference to an oily mixture that 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 subsection (1) to the discharge of an oily mixture from a ship.

Part 4 – Repeal of Act

s. 40

PART 4 – REPEAL OF ACT

40. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.