

TASMANIA

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**MARINE-RELATED INCIDENTS (MARPOL  
IMPLEMENTATION) BILL 2019**

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# **MARINE-RELATED INCIDENTS (MARPOL IMPLEMENTATION) BILL 2019**

*(Brought in by the Minister for the Environment, Parks and Heritage, the Honourable Peter Carl Gutwein)*

## **A BILL FOR**

**An Act to protect State waters from pollution by oil and other substances, to give effect to certain parts of the MARPOL Convention, and for related purposes**

Be it enacted by Her 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 *Marine-related Incidents (MARPOL Implementation) Act 2019*.

### **2. Commencement**

The provisions of this Act commence on a day or days to be proclaimed.

### **3. Interpretation**

(1) In this Act, unless the contrary intention appears –

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***agent of the ship***, in relation to a ship, means any person who performs for or on behalf of the charterer, owner, manager or operator of the ship any function or duty under or for the purposes of this Act and includes any person who, within the State, on behalf of the charterer, owner, manager or operator of the ship, undertakes or performs the functions of ships' husbandry or makes any arrangements for or in connection with the repair or berthing of the ship or the carriage, loading or unloading of cargo, stores or bunkers on the ship or from the ship;

***approved*** means approved by the Director;

***AMSA*** means the Australian Maritime Safety Authority established by the *Australian Maritime Safety Authority Act 1990* of the Commonwealth;

***Australian ship*** means –

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

***charterer***, of a ship, includes a person who has leased, or otherwise hired, the ship while the ship is so leased or hired;

***Committee*** means the State Marine Pollution Committee continued by section 43;

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***Convention***, or ***MARPOL Convention***, means the International Convention for the Prevention of Pollution from Ships, 1973, as affected by any amendment, other than an amendment not accepted by Australia, made under Article 16 of the Convention;

***Convention on Tonnage Measurement*** means the International Convention on Tonnage Measurement of Ships, 1969, as affected by any amendment other than an amendment not accepted by Australia, made under Article 18 of that Convention;

***costs*** includes expenses;

***crew***, in relation to a ship, includes its master;

***Director*** means the person appointed and holding office as Director, Environment Protection Authority under section 18(1) of the *Environmental Management and Pollution Control Act 1994*;

***engage in conduct*** includes to perform an act or to omit to perform an act;

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

***function*** includes duty;

***Government department*** means a department established under the *State Service Act 2000*, or established by any other

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enactment, as a department within the meaning of that Act;

***harbour master*** means –

- (a) in respect of a port, the port operator for the port; or
- (b) in respect of any other area, a person authorised by the Director;

***inspector*** – see section 7;

***land*** includes a structure attached to, extending from or used in connection with that land and a vehicle on that land;

***livestock*** includes fish reared commercially in marine farms;

***Local Government Association of Tasmania*** means –

- (a) the Local Government Association of Tasmania continued as a body corporate by section 326 of the *Local Government Act 1993*, whether or not that body has changed its name; or
- (b) if that body ceases to exist, any other body that has substantially the same purpose and performs substantially the same functions;

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***marine farm*** has the same meaning as in the  
*Living Marine Resources Management*  
*Act 1995*;

***marine pollutant*** means –

- (a) oil within the meaning of Annex I to the Convention; and
- (b) an oily mixture within the meaning of Annex I to the Convention; and
- (c) a noxious liquid substance within the meaning of Annex II to the Convention; and
- (d) a mixture that contains any substance referred to in paragraph (c); and
- (e) a harmful substance within the meaning of Annex III to the Convention; and
- (f) sewage within the meaning of Annex IV to the Convention; and
- (g) garbage within the meaning of Annex V to the Convention;

***marine pollutant spill*** means a discharge or jettison of a marine pollutant –

- (a) from a ship; or
- (b) from land, including a platform;  
or

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- (c) during, or in connection with, a transfer operation; or
- (d) from an unidentified source;

***marine pollution*** means the pollution of State waters as a direct, or indirect, result of a marine pollutant spill;

***maritime casualty*** includes any one or more of the following:

- (a) a collision between ships;
- (b) the collision of a ship with a bridge, breakwater or wharf;
- (c) the stranding of a ship;
- (d) the breaking-up, capsizing or foundering of a ship;
- (e) an explosion or fire on a ship;
- (f) the abandonment or evacuation of a ship by its crew;
- (g) the failure of a pipeline or other apparatus used for transferring fuel between ships or between a ship and a facility on land;

***MAST*** means the Marine and Safety Authority established by the *Marine and Safety Authority Act 1997*;

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

***Navigation Act*** means the *Navigation Act 2012* of the Commonwealth;

***occupier***, in relation to land, includes the owner of that land;

***physical environment*** includes the wildlife and livestock that live in the environment being referred to;

***port*** means a port in State waters;

***port operator***, in relation to a port, means –

- (a) the port operator within the meaning of the *Marine and Safety Authority Act 1997* for the port; or
- (b) in any other case, the Tasmanian Ports Corporation Pty. Ltd. (ACN 114 161 938);

***prescribed*** means –

- (a) prescribed in regulations made under this Act; or
- (b) prescribed in orders made in accordance with section 73;

***prescribed officer***, for the purposes of this Act, or a specific section of this Act, means –

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- (a) the Director; or
- (b) a person or class of persons that has been prescribed for the purposes of this Act or the section;

***regulated Australian vessel*** has the same meaning as in the Navigation Act;

***regulations*** means regulations made under this Act;

***State authority*** means a body or authority, whether incorporated or not, which is established or constituted by or under an Act or under the royal prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister, or another State authority, but does not include a Government department;

***State waters*** means –

- (a) the waters of the territorial sea adjacent to the State that are within 3 nautical miles of the seaward side of the baseline of the territorial sea, by reference to which the territorial limits of Australia are defined for the purposes of international law; and
- (b) the sea on the landward side of that baseline of the territorial sea

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adjacent to the State that is not within the limits of the State; and

- (c) waters within the limits of the State;

***transfer operation*** means any operation that involves preparing for, or the performance 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 land.

- (2) Unless the contrary intention appears, an expression that is used in this Act and in the Convention, otherwise than in an Annex to the Convention (whether or not a particular meaning is assigned to it by the Convention), has, in this Act, the same meaning as in the Convention.
- (3) In this Act, unless the contrary intention appears, damage to a ship or its equipment does not include –
- (a) deterioration of the ship or equipment resulting from a failure to maintain the ship or equipment; or
  - (b) defects that develop during the operation of the ship or equipment in accordance with the manufacturer’s instructions.
- (4) In this Act, unless the contrary intention appears, damage to a ship or to its equipment is intentional damage if the damage –

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- (a) arose in circumstances where the master, the charterer or the owner of the ship –
    - (i) acted with intent to cause the damage; or
    - (ii) acted recklessly and with knowledge that the damage was likely to result; or
  - (b) arose as a result of the negligence of the master, the charterer or the owner of the ship.
- (5) If the gross tonnage applicable to a ship has been determined otherwise than in accordance with the Convention on Tonnage Measurement, in the application of this Act to the ship, a reference in this Act to the gross tonnage of a ship not expressed in tonnes is to be taken, in relation to the ship, to be a reference to the gross tonnage of the ship expressed in tonnes.

#### **4. Application of Act**

The provisions of this Act are in addition to, and do not derogate from, any other law of the State.

#### **5. Act to bind Crown**

- (1) This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, 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 under this Act.

- (3) Subsection (2) does not affect any liability of a servant or agent of the Commonwealth, or a State or Territory of the Commonwealth, to be prosecuted for an offence.

## **6. Delegation**

- (1) The Minister may delegate any of the Minister's powers or functions under this Act other than this power of delegation.
- (2) The Director may delegate any of the Director's powers or functions under this Act other than this power of delegation.

## **7. Inspectors**

- (1) For the purposes of this Act, each of the following persons is an inspector:
  - (a) the Director;
  - (b) a police officer;
  - (c) a person who is appointed in writing by the Director, on such terms and conditions as the Director thinks fit, to be an inspector for the purposes of this Act;
  - (d) a person who is appointed in writing by AMSA, on such terms and conditions as AMSA thinks fit, to be an inspector for the purposes of this Act;

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- (e) a person who is appointed in writing by a harbour master, on such terms and conditions as the harbour master thinks fit, to be an inspector for the purposes of this Act.
- (2) The Director is to cause to be issued to an inspector, other than a police officer, an authority in writing bearing a photograph of the officer.

**8. Warships, &c., are exempt from Act**

Despite section 5, this Act does not apply to –

- (a) a ship under the control of the Australian Defence Force; or
- (b) a warship, naval auxiliary or other ship engaged exclusively in the non-commercial government service of a foreign country.

**9. Pollution that enters State waters taken to be pollution in State waters**

For the purposes of this Act –

- (a) a marine pollutant spill is taken to have occurred in State waters under this Act if the spill occurs in waters outside State waters, or on a structure or thing, and the discharged or jettisoned marine pollutant later enters State waters; and

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- (b) the marine pollutant is taken to have been discharged into State waters at the time at which the discharged or jettisoned marine pollutant enters State waters.

**10. Application of Act to mixtures of oil and noxious liquid substances**

For the purposes of this Act, if a mixture contains oil within the meaning of Annex I to the Convention and one or more noxious liquid substances within the meaning of Annex II to the Convention, Parts 2 and 3 both apply in relation to the mixture.

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**PART 2 – PREVENTION OF POLLUTION BY OIL**

*Division 1 – General*

**11. Interpretation**

Unless the contrary intention appears, an expression that is used in this Part and in Annex I to the Convention (whether or not a particular meaning is assigned to it by that Annex) has, in this Part, the same meaning as in that Annex.

*Division 2 – Pollution by oil or oily mixture*

**12. Prohibition of discharge of oil or oily mixture into State waters**

- (1) Subject to subsections (3) and (4), if oil, or an oily mixture, is discharged into State waters from a ship, the master, the charterer 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 23 500 penalty units; and
- (b) an individual, a fine not exceeding 5 850 penalty units or imprisonment for a term not exceeding 4 years.

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- (2) An offence against subsection (1) is a strict liability offence.
- (3) Subsection (1) does not apply to the discharge of oil, or an oily mixture, from a ship –
- (a) for the purpose of securing the safety of the ship or another ship, or saving human life at sea; or
  - (b) if the oil, or oily mixture, escaped from the ship as a 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, to prevent or minimise the escape of the oil or the oily mixture; or
  - (c) in the case of an oily mixture, if the discharge was for the purpose of minimising damage from specific marine pollution and was approved by a prescribed officer; or
  - (d) if the discharge was authorised by the Director for other purposes.
- (4) Subject to subsection (5), subsection (1) does not apply to –
- (a) the discharge of oil, or an oily mixture, from a ship, if –
    - (i) the ship has a gross tonnage of less than 400 tonnes; and

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- (ii) the ship is proceeding *en route*; and
  - (iii) the ship has in operation equipment, of a kind that meets the requirements set out by regulations made under section 130 of the Navigation Act that ensures that the oil content of the discharge without dilution does not exceed 15 parts in 1 000 000 parts; and
  - (iv) 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, if –
- (i) the ship is not within a special area; and
  - (ii) the ship has a gross tonnage equal to, or greater than, 400 tonnes; and
  - (iii) the ship is proceeding *en route*; and
  - (iv) the oil or oily mixture is processed using oil filtering equipment meeting the requirements under regulations

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- made for the purposes of section 130 of the Navigation Act; and
- (v) the oil content of the effluent without dilution does not exceed 15 parts in 1 000 000 parts; and
  - (vi) 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, from a ship, if –
- (i) the ship is within a special area other than the Antarctic area; and
  - (ii) the ship has a gross tonnage equal to, or greater than, 400 tonnes; and
  - (iii) the ship is proceeding *en route*; and
  - (iv) the oil or oily mixture is processed using oil filtering equipment meeting the requirements under regulations made for the purposes of section 130 of the Navigation Act; and
  - (v) the oil content of the discharge without dilution does not exceed 15 parts in 1 000 000 parts; and

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- (vi) 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
- (d) the discharge of oil, or an oily mixture, from the cargo area of an oil tanker, if the discharge is of clean, or segregated, ballast.
- (5) A reference to an oily mixture in subsection (4) does not include 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.

**13. Duty to report certain incidents involving oil or oily mixture**

- (1) In this section –

*specified oil incident*, in relation to a ship,  
means –

- (a) an incident involving a discharge into State waters from the ship of oil, or an oily mixture, that is not

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- a discharge to which section 12(4) applies; or
- (b) an incident involving the reasonable likelihood of a discharge into State waters from the ship of oil, or an oily mixture, that is not a discharge to which section 12(4) would apply; or
- (c) if the ship is 15 metres or more in length, an incident involving damage, failure or breakdown that –
- (i) affects the safety of the ship (including a collision, grounding, fire, explosion, structural failure, flooding and cargo shifting); or
  - (ii) impairs the ability to navigate the ship (including failure or breakdown of steering gear, propulsion plant, electrical generating system and essential shipborne navigational aids).
- (2) If a specified oil incident occurs in relation to a ship, the master of the ship must notify a prescribed officer as soon as possible, and in the prescribed manner, of the incident.

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Penalty: Fine not exceeding 500 penalty units.

- (3) A master of a ship must, if so requested by a prescribed officer, give a report to the prescribed officer in relation to the incident, in the approved form and within the prescribed time.

Penalty: Fine not exceeding 200 penalty units.

- (4) Subsection (2) does not apply in relation to a specified oil incident in relation to a ship if it is not possible, in the circumstances, for the master of the ship to notify a prescribed officer of the incident in the prescribed manner.
- (5) If a specified oil incident occurs in relation to a ship and –
- (a) the master of the ship fails to comply with subsection (2), for any reason, in relation to the incident; or
  - (b) the incident occurs in circumstances in which the ship is abandoned –

each person who is a charterer, owner, manager, operator or agent of the ship must ensure that a prescribed officer is notified as soon as possible, and in the prescribed manner, of the incident.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; and
- (b) an individual, a fine not exceeding 500 penalty units.

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- (6) An offence under subsection (2) or (5) is a strict liability offence.
- (7) Subsection (5) does not apply to a person in relation to a specified oil incident in relation to a ship if –
  - (a) the person was not aware of the incident; or
  - (b) the person reasonably believes that another person specified in subsection (5) has complied with that subsection in relation to the incident; or
  - (c) in the case of a specified oil incident to which subsection (5) applies, the person did not know or could not reasonably be expected to have known that the master of the ship had not complied with subsection (2) in relation to the incident.
- (8) Subsection (7) is not to be taken to limit by implication any defence that would, but for that subsection, be available to a person charged with an offence against subsection (5).
- (9) A person who has notified a prescribed officer, in accordance with subsection (5), of the occurrence of the specified oil incident must, if so requested by a prescribed officer, give a report to the prescribed officer in relation to the incident, in the approved form and within the prescribed time.

Penalty: Fine not exceeding 200 penalty units.

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**14. Power to require discharge of oil or oily mixture at facility**

- (1) A prescribed officer may require, by written notice, the master or owner of a ship to cause oil or an oily mixture to be discharged from the ship to a specified facility that is suitable to receive that quantity of the oil or oily mixture, within a specified period, if the officer has reason to believe that retention of the oil or oily mixture would create a risk of discharge from the ship into the sea.
- (2) A notice under subsection (1) is to specify –
  - (a) the facility to which the oil or oily mixture is to be discharged; and
  - (b) the period within which the oil or oily mixture is to be discharged; and
  - (c) the quantity of the oil or oily mixture that must be discharged.
- (3) A person required to cause oil or an oily mixture to be discharged from a ship by a notice given under subsection (1) must ensure that the notice is complied with in respect of the ship.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; and
- (b) an individual, a fine not exceeding 250 penalty units.

***Division 3 – Transfer of oil cargo***

**15. Application of Division**

(1) In this Division –

***transfer*** means a transfer of oil cargo between two oil tankers to which this Division applies.

(2) This Division applies to an oil tanker if –

(a) the oil tanker has a gross tonnage of 150 tonnes or more; and

(b) the oil tanker is engaged in a transfer; and

(c) the transfer occurs while the oil tanker is in State waters; and

(d) the transfer is not in accordance with transfers described in regulation 40.2, 40.3, 40.4 or 40.5 of Annex I to the Convention.

(3) In any proceedings for an offence under this Division, a charge for the offence is taken, in the absence of evidence to the contrary, to mean that the transfer is not in accordance with those transfers described in regulation 40.2, 40.3, 40.4 or 40.5 of Annex I to the Convention.

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**16. Transfer to be in accordance with ship-to-ship operations plan**

- (1) The master of an oil tanker to which this Division applies must not undertake a transfer if a transfer is not in accordance with the oil tanker's ship-to-ship operations plan.

Penalty: Fine not exceeding 200 penalty units.

- (2) For the purposes of this section, a *ship-to-ship operations plan* for an oil tanker is –
- (a) if the oil tanker is an Australian ship, a plan –
    - (i) that is in accordance with the prescribed form; and
    - (ii) that is written in the working language of the master of, and the officers on board, the oil tanker; or
  - (b) in any other case, a plan referred to in regulation 41.1 of Annex I to the Convention.

**17. Transfer to be undertaken by qualified person**

- (1) A person must not have overall advisory control of a transfer unless –
- (a) the person is the master of either oil tanker involved in the transfer; and

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- (b) the person satisfies the prescribed qualification requirements.

Penalty: Fine not exceeding 60 penalty units.

- (2) An offence against subsection (1) is a strict liability offence.
- (3) In this section –

*overall advisory control* has the same meaning as in the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* of the Commonwealth.

**18. Notification of transfer**

- (1) In this section –

*ship-to-ship transfer information* means information prescribed for the purposes of this section.

- (2) If ship-to-ship transfer information was available to the master of an oil tanker to which this Division applies at least 48 hours before the transfer begins, he or she must notify a prescribed officer, in the prescribed manner, of –
- (a) the transfer; and
- (b) the ship-to-ship transfer information –
- at least 48 hours before the transfer begins.

Penalty: Fine not exceeding 200 penalty units.

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- (3) If ship-to-ship transfer information was not available to the master of the oil tanker to which this Division applies at least 48 hours before the transfer begins, he or she must notify a prescribed officer, in the manner prescribed—
- (a) at least 48 hours before the transfer begins, of the transfer; and
  - (b) before the transfer begins, of the ship-to-ship transfer information.

Penalty: Fine not exceeding 200 penalty units.

- (4) If –
- (a) the master notified a prescribed officer, in the prescribed manner, of the transfer, and of the ship-to-ship transfer information, at least 48 hours before the transfer began under subsection (2); and
  - (b) after notifying a prescribed officer in accordance with paragraph (a), the estimated time of arrival of the oil tanker to which this Division applies at the location for the transfer changed by more than 6 hours; and
  - (c) the master did not notify a prescribed officer, in the prescribed manner, of the new estimated time of arrival within 2 hours of the master becoming aware of the new estimated time of arrival –

the master is guilty of an offence.

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Penalty: Fine not exceeding 60 penalty units.

- (5) An offence against subsection (4) is a strict liability offence.

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Part 3 – Prevention of Pollution by Noxious Liquid Substances

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**PART 3 – PREVENTION OF POLLUTION BY  
NOXIOUS LIQUID SUBSTANCES**

**19. Interpretation**

(1) In this Part –

*Annex II* means Annex II to the Convention;

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

*oil* has the same meaning as it has in Part 2;

*substance or mixture*, in relation to a ship, means a noxious liquid substance, or a mixture that includes a noxious liquid substance, being carried as cargo, or part cargo, in bulk on that ship, unless otherwise provided by Annex II.

(2) Unless the contrary intention appears, an expression that is used in this Part and in Annex II (whether or not a particular meaning is assigned to it by that Annex) has, in this Part, the same meaning as in that Annex.

**20. Prohibition of discharge of substances or mixtures into State waters**

(1) If –

(a) a person engages in conduct that results in a discharge of a substance or mixture from a ship into State waters; and

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- (b) the person knowingly causes, or is reckless or negligent as to causing, the discharge by that conduct –

the person is guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 10 000 penalty units; and
  - (b) an individual, a fine not exceeding 2 500 penalty units or imprisonment for a term not exceeding 4 years.
- (2) Subject to subsections (5) and (6), if a substance or mixture is discharged into State waters from a ship, the master, the charterer 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 1 000 penalty units; and
  - (b) an individual, a fine not exceeding 500 penalty units.
- (3) An offence against subsection (2) is a strict liability offence.
- (4) Subsection (2) does not apply to the discharge from a ship into State waters of any residue of a substance or mixture if –

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- (a) the ship was constructed on or after 1 January 2007; and
- (b) the ship's tank held a substance in Category Z or a mixture that includes a substance in Category Z; and
- (c) an approval was issued in accordance with section 21 in relation to discharge by the ship of the substance or mixture referred to in paragraph (b); and
- (d) the tank was emptied to the maximum extent in accordance with the procedures in the Procedures and Arrangements Manual; and
- (e) the discharge was made when the ship was 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
- (f) the discharge was made 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
- (g) the discharge was made when the ship was in water at least 25 metres deep.

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- (5) Subsection (2) does not apply to the discharge of a substance or mixture from a ship –
- (a) for the purpose of securing the safety of a ship or saving human life at sea; or
  - (b) if the substance or mixture escaped from the ship as a 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 the substance or mixture; or
  - (c) if the discharge was for the purpose of combating specific marine pollution in order to minimise the damage from pollution and was approved by a prescribed officer.
- (6) Subsection (2) does not apply to –
- (a) the discharge from a ship of bilge water, or of a mixture resulting from tank cleaning or deballasting operations, that contains one or more liquid substances referred to in regulation 6.1.4 of Annex II but does not contain any other liquid substance; or
  - (b) the discharge from a ship of clean ballast or segregated ballast.

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**21. Approval to discharge Category Z substance**

- (1) A person may apply to the Director for an approval to discharge a substance in Category Z or a mixture that includes a substance in Category Z from a ship into State waters.
- (2) On receiving an application under subsection (1), the Director may issue an approval, subject to any conditions that the Director thinks fit, to discharge a substance in Category Z or a mixture that includes a substance in Category Z from a ship into State waters.
- (3) If the Director issues an approval in accordance with subsection (2), he or she is to give notice to the person in the approved form.

**22. Prohibition of carriage of unevaluated substances**

- (1) For the purposes of this section –

*unevaluated substance or mixture* means a substance or mixture that –

- (a) has not been categorized in accordance with regulation 6.1 of Annex II; or
  - (b) has not been provisionally assessed in accordance with regulation 6.3 of Annex II.
- (2) If –

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- 
- (a) a person engages in conduct that results in an unevaluated substance or mixture being carried on an Australian ship in State waters; and
  - (b) the person is negligent as to causing that result –

the person is guilty of an offence.

Penalty: Fine not exceeding 200 penalty units.

- (3) It is a defence in proceedings for an offence under subsection (2) if the person did not know or could not reasonably be expected to know that his or her conduct involved an unevaluated substance or mixture.
- (4) The master, the charterer and the owner of an Australian ship are each guilty of an offence if an unevaluated substance or mixture is carried on the ship in State waters.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 120 penalty units; and
  - (b) an individual, a fine not exceeding 60 penalty units.
- (5) An offence under subsection (4) is a strict liability offence.

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**23. Duty to report certain incidents involving noxious liquid substances**

(1) In this section –

*noxious liquid substance* does not include a substance referred to in regulation 6.1.4 of Annex II;

*specified noxious liquid substance incident*, in relation to a ship, means –

- (a) an incident involving a discharge into State waters from the ship of a noxious liquid substance, or a mixture that includes a noxious liquid substance, that is not a discharge to which section 20(4) or (6) applies; or
- (b) an incident involving the reasonable likelihood of a discharge from the ship of a noxious liquid substance, or a mixture that includes a noxious liquid substance, that is not a discharge to which section 20(4) or (6) would apply; or
- (c) if the ship is 15 metres or more in length, an incident involving damage, failure or breakdown that –
  - (i) affects the safety of the ship (including a collision, grounding, fire,

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explosion, structural failure, flooding and cargo shifting); or

- (ii) impairs the ability to navigate the ship (including failure or breakdown of steering gear, propulsion plant, electrical generating system or essential shipborne navigational aids).

- (2) If a specified noxious liquid substance incident occurs in relation to a ship, the master of the ship must notify a prescribed officer as soon as possible, and in the prescribed manner, of the incident.

Penalty: Fine not exceeding 500 penalty units.

- (3) A master of a ship who has notified a prescribed officer, in accordance with subsection (2), of the occurrence of a specified noxious liquid substance incident must give, within the prescribed time, if so requested by a prescribed officer, a report to the prescribed officer in relation to the incident in accordance with the approved form.

Penalty: Fine not exceeding 200 penalty units.

- (4) Subsection (2) does not apply in relation to a specified noxious liquid substance incident in relation to a ship if it is not possible, in the circumstances, for the master of the ship to

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notify a prescribed officer of the incident in the prescribed manner.

- (5) If a specified noxious liquid substance incident occurs in relation to a ship and –
- (a) the master of the ship fails to comply with subsection (2), for any reason, in relation to the incident; or
  - (b) the ship is abandoned as a result of the circumstances in which the incident occurs –

the charterer, owner, manager, operator or agent of the ship must each ensure that a prescribed officer is notified as soon as possible, and in the prescribed manner, of the incident.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; and
  - (b) an individual, a fine not exceeding 500 penalty units.
- (6) An offence under subsection (2) or (5) is a strict liability offence.
- (7) Subsection (5) does not apply to a person in relation to a specified noxious liquid substance incident in respect of a ship if –
- (a) the person was not aware of the incident; or

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- (b) the person reasonably believes that another person specified in subsection (5) has complied with that subsection in relation to the incident; or
  - (c) in the case of a specified noxious liquid substance incident to which subsection (5) applies, the person did not know or could not reasonably be expected to know that the master of the ship had not complied with subsection (2) in relation to the incident.
- (8) Subsection (7) is not to be taken to limit by implication any defence that would, but for that subsection, be available to a person charged with an offence against subsection (5).
- (9) A person who has notified a prescribed officer, in accordance with subsection (5), of the occurrence of the specified noxious liquid substance incident must, if so requested by a prescribed officer, give a report to the prescribed officer in relation to the incident, in the approved form and within the prescribed time.

Penalty: Fine not exceeding 200 penalty units.

**24. Power to require discharge of noxious liquid substance, or a mixture that includes a noxious liquid substance, at facility**

- (1) A prescribed officer may require, by written notice, the master or owner of a ship to cause a noxious liquid substance, or a mixture that includes a noxious liquid substance, to be

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discharged from the ship to a specified facility, in accordance with the notice, if the officer has reason to believe that retention of the noxious liquid substance, or mixture that includes a noxious liquid substance, would create a risk of discharge from the ship into the sea.

- (2) A notice under subsection (1) is to specify –
- (a) the facility to which the noxious liquid substance, or mixture that includes a noxious liquid substance, is to be discharged; and
  - (b) the period within which the noxious liquid substance, or mixture that includes a noxious liquid substance, is to be discharged; and
  - (c) the quantity of the noxious liquid substance, or mixture that includes a noxious liquid substance, that must be discharged.
- (3) A person who is required to cause a noxious liquid substance, or a mixture that includes a noxious liquid substance, to be discharged from a ship by a notice given under subsection (1) must ensure that the notice is complied with in respect of the ship.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; and

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- (b) an individual, a fine not exceeding 250 penalty units.

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Part 4 – Prevention of Pollution by Packaged Harmful Substances

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**PART 4 – PREVENTION OF POLLUTION BY  
PACKAGED HARMFUL SUBSTANCES**

**25. Interpretation**

(1) In this Part –

*harmful substance* means a substance which –

- (a) is identified as a marine pollutant in the International Maritime Dangerous Goods Code (IMDG Code) as published by the International Maritime Organization; or
- (b) meets the criteria in the Appendix of Annex III to the Convention;

*packaged form* means a form of containment specified for harmful substances in the International Maritime Dangerous Goods Code (IMDG Code) as published by the International Maritime Organization.

(2) Unless the contrary intention appears, an expression that is used in this Part and in Annex III to the Convention (whether or not a particular meaning is assigned to it by that Annex) has, in this Part the same meaning as in that Annex.

**26. Prohibition of discharge by jettisoning of harmful substances into State waters**

(1) If –

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- 
- (a) a person engages in conduct that causes a harmful substance in packaged form, carried as cargo of a ship, to be jettisoned from a ship into State waters; and
  - (b) the person knowingly causes, or is reckless or negligent as to causing, the jettisoning by that conduct –

the person is guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 10 000 penalty units; and
  - (b) an individual, a fine not exceeding 2 500 penalty units or imprisonment for a term not exceeding 4 years.
- (2) Subject to subsections (4) and (5), if a harmful substance in packaged form, carried as cargo of a ship, is jettisoned from the ship into State waters, the master, the charterer 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 1 000 penalty units; and
- (b) an individual, a fine not exceeding 500 penalty units.

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- (3) An offence against subsection (2) is a strict liability offence.
- (4) Subsection (2) does not apply to the jettisoning of a harmful substance from a ship for the purpose of securing the safety of the ship or saving human life at sea.
- (5) Where a harmful substance referred to in subsection (2) is discharged into State waters from a ship due to a leakage of the substance, for the purposes of this section, the substance is taken to have been jettisoned unless –
  - (a) the substance was washed overboard from the ship in accordance with the prescribed requirements; or
  - (b) the substance was washed overboard from the ship, otherwise than in accordance with the prescribed requirements, in circumstances where compliance with the prescribed requirements would have impaired the safety of the ship or of persons on board the ship.

**27. Duty to report certain incidents involving harmful substances**

- (1) In this section –

*specified harmful substance incident*, in relation to a ship, means –

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- (a) an incident involving the discharge from the ship of a harmful substance carried as cargo in packaged form or in a freight container, portable tank, road or rail vehicle or shipborne barge, not being a discharge in accordance with the regulations or orders made under the regulations; or
- (b) an incident involving the reasonable likelihood of the discharge from the ship of a harmful substance carried as cargo in packaged form or in a freight container, portable tank, road or rail vehicle or shipborne barge, not being a discharge in accordance with the regulations or orders made under the regulations; or
- (c) if the ship is 15 metres or more in length, an incident involving damage, failure or breakdown that –
  - (i) affects the safety of the ship (including a collision, grounding, fire, explosion, structural failure, flooding and cargo shifting); or

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(ii) impairs the ability to navigate the ship (including failure or breakdown of steering gear, propulsion plant, electrical generating system or essential shipborne navigational aids).

(2) If a specified harmful substance incident occurs in relation to a ship, the master of the ship must notify a prescribed officer as soon as possible, and in the prescribed manner, of the incident.

Penalty: Fine not exceeding 500 penalty units.

(3) A master of a ship who has notified a prescribed officer, in accordance with subsection (2), of the occurrence of a specified harmful substance incident must, if so requested by a prescribed officer, give a report to the prescribed officer in relation to the incident, in the approved form and within the prescribed time

Penalty: Fine not exceeding 200 penalty units.

(4) Subsection (2) does not apply in relation to a specified harmful substance incident in relation to a ship if it is not possible, in the circumstances, for the master of the ship to notify a prescribed officer of the incident in the prescribed manner.

(5) Subject to subsection (7), if a specified harmful substance incident occurs in relation to a ship and –

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- (a) the master of the ship fails to comply with subsection (2), for any reason, in relation to the incident; or
- (b) the ship is abandoned as a result of the circumstances in which the incident occurs –

the charterer, owner, manager, operator or agent of the ship must each ensure that a prescribed officer is notified as soon as possible, and in the prescribed manner, of the incident.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; and
  - (b) an individual, a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 4 years.
- (6) An offence under subsection (2) or (5) is a strict liability offence.
- (7) Subsection (5) does not apply to a person in relation to a specified harmful substance incident in relation to a ship if –
- (a) the person was not aware of the incident; or
  - (b) the person reasonably believes that another person specified in

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subsection (5) has complied with that subsection in relation to the incident; or

- (c) in the case of a specified harmful substance incident to which subsection (5) applies, the person did not know, or could not reasonably be expected to know, that the master of the ship had not complied with subsection (2) in relation to the incident.
- (8) Subsection (7) is not to be taken to limit by implication any defence that would, but for that subsection, be available to a person charged with an offence against subsection (5).
- (9) A person who has notified a prescribed officer, in accordance with subsection (5), of the occurrence of the specified harmful substance incident must, if so requested by a prescribed officer, give a report to the prescribed officer in relation to the incident, in the approved form and within the prescribed time.

Penalty: Fine not exceeding 200 penalty units.

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**PART 5 – PREVENTION OF POLLUTION BY SEWAGE**

**28. Interpretation**

Unless the contrary intention appears, an expression that is used in this Part and in Annex IV to the Convention (whether or not any meaning is assigned to the expression in that Annex) has the same meaning in this Part as in that Annex.

**29. Prohibition of discharge of sewage into State waters**

(1) If –

- (a) a person engages in conduct that causes sewage to be discharged into State waters from a ship; and
- (b) the person knowingly causes, or is reckless or negligent as to causing, the discharge by that conduct –

the person is guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 10 000 penalty units; and
  - (b) an individual, a fine not exceeding 2 500 penalty units.
- (2) Subject to subsections (4) and (5), if sewage is discharged into State waters from a ship, the

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master, the charterer 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 1 000 penalty units; and
  - (b) an individual, a fine not exceeding 500 penalty units.
- (3) An offence against subsection (2) is a strict liability offence.
- (4) Subsection (2) does not apply to a ship if –
- (a) the discharge of sewage from the ship was for the purpose of securing the safety of the ship or saving human life at sea; or
  - (b) the sewage is discharged from the ship as a consequence of damage to the ship or its equipment and all reasonable precautions were taken before and after the damage to the ship to prevent or minimise the discharge of the sewage; or
  - (c) the ship is not a ship to which Annex IV to the Convention applies and the discharge complies with a sewage management directive issued by the Director under section 30.
- (5) Subsection (2) does not apply to the discharge of sewage from a ship –

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- (a) if the sewage has been treated in a sewage treatment plant on the ship, being a plant that a prescribed officer has certified meets the prescribed requirements; and
- (b) if the discharge does not produce visible floating solids in the waters of the sea and does not cause discolouration of the waters of the sea; and
- (c) if the ship is a prescribed passenger ship, the discharge occurs –
  - (i) when the ship is within a special area; and
  - (ii) on or after a prescribed day.

**30. Sewage management directives**

- (1) After consulting with the Director of Public Health appointed in accordance with section 6 of the *Public Health Act 1997*, the Director may issue a directive in respect of the management of the discharge of sewage (a *sewage management directive*) by certain ships in State waters.
- (2) A sewage management directive is to specify –
  - (a) the ships to which it applies, if it only applies to certain ships; and
  - (b) the waters to which it applies, if it only applies to certain waters.

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- (3) A sewage management directive may specify any one or more of the following matters:
- (a) the application of different or variable requirements on ships in respect of the discharge of sewage;
  - (b) the waters in which the discharge of sewage is prohibited;
  - (c) the waters in which the discharge of sewage is restricted;
  - (d) the application of different treatment standards;
  - (e) any other matter that the Director considers necessary for ensuring –
    - (i) the protection of the aquatic environment from pollution by sewage from ships; or
    - (ii) the health and safety of human beings in relation to such pollution of the aquatic environment.
- (4) For the avoidance of doubt, a sewage management directive may do any one or more of the following:
- (a) apply to more than one type of ship;
  - (b) apply to more than one area of waters;
  - (c) be made so as to apply differently according to the matters, limitations or

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restrictions, whether as to time, circumstance or otherwise, specified in the sewage management directive.

- (5) After making a sewage management directive under subsection (1), the Director is to notify by public notice –
- (a) that the sewage management directive has been made; and
  - (b) where a copy of the sewage management directive may be obtained.
- (6) A sewage management directive takes effect –
- (a) on the day specified in the sewage management directive, being a day that is on or after the day on which the making of the sewage management directive is notified under subsection (5); or
  - (b) if no such day is specified, on the day after the day on which the making of the sewage management directive is notified under subsection (5).

**31. Power to require discharge of sewage at facility**

- (1) A prescribed officer may require, by written notice, the master or owner of a ship to cause sewage to be discharged from the ship to a specified facility that is suitable to receive that quantity of sewage, within a specified period, if the officer has reason to believe that retention of

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the sewage would create a risk of discharge of the sewage from the ship into the sea.

- (2) A notice under subsection (1) is to specify –
- (a) the facility to which the sewage is to be discharged; and
  - (b) the period within which the sewage is to be discharged; and
  - (c) the quantity of the sewage that must be discharged.
- (3) A person who is required to cause sewage to be discharged from a ship by a notice given under subsection (1) must ensure that the notice is complied with in respect of the ship.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; and
- (b) an individual, a fine not exceeding 250 penalty units.

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**PART 6 – PREVENTION OF POLLUTION BY  
GARBAGE**

**32. Interpretation**

Unless the contrary intention appears, an expression that is used in this Part and in Annex V to the Convention (whether or not a particular meaning is assigned to it by that Annex) has, in this Part, the same meaning as in that Annex.

**33. Prohibition of discharge of garbage into State waters**

(1) If –

- (a) a person engages in conduct that results in a discharge of garbage from a ship into State waters; and
- (b) the person knowingly causes, or is reckless or negligent as to causing, the discharge by that conduct –

the person is guilty of an offence.

Penalty: In the case of –

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

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- (2) Subject to subsections (4), (5), (6), and (7), if there is a discharge of garbage from a ship into State waters, the master, the charterer 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 1 000 penalty units; and
  - (b) an individual, a fine not exceeding 500 penalty units.
- (3) An offence against subsection (2) is a strict liability offence.
- (4) Subsection (2) does not apply to –
- (a) the discharge of garbage from a ship for the purpose of securing the safety of the ship and the persons on board the ship or of saving human life at sea; or
  - (b) the discharge of garbage from a ship, if –
    - (i) the discharge is due to damage to the ship or its equipment; and
    - (ii) all reasonable precautions were taken, before and after the damage to the ship, to prevent or minimise the discharge; or
  - (c) the discharge of food waste from a ship if the retention of that waste on board the ship presents an imminent health risk to the persons on board the ship; or

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- (d) the discharge of fishing gear from a ship if –
  - (i) the discharge is for the protection of the marine environment or for the safety of the ship or its crew; or
  - (ii) if all reasonable precautions were taken to prevent the discharge.
- (5) Subsection (2) does not apply to the discharge of garbage from a ship if –
  - (a) the discharge occurs when –
    - (i) the ship is not within a special area; and
    - (ii) the ship is proceeding *en route* and is as far as practicable from the nearest land; and
  - (b) the garbage discharged is animal carcasses; and
  - (c) the prescribed requirements are satisfied; and
  - (d) the discharge occurs when the ship is not alongside, or within 500 metres of, a fixed or floating platform.
- (6) Subsection (2) does not apply to the discharge of garbage from a ship if –

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- (a) the garbage is a cleaning agent or additive contained in deck wash water or other external surfaces wash water; and
  - (b) the cleaning agent or additive is not a prescribed cleaning agent or additive; and
  - (c) the discharge occurs when the ship is not alongside, or within 500 metres of, a fixed or floating platform; and
  - (d) the discharge occurs when –
    - (i) the ship is not within a special area; or
    - (ii) the ship is within a special area and is proceeding *en route*.
- (7) If –
- (a) garbage is discharged into State waters; and
  - (b) that garbage is mixed with, or contaminated by, other matter; and
  - (c) the discharge or disposal of that matter from a ship into the State waters is prohibited under another Part unless certain conditions are complied with; and
  - (d) the conditions referred to in paragraph (c) are more stringent than the conditions referred to in subsection (6) –

subsection (2) does not apply to the discharge of the garbage from a ship if those more stringent requirements are complied with.

**34. Power to require discharge of garbage at` facility**

- (1) A prescribed officer may require, by written notice, the master or owner of a ship to cause garbage to be discharged from the ship to a specified facility that is suitable to receive that quantity of garbage, within a specified period, if the officer has reason to believe that retention of the garbage would create a risk of discharge from the ship into the sea.
- (2) A notice under subsection (1) is to specify –
  - (a) the facility to which the garbage is to be discharged; and
  - (b) the period within which the garbage is to be discharged; and
  - (c) the minimum quantity of the garbage that must be discharged.
- (3) A person who is required to cause garbage to be discharged from the ship by a notice given under subsection (1) in respect of a ship must ensure that the notice is complied with in respect of the ship.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; and

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- (b) an individual, a fine not exceeding 250 penalty units.

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**PART 7 – PREVENTION OF POLLUTION FROM  
TRANSFER OPERATIONS**

**35. Interpretation**

In this Part –

*pipeline* means a purpose-built pipeline used in, or in connection with, a transfer operation;

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

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

**36. Prohibition of discharge of specified marine pollutant from ship or land during transfer operation**

(1) If –

- (a) a person engages in conduct that results in a discharge into State waters, from a ship or land, of a specified marine pollutant during, or in connection with, a transfer operation; and
- (b) the person knowingly causes, or is reckless or negligent as to causing, the discharge by that conduct –

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the person is guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 10 000 penalty units; and
- (b) an individual, a fine not exceeding 2 500 penalty units or imprisonment for a term not exceeding 4 years.

- (2) If a specified marine pollutant is discharged into State waters from a ship during, or in connection with, a transfer operation, the master, the charterer and the owner of the ship and the person in charge of the transfer operation are each guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; and
- (b) an individual, a fine not exceeding 500 penalty units.

- (3) If a specified marine pollutant is discharged into State waters from land during, or in connection with, a transfer operation, the occupier of the land is guilty of an offence.

Penalty: In the case of –

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- (a) a body corporate, a fine not exceeding 1 000 penalty units; and
  - (b) an individual, a fine not exceeding 500 penalty units.
- (4) An offence against subsection (2) or (3) is a strict liability offence.

**37. Prohibition of discharge of specified marine pollutant from pipeline used in transfer operation**

- (1) If –
- (a) a person engages in conduct that results in a discharge into State waters, from a pipeline, of a specified marine pollutant during, or in connection with, a transfer operation; and
  - (b) the person knowingly causes, or is reckless or negligent as to causing, the discharge by that conduct –

the person is guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 10 000 penalty units; and
- (b) an individual, a fine not exceeding 2 500 penalty units or imprisonment for a term not exceeding 4 years.

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(2) If a specified marine pollutant is discharged into State waters from a pipeline whether or not it is being used in, or in connection with, a transfer operation –

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

are each guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; and
- (b) an individual, a fine not exceeding 500 penalty units.

(3) An offence against subsection (2) is a strict liability offence.

**38. Prevention of discharge or spread of specified marine pollutant during transfer**

(1) In this section –

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***responsible person***, in relation to a transfer operation, means one of the following persons:

- (a) the master of the ship involved in the transfer operation;
  - (b) the charterer of the ship involved in the transfer operation;
  - (c) the owner of the ship involved in the transfer operation;
  - (d) the occupier of the land on which a pipeline used in the transfer operation is situated;
  - (e) the person in charge of the transfer operation.
- (2) A responsible person must take reasonable measures to –
- (a) prevent the discharge of a specified marine pollutant into State waters during, or in connection with, a transfer operation; and
  - (b) if a specified marine pollutant is discharged into State waters during, or in connection with, a transfer operation –
    - (i) contain the specified marine pollutant; and
    - (ii) prevent further spread of the specified marine pollutant.

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Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; and
- (b) an individual, a fine not exceeding 500 penalty units.

**39. Transfer of specified marine pollutant at night**

- (1) If a person proposes to transfer a specified marine pollutant from or to a ship in State waters between sunset and sunrise, the person responsible for that transfer is to submit, before the transfer takes place, a written request for permission to undertake the transfer to –
  - (a) the harbour master in charge of the waters in which the transfer is proposed to take place; or
  - (b) if there is no harbour master in charge of the waters in which the transfer is proposed to take place, the Director.
- (2) On receipt of a written request under subsection (1), the harbour master in charge of the waters in which the transfer referred to in the request is proposed to take place, or the Director, may, in writing –
  - (a) issue permission, with or without conditions; or
  - (b) refuse to issue permission –

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to undertake the transfer requested.

- (3) If a specified marine pollutant is transferred from or to a ship in State waters between sunset and sunrise and –
- (a) permission in writing has not been issued in accordance with subsection (2); or
  - (b) the pollutant is transferred in contravention of a condition attached to a permission issued in accordance with subsection (2) –

the master, the charterer 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 5 000 penalty units; and
  - (b) an individual, a fine not exceeding 1 250 penalty units or imprisonment for a term not exceeding 2 years.
- (4) If a specified marine pollutant is transferred from a ship to land, or from land to a ship, between sunset and sunrise and –
- (a) permission in writing has not been issued in accordance with subsection (2); or
  - (b) the pollutant is transferred in contravention of a condition attached to a

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permission issued in accordance with subsection (2) –

the occupier of the land is guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 5 000 penalty units; and
  - (b) an individual, a fine not exceeding 1 250 penalty units or imprisonment for a term not exceeding 2 years.
- (5) An offence under subsection (3) or (4) is a strict liability offence.
- (6) In the case of a transfer to be carried out at a place where transfers are frequently and regularly carried out –
- (a) the requests for permission under subsection (1) may be a general request that transfers may be carried out within a period specified in the request; and
  - (b) the permissions issued under subsection (2) may be general and subject to such conditions as the harbour master in charge of the waters in which the transfer is proposed to take place, or the Director, thinks fit.

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**40. Discharges to which this Part does not apply**

- (1) Section 36(1) or (2), section 37(1) and section 39(3) or (4) do not apply to a discharge from a ship or a pipeline if the discharge was for the purpose of securing the safety of the ship or another ship, or saving human life.
- (2) Sections 36 and 37 do not apply to a discharge –
  - (a) if the discharge occurs –
    - (i) on the landward side of the first isolating valve on land of a pipeline whether or not it is being used in, or in connection with, a transfer operation at the time of the discharge; or
    - (ii) at any other place prescribed by the regulations for the purposes of this section; or
  - (b) 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; or
  - (c) if the discharge was carried out –
    - (i) by a person to whom an environment protection notice has been issued under section 44 of the *Environmental Management and Pollution Control Act 1994* in relation to the discharge of a

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specified marine pollutant during,  
or in connection with, a transfer  
operation; and

(ii) in accordance with the  
requirements of the notice.

**41. Duty to notify of discharge of specified marine pollutant during transfer operation**

(1) In this section –

*relevant person*, in relation to a discharge,  
means a person who would be liable  
under an offence in subsection (2), (3) or  
(4) in respect of the discharge.

(2) If a discharge into State waters of a specified marine pollutant from a ship occurs during, or in connection with, a transfer operation, the master of the ship must notify a prescribed officer as soon as possible, and in the prescribed manner, of the incident.

Penalty: Fine not exceeding 500 penalty units.

(3) If a discharge into State waters of a specified marine pollutant from land occurs during, or in connection with, a transfer operation, the person whose conduct has resulted in that discharge and the occupier of the land must each ensure that a prescribed officer is notified as soon as possible, and in the prescribed manner, of the incident.

Penalty: Fine not exceeding 500 penalty units.

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- (4) If a discharge into State waters of a specified marine pollutant from a pipeline occurs during, or in connection with, a transfer operation, the person whose conduct has resulted in that discharge and a person who may be liable for an offence under section 37(2) must each ensure that a prescribed officer is notified as soon as possible, and in the prescribed manner, of the incident.

Penalty: Fine not exceeding 500 penalty units.

- (5) Subsections (2), (3) and (4) do not apply in relation to a discharge into State waters of a specified marine pollutant during, or in connection with, a transfer operation if it is not possible, in the circumstances, for the master of the ship to notify a prescribed officer of the discharge in the prescribed manner.
- (6) Subsections (3) and (4) do not apply to a person in relation to a discharge into State waters of a specified marine pollutant from land or a pipeline, respectively, during, or in connection with, a transfer operation if the person reasonably believes that another person specified in subsection (3) or (4) respectively has complied with that subsection in relation to the incident.
- (7) If a discharge into State waters of a specified marine pollutant occurs from a ship during, or in connection with, a transfer operation and –

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- (a) the master of the ship fails to comply with subsection (2), for any reason, in relation to the discharge; or
- (b) the ship is abandoned as a result of the circumstances in which the discharge occurs –

the charterer, owner, manager, operator or agent of the ship must each ensure that a prescribed officer is notified as soon as possible, and in the prescribed manner, of the discharge.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; and
  - (b) an individual, a fine not exceeding 500 penalty units.
- (8) An offence under subsection (2), (3), (4) or (7) is a strict liability offence.
- (9) Subsection (7) does not apply to a person in relation to a discharge into State waters of a specified marine pollutant from a ship during, or in connection with, a transfer operation if –
- (a) the person was not aware of the incident; or
  - (b) the person reasonably believes that another person specified in subsection (7) has complied with that subsection in relation to the incident; or

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- (c) in the case of a discharge of a specified marine pollutant from a ship during, or in connection with, a transfer operation to which subsection (7) applies, the person did not know or could not reasonably be expected to know that the master of the ship had not complied with subsection (2) in relation to the incident.
- (10) Subsection (6) is not to be taken to limit by implication any defence that would, but for that subsection, be available to a person charged with an offence against subsection (3) or (4).
- (11) Subsection (9) is not to be taken to limit by implication any defence that would, but for that subsection, be available to a person charged with an offence against subsection (7).

**42. Interaction of this Part with prohibitions on discharges under other Parts of Act**

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

**PART 8 – MISCELLANEOUS**

***Division 1 – State Marine Pollution Committee***

**43. Continuation of State Marine Pollution Committee**

- (1) The State Marine Pollution Committee, established by the *Pollution of Waters by Oil and Noxious Substances Act 1987* as in force immediately before the day on which section 80 of this Act commences, is continued, for the purposes of this Act, as the State Marine Pollution Committee.
- (2) Subject to subsection (4), the Committee is to consist of –
  - (a) the Secretary of the Department; and
  - (b) the person responsible within the Department for oil pollution control, or his or her deputy, as nominated by the Secretary of the Department; and
  - (c) a person to represent each of the following Acts, as appointed by the responsible Department in relation to the Act:
    - (i) the *Emergency Management Act 2006*;
    - (ii) the *Living Marine Resources Management Act 1995*;
    - (iii) the *Marine and Safety Authority Act 1997*;

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- (iv) the *Nature Conservation Act 2002*;
- (v) the *Police Service Act 2003*; and
- (d) a representative of each of the following bodies:
  - (i) AMSA;
  - (ii) the Australian Marine Oil Spill Centre Pty Ltd (ABN 76 051 958 868);
  - (iii) the Local Government Association of Tasmania;
  - (iv) MAST;
  - (v) the Tasmania Fire Service established by the *Fire Service Act 1979*;
  - (vi) the Tasmanian Ports Corporation Pty. Ltd. (ABN 82 114 161 938).
- (3) The Director is to be the chairperson of the Committee.
- (4) If the chairperson of the Committee considers that the circumstances of an incident warrant it, he or she may direct that, for the purpose of responding to that incident –
  - (a) the person referred to in subsection (2)(b) is to be excluded from the Committee; or

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- (b) a particular representative of an Act referred to in subsection (2)(c) is to be excluded from the Committee; or
  - (c) a particular body referred to in subsection (2)(d) is to be excluded from the Committee; or
  - (d) more than one representative of an Act referred to in subsection (2)(c), or a body referred to in subsection (2)(d) is to be included in the Committee; or
  - (e) one or more representatives of a body not referred to in subsection (2)(d) are to be included in the Committee.
- (5) If a body referred to in subsection (2)(d) changes its name to another name, or ceases to exist under that name, the Governor may, by order, amend subsection (2) by substituting for the name of that body –
- (a) the other name; or
  - (b) the name of some other body which the Governor is satisfied represents substantially the same interests as those represented by the first-mentioned body.
- (6) The Committee has the following functions:
- (a) inform and advise the State Government on marine pollution and marine pollutant spills;

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- (b) prepare and update from time to time a plan to combat incidents of marine pollution and marine pollutant spills;
- (c) when a meeting of the Committee is convened by the Director in relation to a marine pollutant spill incident in accordance with section 48, perform the functions imposed on it by that section;
- (d) make recommendations on the training and equipment necessary to combat marine pollution and marine pollutant spills.

**44. Meetings of Committee**

- (1) A meeting of the Committee may be convened by the chairperson of the Committee, or by any 2 or more members of the Committee.
- (2) A quorum at a duly convened meeting of the Committee is constituted by 6 members of the Committee.
- (3) A duly convened meeting of the Committee at which a quorum is present is competent to transact any business of the Committee.
- (4) A question arising at a meeting of the Committee is to be determined by a majority of votes of the members of the Committee present and voting and, in the event of an equality of votes, the matter is to be taken to have been passed in the negative.

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- (5) The chairperson of the Committee is to preside at all meetings of the Committee at which he or she is present.
- (6) If the chairperson of the Committee is not present at a meeting of the Committee, a member of the Committee elected by the members present is to preside at that meeting.
- (7) The Committee is to keep full and accurate minutes of its proceedings at meetings.
- (8) Unless otherwise specified in the Act, the procedure for the calling of, and for the conduct of business at, meetings of the Committee is to be as determined by the Committee.
- (9) The Minister may direct the Committee to allow a person to be present at any specified meeting of the Committee and that person may take part in the Committee's deliberations but may not vote on any question before a meeting of the Committee.

***Division 2 – Provision of waste reception facilities***

**45. Interpretation**

In this Division –

*facilities* includes facilities that are permanent, temporary, fixed or mobile.

**46. Director may provide waste reception facilities**

The Director may –

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- (a) provide for, or arrange for the provision of, facilities to receive marine pollutants; or
- (b) enter into an agreement with another person in respect of the provision of such facilities.

**47. Director may direct person to provide waste reception facilities**

(1) In this section –

*terminal* includes an oil depot, oil installation and any other place used for the loading or unloading of oil or noxious liquid substances in bulk.

(2) The Director may, by written notice, direct the owner or occupier of –

- (a) a port or terminal; or
- (b) an establishment at which repair or other work is performed on ships, if the repair or work involves the disposal of –
  - (i) oily mixtures within the meaning of Annex I to the Convention; or
  - (ii) mixtures that include noxious liquid substances within the meaning of Annex II to the Convention; or
  - (iii) oil residues within the meaning of Annex I to the Convention; or

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- (iv) residues of noxious liquid substances within the meaning of Annex II to the Convention; or
  - (v) sewage within the meaning of Annex IV to the Convention; or
  - (vi) wastes or residues from an exhaust gas cleaning system within the meaning of Annex V to the Convention; or
- (c) an establishment at which ships are berthed, docked or otherwise present –
- to provide facilities for the reception or disposal of specified marine pollutants, and marine pollutant residues, by ships berthed, docked or otherwise present at the port, terminal or establishment.
- (3) A notice given under subsection (2) to the owner or occupier of a port, terminal or establishment –
- (a) is to direct that the owner or occupier make the facilities available at that port, terminal or establishment to enable ships to dispose of marine pollutants and marine pollutant residues; and
  - (b) is to specify the type or types of marine pollutants and marine pollutant residues that the facilities are to receive; and
  - (c) is to specify the period for which the facilities are to be made available;

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- (d) may state a period within which a direction is to be complied with; and
  - (e) is to be signed by the Director.
- (4) If a notice is given under subsection (2) in respect of a port, terminal or establishment, the owner or occupier of that port, terminal or establishment must comply with the notice.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; and, in the case of a continuing offence, a further fine not exceeding 100 penalty units for each day during which the offence continues; and
- (b) an individual, a fine not exceeding 500 penalty units; and, in the case of a continuing offence, a further fine not exceeding 50 penalty units for each day during which the offence continues.

***Division 3 – Powers and procedures in relation to incidents***

**48. Committee procedure on marine pollutant spill incident**

- (1) In this section –

***incident controller*** means the person having the immediate responsibility, on behalf of

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the State, for the management of operations in response to an actual or potential marine pollutant spill or oil spill;

***oil spill*** means a discharge into State waters of any one, or any combination, of the following substances (whether in bulk, packaged or another form):

- (a) oil within the meaning of Annex 1 to the Convention;
  - (b) an oily mixture within the meaning of Annex 1 to the Convention;
  - (c) a residue of a substance specified in paragraph (a) or (b).
- (2) Subject to subsection (3), the Director must immediately convene a meeting of the Committee if a marine pollutant spill occurs, or appears reasonably likely to occur.
- (3) Subsection (2) does not apply if the Director –
- (a) is satisfied that –
    - (i) the marine pollutant spill is, or is likely to be, an oil spill of less than 10 tonnes; or
    - (ii) the marine pollutant spill is, or is likely to be, only garbage, within the meaning of Annex V to the Convention, or sewage, within

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the meaning of Annex IV to the Convention, or both; and

- (b) reasonably believes that there is no serious threat or danger to State waters, the coastline or another part of the State's physical environment or the related interests of the State.
- (4) The Committee has the following functions in respect of a marine pollutant spill:
- (a) to make recommendations to the Director, the incident controller and inspectors regarding the marine pollutant spill and the response to that marine pollutant spill;
  - (b) to coordinate the provision of advice to the State Government regarding the marine pollutant spill and the response to that marine pollutant spill, as necessary, by other levels of government;
  - (c) to monitor the implementation of decisions taken by the State Government related to the marine pollutant spill and the response to that marine pollutant spill, as necessary, and make recommendations to the incident controller or other persons for remedial or further action;
  - (d) to facilitate communication between governments and persons involved in dealing with the marine pollutant spill or the oil spill, including, in particular, the

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communications to and from the incident controller and inspectors.

**49. Emergency declarations**

(1) In this section –

*State law* means a law of the State, or a council by-law, relating to the State’s physical environment.

(2) The Minister may, by emergency declaration, declare that a State law, other than the *Emergency Management Act 2006*, is of no effect to such extent, either as to scope or area, or both, and for such period, not exceeding 14 days, as is specified in the declaration if the Minister is satisfied on reasonable grounds that –

(a) a maritime casualty, or other incident, involving the actual or potential marine pollutant spill into State waters has occurred, or is reasonably likely to occur; and

(b) the incident, by its nature or magnitude, constitutes a grave and imminent threat to –

(i) State waters, the coastline or another part of the State’s physical environment; or

(ii) the related interests of the State; and

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- (c) urgent action must be taken to deal with the incident; and
  - (d) the State law is inconsistent with, or would impede, the taking of that action.
- (3) The Minister is not required to engage in consultation about the emergency declaration.
- (4) An emergency declaration made under subsection (2) –
  - (a) takes effect on the day on which it is made by the Minister, unless another day is specified for this purpose in the declaration; and
  - (b) must identify the incident and describe the nature of the emergency; and
  - (c) is to be published in the *Gazette*; and
  - (d) may be published in such other ways as the Minister sees fit; and
  - (e) expires 14 days after it is made unless sooner revoked by the Minister.
- (5) The Minister must revoke the emergency declaration before its expiry if the Minister is satisfied that the emergency has passed, or abated to such an extent that the declaration is no longer warranted.
- (6) A notice of the revocation of a declaration under subsection (5) –
  - (a) is to be published in the *Gazette*; and

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- (b) may be published in such other ways as the Minister sees fit.
- (7) The Minister must cause a copy of the emergency declaration to be laid before each House of Parliament within the first 3 sitting-days of that House after the emergency declaration is made, whether or not the emergency declaration has expired or been revoked.
- (8) Either House of Parliament may pass a motion to disallow the emergency declaration.
- (9) Disallowance of the emergency declaration under subsection (8) renders it void but does not affect the validity of anything done under the emergency declaration before the passing of the motion of disallowance.
- (10) If a House of Parliament passes a motion to disallow the emergency declaration, the Clerk of that House must cause notice of the motion to be –
- (a) given to the Minister immediately; and
- (b) published in the *Gazette* as soon as practicable.

**50. Powers of inspectors**

- (1) In this section –

*approved interpreter* means –

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- (a) a person who is accredited as an interpreter by the National Accreditation Authority for Translators and Interpreters Ltd (ABN 42 008 596 996); or
  - (b) a prescribed person.
- (2) For any reasonable purpose connected with the enforcement of this Act, an inspector may undertake any one or more of the following actions:
  - (a) go on board a ship or enter land with such assistants and equipment as the inspector considers necessary;
  - (b) require the master of a ship to take such steps as the inspector directs to facilitate the boarding of the ship;
  - (c) require the occupier of land to take such steps as the inspector directs to facilitate the entry onto the land;
  - (d) inspect or test any plant, equipment, machinery, vehicle or other thing for the purpose of determining whether a provision of this Act is being, or has been, complied with, or cause or require it to be so inspected or tested, or seize it or require its production for such inspection or testing;
  - (e) require the master of a ship to take such steps as the inspector directs to facilitate

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- the examination or testing of any machinery or equipment of the ship;
- (f) require the occupier of land to take such steps as the inspector directs to facilitate the inspection or testing of any structure, plant, equipment, machinery, vehicle or other thing on the land;
  - (g) open, or require the master of a ship, or the occupier of land, to cause to be opened, any hold, bunker, tank, compartment, or receptacle, on the ship or land and inspect the contents of any hold, bunker, tank, compartment, or receptacle, on the ship or land;
  - (h) require the master of a ship to produce a record book required to be carried on a ship or any other books, documents, or records, relating to the ship or its cargo, that are carried in the ship;
  - (i) require the occupier of land to produce a book, document or record;
  - (j) make copies of, or take extracts from, any books, documents, or records, referred to in paragraph (h) or (i);
  - (k) require the master of a ship, the occupier of land or any person representing the master or occupier, to produce any substances being on or in the vicinity of a ship or land;

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- (l) examine, either alone or in the presence of an assistant, and take samples of, any substances being on or in the vicinity of a ship or land;
  - (m) require the master of a ship, the occupier of land, or any person representing the master or occupier, to certify the taking of the samples;
  - (n) require a person on the ship or present on the land to answer questions put by the inspector and to sign a declaration of the truth of those answers.
- (3) In the course of the exercise of his or her powers under this Act, an inspector may –
- (a) use such force as is reasonably necessary, including the use of reasonable force to break into or open any part of, or anything on, a ship or land, other than a structure or a part of a structure on land being used as a dwelling; and
  - (b) take such photographs, films or audio, video or other recordings on, or in the vicinity of, a ship or land as he or she considers necessary; and
  - (c) use, or operate, such plant, equipment, machinery, vehicle or other thing on a ship or land as is necessary to exercise those powers.

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- (4) An inspector who goes on board a ship, or enters land, in accordance with subsection (2) may be accompanied by an approved interpreter.
- (5) A requirement or question that is made or put on behalf of an inspector by an approved interpreter is to be taken to have been made or put by the inspector, and the answer to such a question made to the approved interpreter is to be taken to have been made to the inspector.
- (6) When boarding a ship, or entering land, in accordance with this section, an inspector is to –
  - (a) if the inspector is not a police officer, produce an authority, issued to the inspector under section 7, if requested to do so; or
  - (b) if the inspector is a police officer, identify himself or herself as a police officer –to the master of the ship, or the occupier of the land, or the representative of the master or occupier.
- (7) A person must not –
  - (a) without reasonable excuse –
    - (i) refuse to permit an inspector or the assistant of an inspector to go on board a ship, or enter land, in accordance with this section; or

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- (ii) hinder or obstruct an inspector in the exercise of his or her powers under subsection (2); or
  - (iii) refuse or fail to comply with a requirement made by an inspector in the exercise of those powers; or
- (b) in answer to a question that the person is required to answer under subsection (2) or in a declaration signed by him or her in accordance with a requirement under subsection (2)(n), make a statement that is false or misleading in a material particular without –
- (i) indicating that the statement is false or misleading and the manner in which it is false or misleading; and
  - (ii) giving any correct information that is in the person’s control if the person has, or can reasonably obtain, the correct information.

Penalty: Fine not exceeding 200 penalty units.

**51. Detention powers of Director**

- (1) The Director may order the detention of an Australian ship, or a foreign ship, if the ship is in State waters and –

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- (a) there are clear grounds for believing that a marine pollutant spill has occurred as a result of acts or omissions in relation to the ship; or
  - (b) the Director is recovering costs in accordance with section 55(2)(a) from the master, charterer or owner of the ship.
- (2) For the purposes of detaining a ship under subsection (1), the Director may go on board the ship with such assistants and equipment as the Director considers necessary.
- (3) If a ship is detained under subsection (1), the Director may require the ship to be escorted to a port.
- (4) The ship must be released immediately if –
  - (a) financial security is provided by a person in accordance with subsection (5); or
  - (b) all proceedings that have been instituted in respect of a marine pollutant spill have –
    - (i) been discontinued; or
    - (ii) been concluded (whether or not any appeal is pending) without any person being convicted of an offence or being found liable to pay an amount of money; or

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- (iii) have been concluded, and all penalties or other amounts of money, and all costs ordered to be paid, in respect of the marine pollutant spill have been paid; or
  - (c) the Director forms the belief that the marine pollutant spill did not occur, or did not occur as a result of actions in relation to the ship; or
  - (d) if the ship is detained under subsection (1)(b), the costs to be recovered as referred to in that subsection have been paid in full; or
  - (e) the Director determines for any other reason that the ship should be released.
- (5) Financial security for the release of a ship under subsection (4)(a) must be –
  - (a) provided in a form acceptable to the Director; and
  - (b) an amount that, in the Director’s opinion, is equivalent to the maximum total amount of all penalties, other amounts of money and costs that may be payable by the master and any other member of the crew of the ship and the owner of the ship in respect of the marine pollutant spill.
- (6) The master, charterer and owner of the ship are each guilty of an offence if –

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- (a) the ship was detained at a port but leaves the port; or
- (b) the ship was detained within State waters but leaves the outer limits of State waters –

before it is released from detention under this section.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 000 penalty units and, in the case of a continuing offence, a further fine not exceeding 200 penalty units for each day during which the offence continues; and
  - (b) an individual, a fine not exceeding 1 000 penalty units and, in the case of a continuing offence, a further fine not exceeding 100 penalty units for each day during which the offence continues.
- (7) An offence under subsection (6) is a strict liability offence.
- (8) Without limiting any other available defence, subsection (6) does not apply to the owner of the ship if the owner –
- (a) is not aware of the ship leaving before it is released from detention; or

- (b) has ordered the charterer or master of the ship to comply with the Director's order in respect of the detention of the ship.
- (9) While a foreign ship is detained under subsection (1), a person does not have the power of seizure provided for by section 123 of the *Personal Property Securities Act 2009* of the Commonwealth, in relation to the ship.

**52. Powers of Director to prevent or clean up marine pollution**

- (1) The Director may take any preventative or clean-up action that the Director thinks fit, or cause any preventative or clean-up action that the Director thinks fit to be taken, if the Director is satisfied that –
  - (a) there is a reasonable likelihood of a marine pollutant spill occurring; or
  - (b) a marine pollutant spill has occurred or is occurring.
- (2) For the purposes of subsection (1), a preventative or clean-up action may include, but is not limited to, any one or more of the following:
  - (a) an action taken to –
    - (i) plan, coordinate and implement the response to an actual or potential marine pollutant spill; or

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- (ii) prevent or limit a marine pollutant spill; or
- (iii) stop, reduce, contain, disperse or dispose of a marine pollutant spill; or
- (iv) remove a marine pollutant spill from water or land affected by the marine pollutant spill; or
- (v) minimise damage resulting from or likely to result from a marine pollutant spill; or
- (vi) safeguard human or animal life or the physical environment; or
- (vii) clean up and otherwise rehabilitate the physical environment or anything else that may have been damaged because of the actual or potential marine pollutant spill; or
- (viii) procure and deploy machinery, equipment or material to deal with the actual or potential marine pollutant spill or with its effects or probable effects; or
- (ix) procure and deploy expertise, labour or other human resources to deal with the actual or potential marine pollutant spill or with its effects or probable effects; or

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- (x) restrict access to, or prohibit an action in relation to, land affected by the marine pollutant spill;
  - (b) a *critical action* as defined in section 53, provided that the Director complies with the requirements of that section in respect of the taking of the action;
  - (c) any other action as prescribed.
- (3) For the purposes of subsection (1), an inspector, or an officer, employee or agent of the Director, using such force as is reasonable in the circumstances, may do one or more of the following:
- (a) enter, take and retain possession of any ship, land, apparatus, facility or pipeline, other than a structure or part of a structure on land being used as a dwelling;
  - (b) take and retain possession of any substance or thing;
  - (c) use and operate any apparatus or machinery.

**53. Powers of Director in case of maritime casualty**

- (1) In this section –

*critical action* includes, but is not limited to, any one or more of the following actions:

- (a) moving a ship;

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- (b) moving cargo within a ship or removing (other than by jettisoning) cargo from a ship;
- (c) taking measures to salvage a ship, part of a ship, a ship's fuel or a ship's cargo;
- (d) jettisoning or destroying all or part of a ship's cargo;
- (e) sinking or destroying all or part of a ship;
- (f) taking on, moving or discharging a ship's ballast;
- (g) taking emergency measures in respect of a fire, gas or marine pollutant;
- (h) evacuating people or animals from a ship;

*master* does not include the Director when he or she is in control of a ship for the purposes of this section;

*ship* includes the ship's cargo.

- (2) If the Director is satisfied on reasonable grounds, following a maritime casualty or an act related to a maritime casualty, that the maritime casualty or the act, by its nature or magnitude, constitutes grave and imminent danger to State waters, the coastline or another part of the State's physical

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environment or the related interests of the State,  
the Director may –

- (a) assume control of the ship using such force as is reasonable in the circumstances, boarding it if necessary, with or without assistants and equipment, and take critical action; or
  - (b) direct the master, charterer, owner or a salvor to take critical action.
- (3) A person must comply with a direction given under subsection (2)(b).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 5 000 penalty units; and
  - (b) an individual, a fine not exceeding 2 000 penalty units.
- (4) If the critical action referred to in subsection (2) involves the destruction of the ship or part of the ship, or the jettisoning or destruction of all or part of its cargo, the Director must first, if it is practicable to do so, make a reasonable attempt to obtain approval from the Minister for –
- (a) the action to be taken under subsection (2)(a); or
  - (b) the direction to take the action to be given under subsection (2)(b).

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- (5) The provisions of section 50(4), (5) and (6) and section 52 have the same application to the exercise of the Director's powers under this section as those provisions have to the exercise of the Director's powers under those sections.
- (6) Unless it has been abandoned or evacuated by its crew, the Director is taken to have assumed control of a ship under the power conferred by this section as soon as he or she has –
  - (a) identified himself or herself to the master of the ship; and
  - (b) subject to subsection (7), given the master of the ship written notice that the Director is exercising the power to assume control of the ship.
- (7) If it is not practicable for the notice to be in writing it may be given orally and confirmed in writing as soon as practicable after it has been given.
- (8) The Director, or a person who has been directed to take critical action under subsection (2), in taking control of a ship, has power to do all the things that may be necessary or expedient for the purposes of exercising that control.
- (9) If the Director has assumed control of a ship under this section, he or she must, if it is possible and safe to do so, relinquish that control to its master as soon as practicable after taking, or deciding not to take, a critical action.
- (10) A person must not –

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- (a) prevent the Director from exercising a power under this section; or
- (b) hinder, threaten or endanger the Director in the exercise of a power under this section; or
- (c) disobey an order or signal given by the Director when the Director is in control of a ship under this section.

Penalty: Fine not exceeding 500 penalty units.

- (11) Powers under this section must not be exercised in relation to a ship if similar powers under the *Fire Service Act 1979* are being exercised in relation to the ship.

***Division 4 – Legal matters***

**54. False or misleading statements**

A person must not, in a notice or report given to a prescribed officer in accordance with this Act, make a statement that is false or misleading in a material particular without –

- (a) indicating that the statement is false or misleading and the manner in which it is false or misleading; and
- (b) giving any correct information that is in the person's control if the person has, or can reasonably obtain, the correct information.

Penalty: In the case of –

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- (a) a body corporate, a fine not exceeding 1 000 penalty units; and
- (b) an individual, a fine not exceeding 500 penalty units.

**55. Recovery of costs of incidents**

- (1) The costs incurred by, or on behalf of, an inspector in the following circumstances are taken to be costs incurred on behalf of the Crown:
  - (a) costs incurred in carrying out any one or more of the preventative or clean-up actions referred to in section 52(2);
  - (b) costs incurred in respect of an actual, or potential, marine pollutant spill in State waters.
- (2) The Director, on behalf of the Crown, may recover the costs referred to in subsection (1) (the *recoverable costs*) from –
  - (a) if those costs are incurred in respect of a ship, the master, charterer or owner of the ship; or
  - (b) if those costs are incurred in respect of a facility on land, the owner or operator of the facility.
- (3) If costs are recoverable from a person under subsection (2), the Director may, by notice in writing to the person, fix a period, being not less

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than 28 days from the date of the notice, within which the recoverable costs must be paid by the person.

- (4) If the costs are not paid by the person within the period fixed by a notice under subsection (3), the person is liable to pay interest charged at the prescribed rate on the amount unpaid.
- (5) If interest is payable under subsection (4) –
  - (a) it is to capitalise every 90 days after the day on which it first becomes payable; and
  - (b) any part payment of the amount unpaid is to go to reduce the amount of interest owing on the recoverable costs before being applied to the recoverable costs.
- (6) A rate of interest prescribed for the purposes of subsection (4) may be prescribed –
  - (a) as a rate of interest, or as a means of calculating a rate of interest; and
  - (b) by reference to another rate of interest or means of calculating a rate of interest.
- (7) The Director, if unable to recover the whole or any part of the costs as provided by subsection (2), section 51 or section 56, must take such action as is necessary to obtain recompense from the Commonwealth under the National Plan for Maritime Environmental Emergencies maintained, amended and implemented by AMSA.

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- (8) Subsection (7) does not apply if the costs are incurred in respect of an action, or a marine pollutant spill, that primarily includes garbage.
- (9) For the purposes of this section, a cost is taken to have been incurred in dealing with an action or a marine pollutant spill regardless of whether the action has been carried out by the inspector referred to in subsection (1) or another person on behalf of an inspector.
- (10) In addition to subsection (9), a cost that is taken to have been incurred in dealing with an action or a marine pollutant spill includes such salaries, overtime and allowances paid to a person to undertake an activity specified in that subsection.
- (11) If the Director, on behalf of the Crown, recovers costs under this section that have been incurred by another body or organisation, the Director may provide the recovered costs to that body or organisation.

**56. Recovery of costs in court**

- (1) In this section –
  - recoverable costs* has the same meaning as in section 55.
- (2) Recoverable costs, including any interest payable under section 55(4), may –
  - (a) be awarded to the Crown in the course of proceedings for an offence against this

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Act in respect of the relevant discharge, whether or not the person against whom those proceedings are brought is convicted of the offence; or

- (b) be recovered in a court of competent jurisdiction as a debt due to the Crown, notwithstanding that proceedings have not been taken for an offence against this Act in respect of the relevant discharge.
- (3) In addition to any costs payable under subsection (2), a court may, on application by the Director on behalf of the Crown, order a person to pay the reasonable costs and expenses incurred by an inspector in the course of the investigation and prosecution of an offence against this Act, including, but not limited to, costs and expenses arising from –
- (a) the taking of any samples or the conduct of tests, examinations or analyses; and
  - (b) the taking of witness statements; and
  - (c) the gathering of other evidence; and
  - (d) the preparation and submission of a brief of evidence to any person acting on behalf of the applicant; and
  - (e) any appearance of counsel on behalf of the Crown; and
  - (f) other matters as prescribed.

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**57. Securing of costs**

- (1) A cost incurred under this Act, in respect of an action, or an omission, in respect of a ship, is taken to be a charge on that ship until those costs are recovered.
- (2) Subsection (1) does not apply in respect of costs if financial security has been provided in respect of those costs, to the satisfaction of the Director, under this Act.

**58. Right to claim damages**

- (1) In this section –

*appropriate authority* means –

- (a) in relation to the area of a port as determined under any Act, the body that is responsible for constructing, improving, managing, regulating or maintaining the port; or
  - (b) in relation to an area not within a port, the Government department or State authority having jurisdiction over the area.
- (2) Nothing in this Act affects, or qualifies, the right of an appropriate authority or of any other person to claim or recover damages in respect of the consequences of a marine pollutant spill into State waters, whether from a ship or otherwise.

**59. Right to collect fees and charges**

(1) In this section –

*service provider* means –

- (a) a port operator; or
  - (b) a person in charge of a facility specified in a notice issued under section 14, 24, 31 or 34.
- (2) Nothing in this Act prevents a service provider or any other person from collecting and retaining reasonable fees and charges incurred in respect of a ship as a result of –
- (a) the detention of the ship ordered by the Director under section 51; or
  - (b) the requirement to discharge a substance from the ship to a facility specified in a notice issued under section 14, 24, 31 or 34; or
  - (c) any other administrative matters in relation to the ship.

**60. Liability for simultaneous discharges**

- (1) If there is a simultaneous marine pollutant spill into State waters from 2 or more ships, and it is not possible or reasonably practicable to identify the spill from a particular ship, all of the spill may, for the purposes of this Act, be taken to have been discharged or jettisoned from each of the ships.

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- (2) If subsection (1) applies, a person may be charged with and convicted of an offence in respect of the marine pollutant spill from one ship whether or not any person is charged with or convicted of an offence in respect of the marine pollutant spill from another ship.
- (3) For the purposes of this section, events are taken to be simultaneous if they happen within 24 hours of each other.

**61. Multiple offenders**

- (1) This section applies if a provision of this Act provides (expressly or impliedly) that 2 or more persons are liable for an offence.
- (2) Proceedings for an offence may be taken against all or any of the persons liable for the offence.
- (3) Proceedings for an offence may be taken against any of the persons liable for the offence –
  - (a) regardless of whether or not proceedings have been commenced against any of the other persons liable for the offence; and
  - (b) if proceedings have been commenced against any of the other persons liable for the offence, regardless of whether or not the proceedings have been concluded; and
  - (c) if proceedings have been concluded against any of the other persons liable for

the offence, regardless of the outcome of the proceedings.

- (4) This section has effect subject to any provision of this Act to the contrary.

## **62. Immunity of inspectors and others**

- (1) No liability attaches to an inspector, or a person acting with the authority, or on the direction of, an inspector, acting in good faith and –
- (a) in the exercise or purported exercise of a power under this Act; or
  - (b) in the discharge or purported discharge of a function under this Act; or
  - (c) in undertaking any preventative or clean-up action within the meaning of section 52.
- (2) Subsection (1) does not preclude the Crown from incurring liability that an inspector or other person would, but for that subsection, incur.
- (3) No liability attaches to any other person acting in good faith under this Act and –
- (a) in the exercise, or purported exercise, of a power under this Act; or
  - (b) in the discharge, or purported discharge, of a function under this Act; or

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- (c) in undertaking any preventative or clean-up action within the meaning of section 52.

**63. Service**

- (1) A document to be served on the master or any other member of the crew of a ship, or on a charterer, or on the owner of a ship, in respect of an offence against this Act may instead be served on the agent of the ship.
- (2) A document served on the agent of the ship under subsection (1) is taken to have been served on the master or other member of the crew of the ship, or on a charterer, or on the owner of the ship, as the case requires.

**64. Certificates by Minister**

The Minister may, in writing and signed by him or her, certify that a document set out in, or annexed to, the certificate –

- (a) sets out the terms of the Convention; or
- (b) sets out the terms of the 1978 Protocol –

and such a certificate is, for all purposes, admissible in proceedings as *prima facie* evidence of the matters so certified.

**65. Prosecution of offences**

- (1) An offence against a provision of this Act, other than section 50(7) or a provision of the regulations, is an indictable offence.
- (2) Despite subsection (1), an indictable offence under that subsection may, with the consent of the prosecutor and defendant, be heard and determined by a court of summary jurisdiction, if the court is satisfied that it is proper to do so.

**66. Time limits for prosecutions**

- (1) Subject to subsection (2), a prosecution for an offence against this Act may be brought at any time.
- (2) If the prosecution relates to an act or omission that involves a foreign ship –
  - (a) the prosecution must not be brought more than 3 years after the act or omission; and
  - (b) the prosecution must be suspended if, under paragraph 1 of Article 228 of the Law of the Sea Convention, the prosecution is required to be suspended, and must be terminated if under that paragraph the prosecution is required to be terminated.
- (3) In this section –

*Law of the Sea Convention* means the United Nations Convention on the Law of the

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Sea made at Montego Bay on 10  
December 1982.

**67. Criminal responsibility &c.**

- (1) If, in proceedings for an offence against this Act in respect of any conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that a director, employee or agent of the corporation, being a director, employee or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.
- (2) Any conduct engaged in on behalf of a corporation –
  - (a) by a director, employee or agent of the corporation within the scope of his or her actual or apparent authority as a director, employee or agent; or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the corporation, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent –

is taken, for the purposes of a provision of this Act that creates an offence, to have been engaged in by the corporation.

- (3) A reference in subsection (1) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the intention, opinion, belief or purpose.

### **68. Evidence**

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

- (a) any record kept in pursuance of this Act is admissible as *prima facie* evidence 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 *prima facie* evidence 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 such a certified copy as referred to in paragraph (b), is to, unless the contrary is proved, be taken to be such a record or certified copy, as the case may be.

### **69. Evidence of analyst**

- (1) In this section –

*analyst* means –

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- (a) an analyst appointed under section 100 of the *Environmental Management and Pollution Control Act 1994* while he or she is so appointed under that Act; or
  - (b) a person appointed under subsection (2).
- (2) The Director may, in writing, appoint a person whom he or she considers appropriately qualified to be an analyst for the purposes of this Act.
- (3) Subject to subsection (5), a certificate signed by an analyst setting out, in relation to a substance, one or more of the following matters:
  - (a) when and from whom the substance was received;
  - (b) what labels or other means of identifying the substance accompanied it when it was received;
  - (c) what container the substance was in when it was received;
  - (d) a description of the substance received;
  - (e) that he or she has analysed or examined the substance;
  - (f) the date on which the analysis or examination was carried out;
  - (g) the method used in conducting the analysis or examination;

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(h) the results of the analysis or examination –

is admissible in any proceeding for an offence against a provision of this Act as *prima facie* evidence of the matters in the certificate and the accuracy of the results of the analysis or examination.

- (4) For the purposes of this section, a document purporting to be a certificate referred to in subsection (3) is to, unless the contrary is proved, be taken to be such a certificate.
- (5) A certificate referred to in subsection (3) is not to be received in evidence in pursuance of that subsection 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.
- (6) Where, in pursuance of subsection (3), 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 he or she had given evidence of the matters stated in the certificate.
- (7) Subsection (6) does not entitle a person to require an analyst to be called as a witness for the prosecution unless –
- (a) the prosecutor has been given at least 5 days' notice of the person's intention to require the analyst to be so called; or

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- (b) the Court, by order, allows the analyst to be so called by the person.

***Division 5 – Infringement notices***

**70. Infringement notices**

- (1) In this section –

***infringement offence*** means an offence against this Act or the regulations made under this Act that is prescribed by the regulations to be an infringement offence.

- (2) An inspector may issue and serve an infringement notice on a person if he or she reasonably believes that the person has committed an infringement offence.
- (3) If the identity of a person referred to in subsection (2) cannot be readily ascertained or confirmed, an inspector may issue and serve an infringement notice on the occupier or person apparently in charge of the place or vessel at, on or in relation to which the officer is satisfied an infringement offence has been committed.
- (4) An infringement notice is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*.
- (5) The regulations –
- (a) may prescribe, for infringement offences, the penalties payable under infringement notices; and

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- (b) may prescribe different penalties for bodies corporate and individuals.
- (6) Regulations made for the purposes of subsection (5) may provide that an offence is an infringement offence for the purposes of this section only if it is constituted by conduct of a type specified in the regulations.

***Division 6 – Miscellaneous***

**71. Record books**

For the purposes of this Act, a record required to be kept under this Act in relation to a ship to which this Act applies may be kept as a record in a record book in accordance with the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* of the Commonwealth, if required to do so under that Act.

**72. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may be made in relation to one or more of the following purposes:
  - (a) to give effect to the Convention, other than provisions of the Convention to which effect is given by a provision of this Act, any other Act or any instrument made under any other Act;

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- (b) to fix fees to be paid in respect of any matters under this Act;
- (c) to prescribe penalties not exceeding –
  - (i) in the case of a natural person, a fine of 100 penalty units or imprisonment for a term not exceeding one year; or
  - (ii) in the case of a body corporate, a fine of 500 penalty units–for a contravention of a provision of the regulations or of any of the orders made under section 73;
- (d) to exempt, either absolutely or subject to conditions, a prescribed ship, or ships included in a prescribed class of ships, from all or any of the provisions of this Act or of the regulations;
- (e) to make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in orders made in pursuance of the regulations;
- (f) to 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 instrument made, determined or issued under any other Act or under

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any Act of the Parliament of the Commonwealth;

- (g) to make provision for and in relation to giving effect to regulations 13 and 16 of Annex II.
- (3) For the avoidance of doubt, if this Act requires a matter to be prescribed, that matter may be prescribed by reference to all, or any part of, a subordinate instrument specified in subsection (2)(f) with or without any modification prescribed in the regulations.
- (4) In proceedings for an offence against a provision of the regulations, a ship is to, unless the contrary is proved, be taken to be a regulated Australian vessel.
- (5) Regulations do not apply to a foreign ship if the ship is in a port within State waters, or in State waters on its way to or from a port in State waters, as the case may be, for the purpose of securing the safety of a ship or of human life.
- (6) Subject to subsection (5), the regulations may apply, with such modifications or exceptions as may be prescribed, any of the provisions of this Act relating to prescribed operations or prescribed occurrences carried out or occurring in, or in relation to, foreign ships at any time when they are in a port in State waters, or in State waters while on their way to or from a port in State waters.
- (7) Subsection (6) does not apply if –

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- (a) regulations relating to the same prescribed operations or prescribed occurrences have been made under section 32 of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* of the Commonwealth; and
  - (b) those regulations apply to foreign ships when they are in a port in State waters, or in State waters while on their way to or from a port in State waters.
- (8) The regulations may –
- (a) provide for savings or transitional matters necessary or expedient for bringing this Act into operation; and
  - (b) provide for any of those savings or transitional matters to take effect when this Act commences or on a later day specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

**73. Orders**

- (1) The Director may make orders in respect of any matter for, or in relation to, which provision may be made by the regulations.
- (2) Despite subsection (1), an order under this section may not include an offence.

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- (3) Unless the contrary intention appears, expressions used in orders made under this section have the same meaning as in this Act.
  - (4) An order made under this section is a statutory rule for the purposes of the *Rules Publication Act 1953*.
  - (5) The provisions of sections 47(3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply in relation to orders made under this section as if the orders were regulations.
  - (6) A person must comply with any applicable order made under this section.

Penalty: Fine not exceeding 100 penalty units.

**74. Commonwealth domestic commercial vessel national law and State laws prevail in certain circumstances**

- (1) In this section –

*Commonwealth domestic commercial vessel national law* has the same meaning as given by section 4 of the *Marine Safety (Domestic Commercial Vessel National Law Application) Act 2013*.

- (2) Regulations, and orders made under section 73, giving effect to Annex I, II, III, IV or V to the Convention do not apply in relation to a ship that is not a regulated Australian vessel, when the ship is in a particular area, so far as –

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- (a) a provision of the Commonwealth domestic commercial vessel national law gives effect to that Annex in relation to that ship when it is in that area; or
- (b) if paragraph (a) does not apply, a provision of another law of this State gives effect to that Annex in relation to that ship when it is in that area.

**75. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Environment; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Primary Industries, Parks, Water and Environment.

**76. Savings and transitional provisions**

The savings and transitional provisions specified in Schedule 1 have effect.

**77. Consequential amendments of regulations do not prevent their subsequent amendment**

The amendment by this Act of a provision of any regulations does not prevent that or any other

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provision of those regulations from being amended or rescinded by a subsequent regulation.

**78. Consequential amendments**

The legislation specified in Schedule 2 is amended as specified in that Schedule.

**79. Legislation repealed**

The legislation specified in Schedule 3 is repealed.

**80. Legislation rescinded**

The legislation specified in Schedule 4 is rescinded.

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**SCHEDULE 1 – SAVINGS AND TRANSITIONAL  
PROVISIONS**

Section 76

**1. Interpretation**

In this Schedule –

*former Act* means the *Pollution of Waters by Oil and Noxious Substances Act 1987* as in force immediately before the day on which section 80 of this Act commences.

**2. Authorized officer under former Act to be inspector**

- (1) A person who, immediately before the day on which section 7(1) of this Act commences, was appointed or authorised as an authorized officer under paragraph (a) of the definition of *authorized officer* in section 3(1) of the former Act is taken, on and from that day, to be an inspector appointed under section 7(1) of this Act on the same terms and conditions.
- (2) An authority issued to an authorized officer under section 26(7) of the former Act and in force immediately before the day on which section 7(2) of this Act commences, is taken, on and from that day, to be an authority issued to an inspector under section 7(2) of this Act on the same terms and conditions.

### **3. Sewage management directives**

A sewage management directive issued under section 25CC of the former Act and in force immediately before the day on which section 30 of this Act commences is taken, on and from that day, to be a sewage management directive issued under section 30 of this Act on the same terms and conditions.

### **4. Approvals by prescribed officers**

- (1) An approval by a prescribed officer given under section 8(3)(c) of the former Act and in force immediately before the day on which section 12(3)(c) of this Act commences is taken, on and from that day, to be an approval by a prescribed officer given under section 12(3)(c) of this Act on the same terms and conditions.
- (2) An approval by a prescribed officer given under section 20(2)(c) of the former Act and in force immediately before the day on which section 20(5)(c) of this Act commences is taken, on and from that day to be an approval by a prescribed officer given under section 20(5)(c) of this Act on the same terms and conditions.

### **5. Requests by prescribed officers**

- (1) If, immediately before the day on which section 13(3), section 23(3) or section 27(3) of this Act, whichever is relevant in the circumstances, commences, a prescribed officer has made a request for a report under section

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25I(6) of the former Act to a master of a ship and the report is not required to be furnished before that day, that request is taken to be a request under section 13(3), section 23(3) or section 27(3) of this Act, whichever is relevant in the circumstances.

- (2) If, immediately before the day on which section 13(9), section 23(9) or section 27(9) of this Act, whichever is relevant in the circumstances, commences, a prescribed officer has made a request for report under section 25I(7) of the former Act to the charterer, owner, manager or operator of a ship, within the meaning of the former Act, and that report has not been furnished before that day, that request is taken to be a request under section 13(9), section 23(9) or section 27(9) of this Act, whichever is relevant in the circumstances.
- (3) For the avoidance of doubt, a failure to furnish a report referred to in this clause is an offence against the section of this Act which is relevant in the circumstances.

**6. Requirements by authorized officers**

If, immediately before the day on which section 50(2) of this Act commences, an authorized officer has made a requirement of a person under section 26(1) of the former Act and the requirement, on that day, has not been fulfilled, the requirement is taken, on and from that day, to be a requirement made by an

inspector under section 50(2) of this Act on the same terms and conditions.

**7. Emergency declarations**

An emergency declaration made under section 25J of the former Act and in force immediately before the day on which section 49 of this Act commences, is taken, on and from that day, to be an emergency declaration made under section 49 of this Act.

**8. Maritime casualties**

If, immediately before the day on which section 53 of this Act commences, an authorized officer has assumed control of a ship or taken critical action in relation to the ship under section 26A of the former Act, the exercise of those powers is taken to be the exercise of the powers of the Director under section 53 of this Act.

**9. Approvals and permissions**

If, immediately before the day on which section 80 of this Act commences, an approval or permission is in force under sections 8(3)(c), 15(1), 20(2)(c), (6)(e), (7)(a), (8)(e), (9)(d), 21(1)(e), 25C(2)(c), 25CB(2)(d), 25F(2)(c) or 26A(2) of the former Act, that approval or permission is taken to remain in effect on the same terms and conditions under this Act and

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may be varied or revoked by the Director on and from that day.

**10. Defences to certain offences**

- (1) On and from the day on which section 80 of this Act commences, a person is not guilty of an offence under section 26(1) or (2) of this Act in respect of the discharge of packaged harmful substances into State waters from a ship if –
  - (a) immediately before that day, an approval by a prescribed officer given under section 25C(2)(c) of the former Act was in effect in relation to the ship; and
  - (b) the discharge of the packaged harmful substances into State waters, on and from that day, was in accordance with the terms and conditions of that approval.
- (2) On and from the day on which section 80 of this Act commences, a person is not guilty of an offence under section 29(1) or (2) of this Act in respect of the discharge of sewage into State waters from a ship if –
  - (a) immediately before that day, an approval by an authorized officer given under section 25CB(2)(d) of the former Act was in effect in relation to the ship; and
  - (b) the discharge of the sewage into State waters, on and from that day, was in accordance with the terms and conditions of that approval.

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- (3) On and from the day on which section 80 of this Act commences, a person is not guilty of an offence under section 33(1) or (2) of this Act in respect of the discharge of garbage into State waters from a ship if –
- (a) immediately before that day, an approval by a prescribed officer given under section 25F(2)(c) of the former Act was in effect in relation to the ship; and
  - (b) the discharge of the garbage into State waters, on and from that day, was in accordance with the terms and conditions of that approval.
- (4) On and from the day on which section 80 of this Act commences, a person is not guilty of an offence under section 51(6) of this Act in respect of a ship leaving a port or State waters if –
- (a) immediately before that day, the person had written permission of the Director or an authorized officer given under section 39(3) of the former Act that was in effect; and
  - (b) the ship left the port, or State waters, on and from that day, in accordance with the terms and conditions of that written permission.

**11. State Marine Pollution Committee members**

A person who is a member of the State Marine Pollution Committee under section 35(2) of the

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former Act immediately before the section 80 of this Act commences is taken, on and from that day, to be a member of the State Marine Pollution Committee on the same terms and conditions.

**12. Former Act to apply in certain circumstances**

(1) In this clause –

*incident response* means a response under –

- (a) section 35(2A) of the former Act in respect of an incident; or
- (b) section 37 of the former Act in respect of a spill incident;

*cost recovery action* means an action to recover costs taken under section 38 or 39 of the former Act.

- (2) If, immediately before the day on which section 80 of this Act commences, an incident response or cost recovery action was commenced under the former Act and not completed before that day, the former Act applies to the incident response or cost recovery action as if that section had not yet commenced.
- (3) Nothing in this clause prevents action from being taken under this Act, after the day on which section 80 of this Act commences, in respect of a matter for which an incident response or cost recovery action was

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commenced under the former Act and not completed before that day.

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**SCHEDULE 2 – CONSEQUENTIAL AMENDMENTS**

Section 78

***Environmental Management and Pollution Control Act 1994***

**1.** Section 72 is amended as follows:

- (a) by omitting from subsection (2)(b) “or regulations made under that Act” and substituting “, the *Marine-related Incidents (MARPOL Implementation) Act 2019* or regulations made under either of those Acts”;
- (b) by omitting from subsection (4) “the regulations made under that Act” first occurring and substituting “the *Marine-related Incidents (MARPOL Implementation) Act 2019*, regulations made under either of those Acts”;
- (c) by omitting from subsection (4)(b) “the regulations made under that Act” and substituting “the *Marine-related Incidents (MARPOL Implementation) Act 2019*, regulations made under either of those Acts”.

***Marine and Safety (General) Regulations 2013***

- 1.** Regulation 11(b) is amended by omitting “*Pollution of Waters by Oil and Noxious Substances Act 1987*” and substituting “*Marine-related Incidents (MARPOL Implementation) Act 2019*”.

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**SCHEDULE 3 – LEGISLATION REPEALED**

Section 79

*Pollution of Waters by Oil and Noxious Substances Act 1987*  
(No. 95 of 1987)

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**SCHEDULE 4 – LEGISLATION RESCINDED**

Section 80

*Pollution of Waters by Oil and Noxious Substances*  
*Regulations 2017 (No. 98 of 2017)*