

CLAUSE NOTES

Marine-related Incidents (MARPOL Implementation) Bill 2019

PART I – PRELIMINARY

Clause 1 **Short title**

Clause 2 **Commencement**

The Act commences on a day [or days] to be proclaimed.

Clause 3 **Interpretation**

This clause provides definition and interpretation of various matters in various provisions of the Act.

3(1) includes the following definitions of specific terms used in the Act.

agent of the ship means any person who performs for or on behalf of the charterer, owner, manager or operator of a ship any function or duty under or for the purposes of the Act, in particular an agent who performs the functions of ships' husbandry or makes any arrangements within the State. The term agent is used in the Act to be repealed, but is undefined. A definition is necessary in view of the significant role of agents.

approved means approved by the Director, Environment Protection Authority. This definition is necessary as the Director will approve the form of various reports and notices prescribed under the Act (the forms of some of which are currently prescribed in regulations).

Australian ship means a ship registered in Australia or an unregistered ship having Australian nationality. This definition is identical to the one in the Act to be repealed.

charterer includes a person who has leased, or otherwise hired, a ship while the ship is so leased or hired. The term charterer is used more widely in the Act than in the repealed Act, and this clarification of its meaning is necessary in view of the prevalence of chartering.

Committee means the State Marine Pollution Committee continued by section 43. This definition is identical to the one in the Act to be repealed, except that the relevant section number is referenced.

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. This

definition clarifies the one in the Act to be repealed, in particular that Australia may or may not accept a Convention amendment.

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. This definition refers directly to the relevant Convention, rather than to an outdated provision in Commonwealth legislation as in the Act to be repealed.

costs includes expenses. This clarification of meaning is identical to the one in the Act to be repealed.

crew, in relation to a ship, includes its master. This clarification of meaning is identical to the one in the Act to be repealed.

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*. This definition is identical to the one in the Act to be repealed, except for a minor wording change.

engage in conduct includes to perform an act or to omit to perform an act. This clarifies a term used in the Act to be repealed.

foreign ship means a ship that is not an Australian ship. This term has been defined because it is used more widely than in the Act to be repealed.

function includes duty. This definition is identical to the one in the Act to be repealed.

Government department means a department established under the *State Service Act 2000*, or established by any other enactment, as a department within the meaning of that Act. This definition is identical to the one in the Act to be repealed, except for a punctuation change.

harbour master means –

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

This definition is identical to the one in the Act to be repealed.

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. This ensures that jetties, wharves and the like are included within the term “land”.

The term “land” is used more widely than in the Act to be repealed, particularly in Parts 7 and 8 of this Act.

livestock includes fish reared commercially in marine farms. This clarification of meaning is identical to the one in the Act to be repealed.

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; and
- (b) if that body ceases to exist, any other body that has substantially the same purpose and performs substantially the same functions;

This definition provides a legal meaning for the term as used in section 43.

marine farm has the same meaning as in the *Living Marine Resources Management Act 1995*. This definition supplements the definition of *livestock*.

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;

This definition is identical to the one in the Act to be repealed, except for minor wording changes and the inclusion of sewage (most of the provisions of this Act which refer to a *marine pollutant* must necessarily apply to sewage as well as other pollutants).

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

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

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

This definition is necessary because the term *marine pollutant spill* is used as an umbrella term in the Act for multiple actions and situations that were separately described in the Act to be repealed.

marine pollution means the pollution of State waters as a direct, or indirect, result of a marine pollutant spill. This definition utilises the term *marine pollutant spill* and reflects the broader definition of marine pollutant.

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;

This definition is identical to the one in the Act to be repealed, except for a minor wording change.

MAST means the Marine and Safety Authority established by the *Marine and Safety Authority Act 1997*. This definition provides a legal meaning for the term where used in provisions of the Act.

master means a person, other than a pilot, having command or charge of a ship.

Navigation Act means the *Navigation Act 2012* of the Commonwealth. This definition is identical to the one in the Act to be repealed.

occupier, in relation to land, includes the owner of that land. This clarification of meaning is for the purposes of various provisions of the Act that use the term *occupier*, that were not in the Act to be repealed.

physical environment includes the wildlife and livestock that live in the environment being referred to. This definition is identical to the one in the Act to be repealed, except for a minor wording change.

port means a port in State waters. This definition provides a legal meaning for the term where used in provisions of the Act.

port operator has the same meaning as in the *Marine and Safety Authority Act 1997*. For the sake of clarity, the definition also includes mention of 'TasPorts Corporation Pty Ltd.'

prescribed means –

- (a) prescribed in regulations made under this Act; or
- (b) prescribed in orders made in accordance with section 74;

This definition clarifies that matters may be prescribed in section 74 orders, as well as in regulations.

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

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

This definition has the effect of making the EPA Director a prescribed officer for all purposes of the Act (which is convenient for operational reasons), and also enables the prescription of other officers by regulation.

regulated Australian vessel has the same meaning as in the Navigation Act. Under that Act, a **regulated Australian vessel** is one that requires registration under the Commonwealth shipping registration law, is not a pleasure vessel, and meets other requirements. The definition provides a legal meaning for the term where used in provisions of this Act.

regulations means regulations made under this Act. This definition provides a legal meaning for the term where used in provisions of the 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. This definition is identical to the one in the Act to be repealed.

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

(c) waters within the limits of the State;

This definition is identical to the one in the Act to be repealed.

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. This definition provides a legal meaning for the term where used in various provisions of the Act, mainly in Part 7.

3(2) ensures that expressions used in the Act are consistent with those used in the MARPOL Convention, except where a contrary intention is stated in the Act.

3(3) ensures that the master of a ship or other responsible person cannot claim a defence against an offence under the Act (e.g. the defence in subsection (3) of section 12) where the defence relates to damage to the ship or equipment, if the damage was caused by failure of maintenance or operational defects.

3(4) similarly ensures that the master of a ship or other responsible person cannot claim a defence against an offence under the Act (e.g. the defence in subsection (3) of section 12) where the defence relates to damage to the ship or equipment, if the damage was intentional as defined.

3(5) specifies how gross tonnage of a ship is to be determined.

Clause 4

Application of Act

This provision is a standard non-derogation clause.

Clause 5

Act to bind Crown

5(1) provides that the Act binds the Crown.

5(2) provides the Commonwealth, States and Territories with immunity from prosecution under the Act, but subsection (3) provides that the immunity does not extend to a servant or agent of the Commonwealth or a State or Territory.

These provisions are identical to the equivalent ones in the Act to be repealed, except for a minor punctuation change.

Clause 6

Delegation

This section allows the Minister and EPA Director to delegate any of their powers or functions under the Act, except this power of

delegation. These provisions are similar to the equivalent ones in the Act to be repealed, except that subsection (2) now provides a power of delegation to the Director. Note that the Director has a considerably greater role in the Act than the Director had under the Act to be repealed.

Clause 7

Inspectors

The purpose of s.7 is to define who is an 'inspector' (formerly an authorised officer) for the purposes of the Act. These are the Director or a person they appoint a police officer, or a person appointed by AMSA. Their appointment is subject to terms and conditions.

Inspectors have various powers under section 50 of the Act and may issue infringement notices under section 70.

Clause 8

Warships, &c., are exempt from Act

This section exempts Australian and foreign military ships and foreign, non-commercial, governmental ships from the provisions of the Act. It reflects the provisions of the MARPOL Convention. The provisions are identical to the equivalent ones in the Act to be repealed.

Clause 9

Pollution that enters State waters taken to be pollution in State waters

The purpose of s.9 is to ensure that pollution which enters State waters from a spill outside these waters is still covered by the Act.

A person conducting an activity outside of State waters can therefore be held responsible for pollution of State waters. The provisions are identical to the equivalent ones in the Act to be repealed, except for minor terminology and wording changes.

Clause 10

Application of Act to mixtures of oil and noxious liquid substances

This section clarifies that if a pollutant is a mixture of oil and noxious liquid substances(s), Parts 2 and 3 of the Act both apply.

PART 2 – PREVENTION OF POLLUTION BY OIL

Division 1 - General

Clause 11

Interpretation

This section ensures that expressions used in Part 2 are consistent with those used in Annex 1 of the MARPOL Convention, except where a contrary intention is stated. This provision is identical to the

equivalent one in the Act to be repealed, except for minor wording changes.

Division 2 – Pollution by oil or oily mixture

Clause 12 Prohibition of discharge of oil or oily mixture into State waters

The general purpose of s.12 is to prohibit the discharge of oil or oily mixture, specify the responsible parties, offences and penalties, and provide various exclusions to the prohibition.

These provisions are virtually identical to the equivalent ones in the Act to be repealed, except that the monetary penalty has been substantially increased (it is now of a similar magnitude to the penalty for the same offence under Commonwealth legislation that implements the MARPOL Convention).

12(2) An offence against subsection (1) is a strict liability offence.

12(1) makes the ship's master, charterer and owner each responsible for any discharge and guilty of an offence, and defines the maximum individual and corporate penalties for such offences.

12(3) provides the following exceptions to the offence, if the discharge:

- is for the purpose of securing a ship's safety or saving life at sea;
- was a consequence of non-intentional damage to a ship and all reasonable precautions were taken;
- was for the purpose of minimising damage from marine pollution and was approved by a prescribed officer; or
- if the discharge was approved by the EPA Director for other purposes.

These provisions are similar to the equivalent ones in the Act to be repealed, except that provision for the EPA Director to approve discharges has been added. Such approval may be required for training and exercise purposes, for example.

12(4) provides several more exceptions to the subsection (1) offence. The provisions are practically identical to the equivalent provisions in Commonwealth legislation that implements the MARPOL Convention.

Subsection (4) paragraph (a) relates to ships of less than 400 tonnes, and paragraphs (b) and (c) to larger ships not within a special area or within such an area, respectively. The MARPOL Convention defines certain sea areas as "special areas" in which, for technical reasons relating to their oceanographical and ecological condition and to their sea traffic, the adoption of special mandatory methods for the

prevention of sea pollution is required. There are currently no special areas within Tasmanian State waters.

Under 12(b), In order to discharge without committing an offence, a ship must be proceeding *en route*, must have equipment meeting the requirements of section 130 of the Commonwealth's Navigation Act and must comply with a limit on oil content of 15 parts per million. If the ship is an oil tanker the discharge must not originate from cargo pump room bilges or be mixed with cargo residues.

12(5) prevents use of the exceptions in subsection (4) if:

- the oily mixture contains chemicals or other substances in quantities or concentrations that are hazardous to the marine environment; or
- chemicals or other substances have been introduced for the purpose of attempting to avoid the subsection (1) offence.

Clause 13

Duty to report certain incidents involving oil or oily mixture

The provisions of this section are very similar to the equivalent ones in the Act to be repealed, and also the equivalent provisions in Commonwealth legislation that implements the MARPOL Convention.

13(1) defines a ***specified oil incident***. Such an incident is a discharge or likely discharge of oil or an oily mixture to which none of the section 12(4) exceptions apply, or an incident relating to a ship 15 metres or more in length involving damage, failure or breakdown that affects the safety or navigation of the ship (which in turn could create a risk of oil discharge).

13(2) provides that, 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. It is an offence with a penalty of 500 units to fail to notify. The manner of notification will be prescribed in regulations soon after the new Act commences.

13(3) provides that the master of a ship who has notified an incident in accordance with subsection (2) must, if so requested by a prescribed officer, provide that officer with a report on the incident in the approved form and within the prescribed time. It is an offence with a penalty of 200 units to fail to comply with this provision. Relevant prescribed officers and the time limit for a report will be prescribed in regulations soon after the new Act commences, and the "approved form" will be determined by the EPA Director.

13(4) provides that an offence is not committed under subsection (2) if it is not possible for the master of a ship to comply in the circumstances.

13(5) provides that, where the master of a ship fails to comply with subsection (2), or where the ship has been abandoned, the charterer, owner, manager, operator and agent of the ship must ensure that a prescribed officer is notified of the incident as soon as possible.

13(6) provides that the offences under subsections (2) and (5) are strict liability offences.

13(7) provides certain exceptions to the notification requirement in subsection (5). Subsection (5) does not apply where a relevant person was not aware of the incident, reasonably believes that another person has complied with the notification requirement, or did not know or could not reasonably be expected to have known that the master of the ship had not complied with subsection (2).

13(8) provides that 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).

13(9) is a similar provision to subsection (3), and it applies where subsection (5) applies.

Clause 14

Power to require discharge of oil or oily mixture at facility

This section has provisions very similar to the equivalent ones in Commonwealth legislation that implements the MARPOL Convention.

The purpose of s.14 is to provide a power under 14(1) for a prescribed officer to give written notice to a ship's master or owner that oil or an oily mixture is to be transferred to a suitable facility if there is a risk of discharge into the sea.

14(2) defines what a written notice must specify.

14(3) makes it an offence not to comply with a written notice, and gives the individual and corporate penalties.

Division 3 – transfer of oil cargo

Division 3 has provisions very similar to the equivalent ones in Commonwealth legislation that implements the MARPOL Convention.

Clause 15

Application of Division

Section 15 (1) defines *transfer* as meaning transfer of oil cargo between two oil tankers to which the Division applies.

15(2) provides that the Division applies to oil tankers of 150 gross tonnes or more which are engaged in a transfer in State waters. It does not apply to certain types of transfer to which Annex I of the MARPOL Convention does not apply.

15(3) makes it clear that offence proceedings may not be taken where the Annex I exceptions apply.

Clause 16

Transfer to be in accordance with ship-to-ship operations plan

16(1) The master of an oil tanker commits an offence if a transfer is not in accordance with the tanker's ship-to-ship operations plan.

16(2) specifies the requirements for a ship-to-ship operations plan. For an Australian ship it must be as prescribed in regulations (which will in turn reference the relevant Commonwealth Marine Order) and in an appropriate language. For a foreign ship it must be in accordance with the relevant provisions of Annex I of the MARPOL Convention.

Clause 17

Transfer to be undertaken by qualified person

A person in overall control of a transfer must be the master of one of the tankers, and qualified as prescribed in regulations (which will in turn reference the relevant Commonwealth Marine Order). It is a strict liability offence not to comply with these requirements.

Clause 18

Notification of transfer

The purpose of s.18 is to specify the notification requirements for transfers of oil cargo.

18(1) defines *ship-to-ship transfer information* as information prescribed in regulations for the purposes of the section. The information will be prescribed by reference to the relevant Commonwealth Marine Order.

18(2) requires ship-to-ship transfer information to be provided by the ship's master at least 48 hours before a transfer, if it is available, and is an offence not to comply with this requirement.

18(3) provides for notification where the ship-to-ship transfer information is not available 48 hours before a transfer, with a similar non-compliance offence.

18(4) requires notification to be provided where the estimated time of arrival of a ship at the transfer location changes by more than six hours, with non-compliance being an offence.

PART 3 – PREVENTION OF POLLUTION BY NOXIOUS LIQUID SUBSTANCES

Clause 19 Interpretation

19(1) defines the meaning of particular terms as they used in Part 3.

19(2) ensures that expressions used in Part 2 are consistent with those used in Annex II of the MARPOL Convention, except where a contrary intention is stated. This provision is identical to the equivalent one in the Act to be repealed, except for minor wording changes.

Clause 20 Prohibition of discharge of substances or mixtures into State waters

These provisions are similar to the equivalent ones in the Act to be repealed, except that the 'reckless, negligent or knowingly cause' elements have been introduced and all exceptions have been omitted. This is consistent with equivalent provisions in the Commonwealth legislation that implements MARPOL.

20(1) makes it an offence to recklessly, negligently or knowingly cause the discharge of a noxious liquid substance or mixture into State waters. Monetary and imprisonment penalties are prescribed.

20(2) makes the ship's master, charterer and owner each guilty of an offence, subject to subsections (5) and (6), if a noxious liquid substance or mixture is discharged into State waters from a ship. Monetary penalties are prescribed.

20(3) makes an offence under 20(2) a strict liability offence.

20(4) provides an exception to the subsection (2) offence for the discharge of residues of a Category Z substance or mixture. Paragraphs (a) to (g) specify various conditions that must be met in order to discharge, including approval in accordance with approval in accordance with section 21. The provisions are practically identical to the equivalent provisions in Commonwealth legislation that implements the MARPOL Convention.

20(5) provides several further exceptions to the subsection (2) offence. Subsection (2) does not apply if a discharge is for the purpose of securing a ship's safety or saving life at sea, if a discharge was a consequence of non-intentional damage to a ship and all reasonable precautions were taken, or if a discharge was for the purpose of minimising damage from marine pollution and was approved by a prescribed officer. These provisions are similar to the equivalent ones in the Act to be repealed.

20(6) provides further exceptions to the subsection (2) offence, in relation to bilge water and ballast. The provisions are practically identical to the equivalent provisions in Commonwealth legislation that implements the MARPOL Convention.

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

This section provides that 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, for the purposes of section 20(4)(c).

21(2) provides that the Director may issue an approval subject to any conditions he/she thinks fit. Subsection (3) requires that the Director give notice of approval to the applicant of a successful application.

Clause 22 **Prohibition of carriage of unevaluated substances**

The provisions of this section are practically identical to the equivalent provisions in Commonwealth legislation that implements the MARPOL Convention. Subsection (1) defines *unevaluated substance or mixture* as meaning a substance or mixture that has not been categorised or provisionally assessed in accordance with the relevant MARPOL Annex II requirements.

22(2) provides that it is an offence for a person to negligently engage in conduct that results in an unevaluated substance or mixture being carried on an Australian ship in State waters.

22(3) provides a defence to the subsection (2) offence where the person did not know or could not reasonably be expected to know that the conduct related to an unevaluated substance or mixture.

22(4) and (5) provide that the master and owner of an Australian ship are guilty of a strict liability offence if an unevaluated substance or mixture is carried on the ship in State waters.

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

The provisions of this section are very similar to the equivalent ones in the Act to be repealed, and also the equivalent provisions in Commonwealth legislation that implements the MARPOL Convention.

23(1) defines a *specified noxious liquid substance incident*. Such an incident is a discharge or likely discharge of a noxious liquid substance or mixture to which neither the section 20(4) nor 20(6) exceptions apply, or an incident relating to a ship 15 metres or more in length involving damage, failure or breakdown that affects the

safety or navigation of the ship (which in turn could create a risk of noxious liquid substance discharge).

23(2) provides that, 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. It is an offence with a penalty of 500 units to fail to notify. The manner of notification will be prescribed in regulations soon after the new Act commences.

23(3) provides that the master of a ship who has notified an incident in accordance with subsection (2) must, if so requested by a prescribed officer, provide that officer with a report on the incident in the approved form and within the prescribed time. It is an offence with a penalty of 200 units to fail to comply with this provision. Relevant prescribed officers and the time limit for a report will be prescribed in regulations soon after the new Act commences, and the "approved form" will be determined by the EPA Director.

23(4) provides that an offence is not committed under subsection (2) if it is not possible for the master of a ship to comply in the circumstances.

23(5) provides that, where the master of a ship fails to comply with subsection (2), or where the ship has been abandoned, the charterer, owner, manager, operator and agent of the ship must ensure that a prescribed officer is notified of the incident as soon as possible.

23(6) provides that the offences under subsections (2) and (5) are strict liability offences.

23(7) provides certain exceptions to the notification requirement in subsection (5). Subsection (5) does not apply where a relevant person was not aware of the incident, reasonably believes that another person has complied with the notification requirement, or did not know or could not reasonably be expected to have known that the master of the ship had not complied with subsection (2).

23(8) provides that 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).

23(9) is a similar provision to subsection (3), and it applies where subsection (5) applies.

Clause 24

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

This section has provisions very similar to the equivalent ones in Commonwealth legislation that implements the MARPOL Convention.

24(1) provides that a prescribed officer may require, by written notice, the master or owner of a ship to cause a noxious liquid substance or mixture to be discharged from the ship to a specified reception facility, within a specified period, if the officer has reason to believe that retention of the noxious liquid substance or mixture would create a risk of discharge from the ship into the sea.

24(2) specifies the requirements for a notice under subsection (1).

24(3) makes it an offence not to comply with a notice given under subsection (1).

PART 4 – PREVENTION OF POLLUTION BY PACKAGED HARMFUL SUBSTANCES

Clause 25

Interpretation

25(1) defines the meaning of particular terms as they used in Part 3.

25(2) ensures that expressions used in Part 2 are consistent with those used in Annex II of the MARPOL Convention, except where a contrary intention is stated. This provision is identical to the equivalent one in the Act to be repealed, except for minor wording changes.

Clause 26

Prohibition of discharge by jettisoning of harmful substances into State waters

These provisions are similar to the equivalent ones in the Act to be repealed, except that the 'reckless or negligent' element has been introduced and all exceptions have been omitted. This is consistent with equivalent provisions in the Commonwealth legislation that implements MARPOL.

26(1) makes it an offence for a person to engage in reckless or negligent conduct that results in the jettisoning of a packaged harmful substance into State waters, or to knowingly cause the jettisoning. Monetary and imprisonment penalties are prescribed.

26(2) provides that, subject to subsections (4) and (5), if a packaged harmful substance is discharged into State waters from a ship, the master and owner of the ship are each guilty of an offence. Monetary penalties are prescribed.

26(3) provides that an offence against subsection (2) is a strict liability offence. Subsections (2) and (3) are consistent with

equivalent provisions in the Commonwealth legislation that implements MARPOL.

26(4) provides exceptions to the subsection (2) offence. Subsection (2) does not apply if a discharge is for the purpose of securing a ship's safety or saving life at sea.

26(5) provides that subsection (2) applies where a harmful substance is discharged from a ship due to the leakage of the substance, except where the substance was washed overboard from the ship in accordance with requirements prescribed in regulations, or the substance was washed overboard from the ship otherwise than in accordance with the prescribed requirements in circumstances where compliance would have impaired the safety of the ship or of persons on board the ship.

Clause 27

Duty to report certain incidents involving harmful substances

The provisions of this section are very similar to the equivalent ones in the Act to be repealed, and also the equivalent provisions in Commonwealth legislation that implements the MARPOL Convention.

27(1) defines a *specified harmful substance incident*. Such an incident is a discharge or likely discharge of a harmful substance from a ship carried in packaged form or in a freight container, portable tank, road or rail vehicle or shipborne barge, not being a discharge in accordance with regulations or orders, or an incident relating to a ship 15 metres or more in length involving damage, failure or breakdown that affects the safety or navigation of the ship (which in turn could create a risk of harmful substance discharge).

27(2) provides that, 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. It is an offence with a penalty of 500 units to fail to notify. The manner of notification will be prescribed in regulations soon after the new Act commences.

27(3) provides that the master of a ship who has notified an incident in accordance with subsection (2) must, if so requested by a prescribed officer, provide that officer with a report on the incident in the approved form and within the prescribed time. It is an offence with a penalty of 200 units to fail to comply with this provision. Relevant prescribed officers and the time limit for a report will be prescribed in regulations soon after the new Act commences, and the "approved form" will be determined by the EPA Director.

27(4) provides that an offence is not committed under subsection (2) if it is not possible for the master of a ship to comply in the circumstances.

27(5) provides that, where the master of a ship fails to comply with subsection (2), or where the ship has been abandoned, the charterer, owner, manager, operator and agent of the ship must ensure that a prescribed officer is notified of the incident as soon as possible.

27(6) provides that the offences under subsections (2) and (5) are strict liability offences.

27(7) provides certain exceptions to the notification requirement in subsection (5). Subsection (5) does not apply where a relevant person was not aware of the incident, reasonably believes that another person has complied with the notification requirement, or did not know or could not reasonably be expected to have known that the master of the ship had not complied with subsection (2).

27(8) provides that 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).

27(9) is a similar provision to subsection (3), and it applies where subsection (5) applies.

PART 5 – PREVENTION OF POLLUTION BY SEWAGE

Clause 28

Interpretation

This section ensures that expressions used in Part 5 are consistent with those used in Annex IV of the MARPOL Convention, except where a contrary intention is stated. This provision is identical to the equivalent one in the Act to be repealed, except for minor wording changes.

Clause 29

Prohibition of discharge of sewage into State waters

29(1) provides that, if a person engages in conduct that causes sewage to be discharged from a ship into State waters, and the person is reckless or negligent or knowingly causes the discharge, the person is guilty of an offence. Monetary penalties are prescribed.

These provisions are similar to the equivalent ones in the Act to be repealed, except that the 'reckless or negligent' element has been introduced and all exceptions have been omitted. This is consistent with equivalent provisions in the Commonwealth legislation that implements MARPOL.

29(2) provides that, subject to subsections (4) and (5), if sewage is discharged into State waters from a ship, the master and owner of

the ship are each guilty of an offence. Monetary penalties are prescribed.

29(3) provides that an offence against subsection (2) is a strict liability offence. Subsections (2) and (3) are consistent with equivalent provisions in the Commonwealth legislation that implements MARPOL.

29(4) provides exceptions to the subsection (2) offence. Subsection (2) does not apply if a discharge is for the purpose of securing a ship's safety or saving life at sea, if a discharge was a consequence of non-intentional damage to a ship and all reasonable precautions were taken, or if the discharge is from a ship to which Annex IV does not apply and it complies with a sewage management directive issued under section 30. These provisions are similar to the equivalent ones in the Act to be repealed, although one exception has been omitted for consistency with the Commonwealth legislation that implements MARPOL.

29(5) provides a further exception to the subsection (2) offence. Subsection (2) does not apply if the sewage has been treated in a sewage treatment plant on the ship which is a plant that a prescribed officer has certified meets the prescribed requirements, the discharge does not produce visible floating solids or discolouration of the sea, and (if the ship is a prescribed passenger ship).

Clause 30

Sewage management directives

This section is identical to the equivalent one in the Act to be repealed, except for minor wording changes. One sewage management directive has been issued to date, which applies to sewage discharges from vessels to which Annex IV does not apply.

Clause 31

Power to require discharge of sewage at facility

This section has provisions very similar to the equivalent ones in Commonwealth legislation that implements the MARPOL Convention.

31(1) provides that 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 reception facility, within a specified period, if the officer has reason to believe that retention of the sewage would create a risk of discharge from the ship into the sea.

31(2) specifies the requirements for a notice under subsection (1). Subsection (3) makes it an offence not to comply with a notice given under subsection (1).

PART 6 – PREVENTION OF POLLUTION BY GARBAGE

Clause 32 Interpretation

This provision ensures that expressions used in Part 6 are consistent with those used in Annex IV of the MARPOL Convention, except where a contrary intention is stated. It is identical to the equivalent one in the Act to be repealed, except for minor wording changes.

Clause 33 Prohibition of discharge of garbage into State waters

33(1) provides that, if a person engages in conduct that results in the discharge of garbage from a ship into State waters, and the person is reckless or negligent, or knowingly causes the discharge, the person is guilty of an offence. Monetary penalties are prescribed.

These provisions are similar to the equivalent ones in the Act to be repealed, except that the 'reckless or negligent' element has been introduced and all exceptions have been omitted. This is consistent with equivalent provisions in the Commonwealth legislation that implements MARPOL.

33(2) provides that, subject to subsections (4), (5), (6) and (7), if garbage is discharged into State waters from a ship, the master, the charterer and owner of the ship are each guilty of an offence. Monetary penalties are prescribed.

33(3) provides that an offence against subsection (2) is a strict liability offence. Subsections (2) and (3) are consistent with equivalent provisions in the Commonwealth legislation that implements MARPOL.

33(4) provides exceptions to the subsection (2) offence. Subsection (2) does not apply if a discharge is for the purpose of securing a ship's safety or saving life at sea, if a discharge was a consequence of non-intentional damage to a ship and all reasonable precautions were taken, if food waste is discharged to prevent an imminent human health risk, or if fishing gear is discharged for the protection of the marine environment or for safety and all reasonable precautions were taken to prevent the discharge. These provisions are similar to the equivalent ones in the Commonwealth legislation that implements MARPOL.

33(5) provides a further exception to the subsection (2) offence. Subsection (2) does not apply if the discharge is of animal carcasses, provided that the ship is not in a special area, the ship is proceeding *en route* and is as far as practicable from land, the ship is not within 500 metres of a platform, and other prescribed requirements are satisfied. The other requirements will be prescribed in regulations

(which will in turn reference the relevant Commonwealth Marine Order).

33(6) provides a further exception to the subsection (2) offence. Subsection (2) does not apply if the garbage is a cleaning agent or additive contained in deck or other external surface wash water, the cleaning agent or additive is not a prescribed cleaning agent or additive, the discharge occurs when the ship is not alongside or within 500 metres of a platform, and the discharge occurs when the ship is not within a special area or is within a special area but is proceeding *en route*. Cleaning agents and additives will be prescribed in regulations (which will in turn reference the relevant Commonwealth Marine Order). Regarding special areas, see notes on clause 12.

33(7) provides a further exception to the subsection (2) offence. Subsection (2) does not apply to discharge of garbage that contains other matter, the discharge of which is prohibited under another Part of the Act, provided that the requirements relating to discharge or disposal in the other Part are more stringent than the subsection (6) requirements and are complied with.

Clause 34

Power to require discharge of garbage at reception facility

This section has provisions very similar to the equivalent ones in Commonwealth legislation that implements the MARPOL Convention.

34(1) provides that 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 reception facility, 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.

34(2) specifies the requirements for a notice under subsection (1).

34(3) makes it an offence not to comply with a notice given under subsection (1).

PART 7 – PREVENTION OF POLLUTION FROM TRANSFER OPERATIONS

Clause 35

Interpretation

s.35 defines the meaning of particular terms as they used in Part 3.

Clause 36

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

36 (1) makes it an offence to engage to knowingly, recklessly or negligently engage in conduct that results in the discharge of a specified marine pollutant, during or in connection with a transfer

operation from a ship or land. Monetary and imprisonment penalties are prescribed, similar to those for other major offences under the Act.

36(2) provides that, if a specified marine pollutant is discharged into State waters from a ship during, or in connection with, a transfer operation, the master, charterer and owner of the ship and the person in charge of the transfer operation are each guilty of an offence. Monetary penalties are prescribed.

36(3) provides that, 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. Monetary penalties are prescribed.

36(4) makes subsection (2) and (3) offences to be strict liability offences.

Clause 37

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

37(1) provides that a person who engages in reckless or negligent 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, is guilty of an offence. Monetary and imprisonment penalties are prescribed, similar to those for other major offences under the Act. Pipelines are a significant source of marine pollution and a separate offence for discharges from them is a useful deterrent.

37(2) provides that, if a specified marine pollutant is discharged into State waters from a pipeline, whether or not it is being used or in connection with, a transfer operation, various persons are each guilty of an offence: the occupier of the land, the owner of the pipeline, any relevant lessee or licence holder, and the person in charge of the pipeline. Monetary penalties are prescribed.

37(3) provides that the subsection (2) offence is a strict liability offence.

Clause 38

Prevention of discharge or spread of specified marine pollutant during transfer

Subsection (1) specifies the responsible persons to which this section applies: the master, charterer and owner of the relevant ship, the occupier of relevant land, and the person in charge of a transfer operation.

Subsection (2) provides that a responsible person must take reasonable measures to prevent the discharge of a specified marine pollutant into State waters during, or in connection with, a transfer

operation, and if a specified marine pollutant is discharged into State waters relating to a transfer operation take reasonable measures to contain the pollutant and prevent further spread of the pollutant. Non-compliance is an offence, and monetary penalties are prescribed. This offence provision should be an incentive for relevant persons to take preventive measures, and emergency measures when required.

Clause 39

Transfer of specified marine pollutant at night

The purpose of clause 39 is to formalise the process of transferring marine pollutants at night.

39(1) A person wanting to transfer a specified marine pollutant from or to a ship during the night must make a written request to the relevant harbour master, or Director.

39(2) The harbour master or Director may, in writing, issue permission, or refuse permission.

39(3), (4) & (5) If such a transfer takes place without permission, the ship's master, charterer and owner are each guilty of an offence, as is the occupier of the land if the transfer is ship-to-shore or shore-to-ship. The offences are strict liability.

(6) If the intended transfers are frequent and regular, a request for permission may be a general one for a specified period.

Clause 40

Discharges to which this Part [Part 7 – Prevention of pollution from transfer operations] does not apply

40(1) specifies that sections 36(1), 36(2), 37(1), 39(3) and 39(4) do not apply if the discharge was for the purpose of securing the safety of the ship, or another ship, or saving human life.

40(2) specifies that s.36 and s.37 don't apply if the discharge occurs:

- On the landward side of the first isolating valve on land;
- At any other place described by the regulations;
- For the approved purpose of combating specific pollution incidents; or
- Under an EMPCA environment protection notice.

Clause 41

Duty to notify of discharge of specified marine pollutant during transfer operation

41(2), (3), (4) - If a marine pollutant spill happens during transfer from a ship or land, the ship's master, or land occupier and person whose conduct led to the spill each have to notify a prescribed

officer as soon as possible. It is an offence for them not to do so. These requirements also apply to a discharge from a pipeline.

41(5) and (6) provide exemptions from the above offence if it is not possible for the master to notify, or if a person involved in the transfer reasonably believes that another person has complied with (3) or (4).

41(7) If the ship's master doesn't comply with (2), or if the ship is abandoned as a result of the circumstances, the charterer, owner, manager, operator or agent of the ship must each ensure that a prescribed officer is notified as soon as possible.

41(8) Offences under (2) to (4) and (7) are strict liability offences.

41(9) provides an exemption if a person was not aware of the incident or if they reasonably believed another person had complied.

41(10) & (11) clarify that (6) and (9) are not to be taken to limit any defence that would be available in relation to the relevant subsection.

Clause 42

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

S.42 clarifies that Part 7 applies to a discharge whether or not it is a discharge prohibited by Part 2 or 3, and even if a defence is available under either of those Parts. However, a person won't be liable for an offence under both Part 7 and Part 2 or 3.

PART 8 - MISCELLANEOUS

Division 1 – State Marine Pollution Committee

Clause 43

Continuation of State Marine Pollution Committee

The purpose of s.43 is to ensure the continuation of the Committee established under the previous Act, including its membership and operation. Some minor changes have been made to clarify these aspects:

43(1) establishes the Committee's continuity.

43(2) – Committee Membership is:

Secretary of the Department, person in that Dept. responsible for oil pollution control, a person to represent each of the five relevant Acts, the Australian Maritime Safety Authority (AMSA), the Aust. Marine Oil Spill Centre, LGAT, MAST, TFS and the TasPorts Corporation.

43(3) – Director EPA is the Committee's Chair.

43(4) – gives the Director powers to exclude members if the circumstances of an incident warrant it.

43(5) provides that the Governor may, by Order, amend subsection (2) if made necessary by, e.g., a name change to one of the bodies listed in (2).

43(6) defines the practical functions of the Committee in relation to marine pollution and spills, which are to:

- Inform and advise the State Government;
- Prepare and update a plan to combat incidents;
- Perform Committee functions as per s.48 ('Committee procedure on marine pollutant spill incident'); and
- Make recommendations on training and equipment.

Clause 44 Meetings of Committee

This section provides the rules necessary for the Committee to meet and function effectively.

Division 2 – Provision of waste reception facilities

Clause 45 Interpretation

Clause 46 Director may provide waste reception facilities

Section 46 gives the Director to provide or otherwise arrange for appropriate waste reception facilities.

Clause 47 Director may direct person to provide waste reception facilities

The purpose of s.47 is to provide the Director with the necessary powers to direct the owner or occupier of a port, terminal, appropriate ship repair facility, or other docking/berthing place to provide waste reception facilities in an emergency situation.

The direction must be in writing, and is to specify such things as the type of pollutant to be received and the period for which the facilities are to be made available. Corporate and individual penalties apply for non-compliance.

Division 3 – Powers and procedures in relation to incidents

Clause 48 Committee procedure on marine pollutant spill incident

48(1) defines the 'incident controller' as the person who takes overall charge during an actual or potential pollutant spill. This

section also references the definitions of 'oil' and 'oily mixture' back to the International Convention.

48(2) requires the Director to convene a Committee meeting in the actual or likely event of a spill.

48(3) lists the following exceptions to (2):

- Oil quantity is less than 10 tonnes; or
- Spill is only 'garbage' and/or sewage as per Annexes V and IV to the Convention; AND
- The Director reasonably believes there is no serious threat or danger

48(4) lists the following Committee functions in relation to a spill:

- Make recommendations to the Director;
- Coordinate the provision of advice to the State Government;
- Monitor the implementation of management decisions and the spill response;
- Make recommendations to the controller and other relevant persons on remediation; and
- Facilitate communications between the various parties.

Clause 49

Emergency declarations

The purpose of s.49 is to establish Ministerial powers for declaring an emergency relating to an actual or potential marine pollutant spill, as well as Parliamentary oversight of these powers.

49(1) clarifies that these powers only apply to State laws, including council bylaws, that cover the State's physical environment.

49(2) allows the Minister to make an emergency declaration for no longer than 14 days, and to declare that a law is of no effect during that time. The declaration may also define the scope and/or area of effect of that declaration.

There must be reasonable grounds, such as the actual or likely occurrence of a marine casualty, or pollutant spill AND a threat to the State's waters or other environment, or related interests, AND urgent action is required AND the State law would impede the taking of action.

49(3) allows the Minister to declare an emergency without consultation.

49(4) defines the conditions of making a declaration, including a starting date, a description of the incident, a limit of 14 days, Gazettal, and other publishing as the Minister sees fit.

49(5) give the Minister the power to revoke an emergency declaration if it is appropriate to do so.

49(6) requires the revocation to be Gazetted, and otherwise published as the Minister sees fit.

48(7) – Minister has to table the declaration before both Houses of Parliament within 3 days, regardless of whether it has expired or been revoked.

48(8) Either House of Parliament may disallow the emergency declaration.

48(9) Disallowance renders the declaration void but doesn't invalidate any action taken prior to the disallowance.

48(10) The Clerk of the relevant House must immediately give the Minister a copy of the disallowance motion and have it Gazetted as soon as practicable.

Clause 50

Powers of inspectors

50(1) Requires a language interpreter (used for the purposes of the Act) to be accredited by the National Accreditation Authority for Translators and Interpreters Ltd.

50(2) allows an inspector to:

Board a ship or enter land with any necessary assistants and equipment;

Require the ship's master to facilitate the boarding of the ship;

Require land occupier to facilitate entry onto land;

Inspect, test, or seize any relevant plant, equipment, or vehicle, or requires such items to be produced;

Require the ship's master or a land occupier to cooperate with any such examination or testing of any ship equipment and machinery; plant, vehicle or any other item on land;

Require ship's master and land occupier to open for inspection any hold, bunker, tank, compartment or receptacle;

Require the ship's master and land occupier to produce all necessary books, documents, or records relating to cargo and activities;

Make copies or take extracts from all such documents and records referred to above;

Require ship's master, land occupier or their representative to produce any substances on or near the ship or land;

Examine and take samples of any of the substances mentioned above;

Require the ship's master, land occupier or their representative to certify the taking of samples;

Require any person present on the ship or land to answer questions and sign a declaration to the truth of those answers.

50(3) to exercise their powers under this Act an Inspector may –

Use reasonable force to break into or open anything on a ship or land providing it is not a dwelling on land;

Take all necessary photographs, audio and video footage as necessary;

Operate any plant, equipment, vehicle or other item necessary to exercise these powers.

50(4) An inspector acting under subsection 50 (2) above can be accompanied by an interpreter.

50(5) Any requirement, question or answer made by the interpreter is considered to have been made by the inspector.

50(6) When boarding a ship or land an inspector is to :

Produce an authority if requested to do so;

If a police officer identify themselves as such to the ship's master or land occupier.

50(7) A person must not:

Refuse entry, hinder or obstruct or refuse to comply with a requirement from the inspector without a reasonable excuse.

Make false or misleading statements and must give correct information within their control.

A monetary penalty is prescribed.

Clause 51

Detention powers of Director

51(1) The Director can order the detention of a ship if that ship is in State waters and there are clear grounds for believing that a marine pollutant spill has occurred;

Or the Director is seeking to recover costs under section 55(2)(a) from the ship's master, charterer or owner.

51(2) The Director may go aboard a ship detained under s.51(1) with all necessary assistants and equipment.

51(3) The Director can require a detained ship to be escorted to port.

51(4) The ship must be released if –

Financial security is provided

Proceedings have been discontinued or concluded without conviction or being found financially liable or have been concluded with all penalties and costs paid;

Or the Director finds a marine pollutant spill did not occur as a result of the ship's actions ; or

The costs relating to 51(1)(b) have been fully paid; or

For some other reason as determined by the Director.

51(5) Financial security for a ship's release must be:

In an acceptable form to the Director;

An amount that is equivalent to all maximum penalties and all other costs and monies that must be payable by the ship's master and crew member and ship owner in relation to the spill.

51(6) The master, charterer and owner of the ship are guilty of an offence if:

A detained ship leaves port; or

The ship leaves the outer limits of State waters before being released from detention.

Monetary penalties are prescribed for body corporates and individuals.

51(8) Ship owners are not considered guilty if they are unaware of the ship leaving before being released from detention and if they have ordered the master or charterer to comply with the ship's detention.

51(9) A person does not have the power of seizure under the Commonwealth's *Personal Property Securities Act 2009* with a detained foreign ship.

Clause 52

Powers of Director to prevent or clean up marine pollution

52(1) The Director can take any preventative or clean action required when they see there is a reasonable likelihood of a spill occurring or a spill has occurred or is occurring.

52(2) sets out a list of preventative or clean up actions that can be set by the Director.

52(3) The Director may use reasonable force to:

Enter, take or retain possession of any ship, land, apparatus, facility or pipeline other than a dwelling on land;

Take or retain possession of any substance or thing;

Use and operate any apparatus or machinery.

Clause 53

Powers of Director in case of maritime casualty

53(1) Defines "critical action" to mean moving a ship or cargo; salvaging a ship, its fuel or cargo; destroying its cargo; sinking or destroying a ship; movement of a ship's ballast; taking emergency action to deal with fire, gas or marine pollutant and evacuating people or animals.

Defines that "master" does not include the Director when they have taken control of the ship and "ship" to include its cargo.

53(2) If the Director is satisfied that there is imminent danger to the State's waters, coastline or physical environment then the Director can:

- (a) Assume control of the ship using reasonable force if required and take critical action;
- (b) Direct the Master, charterer, owner or salvor to take critical action.

53(3) Sets out the prescribed penalties for 52(b)

53(4) The Director must attempt to seek Ministerial approval prior to any action to jettison or destruction of a ship and/or its cargo.

53(6) Sets out the conditions upon which the Director is taken to have assumed control of a ship.

53(7) Sets out that notice to assume control of the ship may be given orally if not practicable to be given in writing in the first instance and is to be confirmed in writing as soon as practicable.

53(9) The Director must relinquish control of the ship once it is has been decided not to take critical action.

53(10) Sets out the conditions that a person must not do to prevent the Director for exercising their power under this section.

A monetary penalty is prescribed.

Division 4 – Legal matters

Clause 54 False or misleading statements

A person must not give false or misleading information in a report or notice to a prescribed officer.

Monetary penalties are prescribed for both a body corporate and individual.

Clause 55 Recovery of costs of incidents

55(1) Costs incurred by an inspector or on behalf of an inspector for preventative, clean up actions and for an actual or potential marine pollutant spill in State waters are considered to be costs incurred by the Crown.

55(2) The Director may recover these costs on behalf of the Crown.

55(3) Recoverable costs are to be paid within 28 days from date of the notice.

55(4) Failure to pay within 28 days by the person liable to pay may be charged interest on the amount unpaid.

55(5) and 55(6) set out the terms for the charging and payment of interest.

55(7) The Director can seek recompense from the Commonwealth when unable to recover all or part of the costs incurred under 55(2).

55(8) Recompense from the Commonwealth does not apply when the pollutant spill includes mainly garbage.

55(11) The Director on behalf of the Crown can provide recovered costs to the body or organisation that incurred costs on behalf of the Crown.

Clause 56 Recovery of costs in court

56(1) Recoverable costs have the same meaning as in s.55.

56(2) Recoverable costs, including interest, can be

(a) recovered against a relevant person regardless as to whether they are convicted or not;

(b) Be recovered in a court of competent jurisdiction as a debt due to the Crown even if proceedings have not been taken for an offence.

56(3) The Director can also apply to the courts to recover all reasonable costs and expenses incurred by an inspector in the course of an investigation and prosecution – e.g. sample taking and testing, witness statements, evidence gathering.

Clause 57

Securing of costs

57(1) A cost incurred under this Act is taken to be a charge on that ship until the costs are recovered.

57(2) Subsection (1) does not apply if financial security has been provided in respect of these costs and to the satisfaction of the Director.

Clause 58

Right to claim damages

58(1) Definition of “appropriate authority” – in relation to the area of a port and in when not a port, stating that relevant government authority or state authority having jurisdiction over that area.

58(2) states that nothing in this Act will prevent an appropriate authority or any other person from claiming damages resulting from a marine pollutant spill.

Clause 59

Right to collect fees and charges

59(1) defines service provider as a port operator or a person in charge of a facility specified in a notice in sections 14, 24, 31 or 34.

59(2) Service providers are not prevented from collecting and retaining reasonable fees and charges resulting from the detention of a ship or the requirement to discharge a substance from a ship to a specified facility.

Clause 60

Liability for simultaneous discharges

60(1) When the source of simultaneous spills from two or more ships occurs then the discharge is considered to be from each of the ships for the purposes of this Act.

60(2) In the case of (1) above, a person from one ship can be charged and convicted of an offence from one ship regardless of whether or not a person/s from the other ship/s are charged and convicted.

60(3) Simultaneous events is defined as spills that takes place within 24 hours of each other.

Clause 61

Multiple offenders

61(1) This provision deals with situations where there are more than one person liable for an offence.

61(2) Proceedings can be taken against all persons liable for an offence.

61(3) This provision sets out the criteria for undertaking proceedings against any persons liable for an offence.

Clause 62

Immunity of inspectors and others

62(1) This provision states that inspectors or authorised persons are not subject to any liability in the exercise of their powers and functions under this Act.

62(2) Subsection (1) however does not preclude the Crown from incurring liability that an inspector or other person may incur if not for that subsection.

62(3) No liability applies to any other person acting in good faith when exercising their powers and functions under this Act.

Clause 63

Service

63(1) Documents can be served on an agent of the ship instead of the ship's master, charterer or owner.

63(2) A document served on agent of the ship is deemed to have been served on the ship's master, charterer or owner.

Clause 64

Certificates by Minister

This provision states that documents attached to the certificate set out terms of the Convention and the terms of the 1978 Protocol. This certificate is admissible in proceedings as *prima facie* evidence of the matters included in that certificate.

Clause 65

Prosecution of offences

65(1) Offences under this Act (apart from s.50(7)) are indictable offences.

65(2) Indictable offences however can be heard by a court of summary jurisdiction – with the consent of the prosecutor and defendant.

Clause 66

Time limits for prosecutions

66(1) Prosecutions for all domestic ships can be brought at any time.

66(2) Prosecutions for foreign owned ships cannot be brought more than 3 years after events of the act or omission and if is required to be terminated under Article 228 of the Law of the Sea Convention.

66(3) Defines the Law of the Sea Convention.

Clause 67

Criminal responsibility &c.

67(1) The state of mind of the corporation in any proceedings for an offence under this Act is considered to be that of the director, employee or agent of the corporation.

67(2) Any conduct deemed to have created an offence under this Act engaged in by the director, employee, agent of the corporation or any other person given direction by any of the former is considered to have been done by the corporation.

67(3) This provision clarifies the meaning of “state of mind” in subsection (1).

Clause 68

Evidence

This provision outlines that documents and records kept in pursuance of this Act are admissible as prima facie evidence.

Clause 69

Evidence of analyst

69(1) and (2) Defines an “analyst” as someone appointed under s.100 of EMPCA and a person appointed by the Director who is considered appropriately qualified.

69(3) – (7) These provisions set out procedural matters with regard to the certification and admission of evidence by an analyst

Division 5 – Infringement Notices

Clause 70

Infringement notices

70(1) defines an “Infringement offence” and regulations made under this Act that prescribe regulations to be an infringement notice.

70(2) – (3) These provisions set out procedural matters with regard to the issue and serving of infringement notices and with the making of regulations.

Division 5 – Miscellaneous

Clause 71 **Record books**

A provision outlining how a ship's record may be recorded – in accordance with the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

Clause 72 **Regulations**

72 (1) - These provision relate to the power to make regulations under this Act.

72 (2) prescribes the purposes to which regulations can be made. For example - to give effect to the Convention; to fix fees; prescribe penalties; to set exemptions and orders; to make provision for a range of subordinate legislation instruments and to make provisions to give effect to regulations 12 and 13 in Annex II.

72(4) offence provisions apply to Australian vessels.

72(5) Regulations do not apply to foreign vessels in State waters if action is required to secure the ship's safety or human life.

72(8) Provisions to make regulations for savings or transitional matters.

Clause 73 **Orders**

73(1) – (6) A set of provisions concerning the making of orders including a prescribed penalty for failing to comply with an order.

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

74(1) gives meaning to the *Commonwealth domestic commercial vessel national law*.

74(2) Regulations and order made under s.73 that give effect to Annexes under the Convention do not apply to Australian vessels when there are Commonwealth commercial vessel law provisions that give effect to that Annex or when another law of the State gives effect to the Annex when in a particular area.

Clause 75 **Administration of Act**

Sets out that the Minister for Environment and department of Primary Industries, Parks, Water and Environment are responsible for the administration of this Act until provision is made by order under section 4 of the *Administrative Arrangements Act 1990*.

Clause 76	<p>Savings and transitional provisions</p> <p>These provisions specified in Schedule 1 have effect.</p>
Clause 77	<p>Consequential amendments of regulations do not prevent their subsequent amendment</p> <p>This provision states that if an Act amendment results in an amendment of regulations then it does not prevent that regulation or any other regulation from being amended or rescinded by a subsequent regulation.</p>
Clause 78	<p>Consequential Amendments</p> <p>States the legislation in Schedule 2 is amended.</p>
Clause 79	<p>Legislation repealed</p> <p>States the legislation in Schedule 3 is repealed.</p>
Clause 80	<p>Legislation rescinded</p> <p>Legislation in Schedule 4 is rescinded.</p>
Schedule 1	<p>Savings And Transitional Provisions Section 76</p> <p>76(1) <u>Interpretation</u> The former Act referred to in this Schedule is the <i>Pollution of Waters by Oil and noxious Substances Act 1987</i>.</p> <p>76(2) (1 & 2) <u>Authorised officer under former Act to be Inspector</u> Ensures the transition of authorised officer and the authority issued to them under the former Act to Inspector under this Act.</p> <p>76(3) <u>Sewage management Directives</u> - Ensures transition of sewage manage directives from the old to the new Act.</p> <p>76(4) <u>Approvals by Prescribed Officers</u> - Ensures approvals issued by prescribed officers under the former Act are transitioned to the new Act.</p> <p>76(5) (1-3) <u>Requests by prescribed officers</u> for reports under the former Act that are required after the new Act takes effect are taken to be a request under the new Act. Failure to furnish a report is taken to be an offence under the new Act.</p> <p>76(6) <u>Requirements by authorised officers.</u> A requirement asked of a prescribed officer under the former Act is taken to mean a requirement under the new Act by an Inspector.</p> <p>76(7) <u>Emergency declarations</u> made under the former Act are taken to be emergency declarations under the new Act.</p>

76(8) Maritime Casualties - Ships taken control of or critical action employed by prescribed officers under the former Act are considered to be under assumed control by the Director under the new Act.

76(9) Approvals and Permissions – are transitioned from the former to the new Act.

76 (10) Defence to Certain Offences. These provisions exempt a person from an offence under the new Act if they had an approval issued under the former Act. This concerns approvals issued for the discharge of packaged harmful substances; sewage; garbage and permission to leave port.

76(11) State Marine Pollution Committee members – members appointed under the former Act are appointed under the new Act under the same terms and conditions.

76(12) Former Act to apply in certain circumstances If incident responses and cost recovery actions commence under the former Act and have not been completed prior to the new Act taking effect then compliance with the former Act is still required. This does not prevent action being taken under the new Act if the action is not completed under the former Act.

Schedule 2

Consequential Amendments

Environmental Management and Pollution Control Act 1994 (EMPCA)

Section 72 of EMPCA is amended by omitting “or regulations made under that Act” in subsection 2(b); subsection (4) and 4(b) and substituting “the Marine-related Incidents (MARPOL Implementation) Act 2019 or regulations made under either of those Acts”.

Schedule 3

Legislation Repealed

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

Schedule 4

Legislation Rescinded

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