



ANNO DECIMO

## ELIZABETHAE II REGINAE

A.D. 1961

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### No. 34 of 1961

An Act to provide for certain matters arising out of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, and for other purposes.

[Assented to 9th November, 1961.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. This Act may be cited as the "Prevention of Pollution of Waters by Oil Act, 1961". Short title.
2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.
3. (1) In this Act unless the context or subject matter otherwise requires :—
  - "Board" means The South Australian Harbors Board.
  - "Contracting State" means a State declared by the regulations to be a State which is a party to and bound by the Convention :
  - "the Convention" means the International Convention of Pollution of the Sea by Oil, 1954, prepared and opened for signature and acceptance at the International conference held in London during the year one thousand nine hundred and fifty four :
  - "discharge" means any discharge or escape, howsoever caused or occasioned :

“intrastate ship” means any ship within the jurisdiction except a ship which trades or proceeds to or from a port or ports outside the jurisdiction :

“master” means the person having the command or charge of any ship :

“mile” means a nautical mile of six thousand and eighty feet :

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

“oil” means oil of any description and includes spirit produced from oil of any description and also includes coal tar :

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

“ship” means every description of vessel or craft :

“tanker” means a ship constructed or adapted for carrying a cargo of oil in bulk :

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

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

(3) Effluent emitted from a separation process into navigable waters as defined in this Act, shall meet standards of quality established, when installed, by the appropriate authority.

Saving.

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

Discharge of oil into waters.

5. If any discharge of oil, or of any mixture containing oil, into any waters within the jurisdiction occurs from any ship, or from any apparatus used for transferring oil from or to

any ship (whether to or from a place on land or to or from another ship) then subject to the provisions of this Act—

- (a) if the discharge is from a ship, both the owner and the master of the ship ; or
- (b) if the discharge is from apparatus used for transferring oil from or to a ship, the person in charge of the apparatus,

shall be guilty of an offence against this section.

Penalty : One thousand pounds.

6. (1) Where a person is charged with an offence against section 5 as owner or master of a ship, it shall be a defence to prove—

Special defences.

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

(2) Where a person is charged with an offence under section 5 as the person in charge of any apparatus, it shall be a defence to prove that the escape of the oil or mixture containing oil was due to accident which could not have been avoided, foreseen or anticipated, and that all reasonable steps were taken for prompt discovery of the escape of the oil or mixture and thereafter for stopping or reducing such escape.

7. (1) Where any discharge of the nature referred to in section 5 of this Act has occurred, the Board may take such action as it deems appropriate to remove from the waters affected by such discharge the oil so discharged, or the oil contained in any mixture so discharged, or any substance other than water contained in any such mixture, and may recover all costs and expenses incurred in and about such removal from either the owner or master of the vessel concerned, or from the person in charge of the apparatus concerned, as the case may require.

Removal of oil pollution.

(2) Such costs and expenses may be awarded in the course of proceedings for the recovery of any penalty in respect of the discharge, or may be recovered by separate action in any Court of competent jurisdiction.

(3) Nothing in this Act shall affect any rights of the Board or of any other person to recover damages at common law in respect of the consequences of any discharge of oil or of a mixture containing oil.

Equipment in  
ships to  
prevent oil  
pollution.

8. (1) For the purpose of preventing the discharge of oil and mixtures containing oil into any waters within the jurisdiction, every intrastate ship shall be fitted with such equipment and shall comply with such requirements as may be prescribed by regulation.

(2) Without prejudice to the generality of the preceding subsection, where any regulations made thereunder require ships to be fitted with equipment of a prescribed description the regulations may provide—

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

(3) The Board may appoint persons to carry out the inspections and tests respectively provided for in the preceding subsection.

(4) If, in the case of any ship, the provisions of any regulations under this section which apply to that ship are contravened, both the owner and the master of the ship shall be guilty of an offence against this section.

(5) The penalty for an offence against this section is a fine not exceeding Five hundred pounds.

9. (1) The Governor may make regulations requiring the master of an intrastate ship to keep such records as may be prescribed for the purposes of this Act and in particular, but without restricting the generality hereof, any record or records of the nature hereinafter described. Keeping of  
oil records.

(2) The regulations may require the keeping of records by the master of an intrastate ship—

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

(3) The regulations may require the keeping of records by the master of an intrastate ship relating to the transfer of oil to or from the ship.

(4) The regulations may :—

- (a) prescribe the form in which records shall be kept and the nature of the entries to be made in them ;
- (b) require the person keeping the records to retain them for a prescribed period ;
- (c) require that person, at the end of the prescribed period, to transmit the records to a place or person determined by or under the regulations :

(d) provide for the custody or disposal of the records after their transmission to such a place or person.

(6) (a) If any records required by regulations made under this section to be kept in relation to any ship are not so kept in and according to any form prescribed, then both the owner and the master of such ship shall be guilty of an offence against this section.

(b) Any person who fails to comply with any requirement imposed by or under this section, or any regulations made thereunder, or makes an entry in any records kept under this section which is to his knowledge false or misleading in any material particular, shall be guilty of an offence against this section.

(7) The penalty for an offence against this section is a fine not exceeding Five hundred pounds.

Reporting and  
Investigation  
of discharges  
of oil, etc.

10. (1) If any discharge of oil, or of any mixture containing oil, occurs from any ship into any waters within the jurisdiction, the owner or master of such ship, shall forthwith inform the Board of all details of the occurrence, and, if he fails to do so, shall be guilty of an offence against this section.

(2) For the purpose of investigating any discharge or suspected discharge of oil or of a mixture containing oil into any waters within the jurisdiction, the harbour master of any port, or any officer or employee of the Board having charge of any district, or any other person appointed for that purpose by the Board—

(a) may go on board and inspect any ship being within the jurisdiction ;

(b) may inspect any records required to be kept in respect of the ship by this Act or any regulations made thereunder, or by any laws of any Contracting State for the carrying out of the purposes of the Convention ;

(c) if such records are kept in a language other than English, may be accompanied and assisted by an interpreter ; and

(d) may cause any entry in any such records to be copied and require the person by whom the records are to be kept to certify the copy as a true copy of the entry.

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

(3) Any person appointed for that purpose by the Board may enter and inspect any place for the purpose of investigating any discharge or suspected discharge of oil or of a mixture containing oil, and for that purpose may inspect any records required to be kept under this Act in respect of such place, may cause any entry in any such records to be copied and may require the person by whom the records are to be kept to certify the copy as a true copy of the original.

(4) The right of inspection provided in the two preceding subsections includes the right to take samples of any substances or mixtures of substances being in, on, or in the vicinity of the ship inspected, and to require the master of such ship or any person representing such master, to certify the taking of such samples, and to require the testing of any equipment or apparatus in such ship, the condition or efficiency of which is considered relevant to the discharge or suspected discharge.

(5) Any person who assaults, resists, hinders or obstructs any person acting in the exercise of any power conferred by virtue of this section, or who fails to comply with any requirement duly made under this section, shall be guilty of an offence against this section.

(6) The penalty for an offence against this section is a fine not exceeding Two hundred pounds.

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

Oil reception  
facilities.

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

(3) Subject to the following provisions of this section, any facilities provided by, or by arrangement with, the Board shall be open to all ships on payment of any charges and subject to compliance with any conditions imposed in accordance with the last preceding subsection.

(4) Notwithstanding the provisions of subsection (3) of this section, the Board, or a person providing facilities by arrangement with the Board, shall not be obliged to make those facilities available for use by tankers, or for the reception of oil residues disposed of for the purpose of enabling a ship to undergo repairs.

(5) Nothing in this section shall be construed as requiring the Board to allow untreated ballast water (that is to say, ballast water which contains oil and has not been subjected to an effective process for separating the oil from the water) to be disposed of into any facilities provided by, or by arrangement with, the Board.

(6) The Governor on the recommendation of the Board may make regulations requiring—

- (a) the owners or occupiers of oil terminals, oil depots, oil installations or other similar establishments used for the loading or unloading of oil in bulk ; and
- (b) the owners or occupiers of establishments at which ships are repaired or any other work is performed in relation to ships which may involve the disposal of oil residues therefrom ;

to provide facilities of a standard satisfactory to the Board, to maintain such facilities in good order and condition, and to keep such records as may be prescribed.

Restrictions on  
transfer of oil  
at night.

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

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

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

Regulations.

**13.** (1) The Governor on the recommendation of the Board may make such regulations, in addition to those regulations in respect of which power is specifically conferred by this Act, as he deems necessary to carry out the provisions of this Act, and in such regulations may prescribe for the payment of such fees and the imposition of such penalties for breach as it deems appropriate.



(2) Any regulation made under any power conferred by this Act may make provisions applying generally to all waters within the jurisdiction at all times and under all circumstances, or make varying provisions for different areas, or different times or different circumstances, or apply, in general or with variations, to a particular area or particular areas, particular times or particular circumstances and not to other areas, times or circumstances, and may make provisions applying to all ships, property, persons or other subject matter or make varying provisions for different classes of ships, property, persons or other subject matter, or apply, in general or with variations, to certain classes of ships, property, persons or subject matter and not to other classes of ships, property, persons or subject matter.

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

Inspection and report.

(2) Any person who assaults, resists, hinders or obstructs any person acting in the exercise of any power conferred by virtue of this section, or who fails to comply with any requirement duly made under this section, or who in giving any answer required under this section makes a statement which is false or misleading in any particular, shall be guilty of an offence.

(3) The penalty for an offence against this section is a fine not exceeding Two hundred pounds.

15. (1) Where, in respect of any requirement prescribed by regulations made under this Act, the Board is satisfied—

Dispensations and exemptions.

(a) that the requirement has been substantially complied with ; or

(b) that compliance with the requirement is, in the circumstances of the case, impracticable or unnecessary ;  
or

- (c) that the action taken or provision made as regards the subject matter of the requirement is as effective as, or more effective than, actual compliance with the requirement,

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

(2) The Board may exempt any ship or class of ship from any of the provisions of this Act or of any regulations made thereunder, provided that no exemption whatsoever shall be granted in any case from the provisions of section 5 of this Act.

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

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

**Evidence.**

**16. In any proceedings under this Act—**

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

**Proceedings for offences.**

**17. (1) No proceedings shall be taken for the recovery of a penalty for an offence under this Act without the approval of the Board.**

(2) The approval of the Board for any such proceedings shall be sufficiently proved by a statement in writing purporting to be signed by the Secretary or Acting Secretary to the Board, or by production of any file purporting to record the approval of the Board of the taking of such proceedings.

(3) The taking of any proceedings by any officer or employee of the Board in respect of an offence under this Act shall be deemed to have been approved by the Board in the absence of proof to the contrary.

(4) All penalties, costs and expenses recovered for any offence under this Act shall be paid into the funds of the Board.

18. A statement in writing purporting to be signed by an officer or person authorized by the Board—

Evidence of  
administrative  
acts.

(a) to the effect that any person has been generally or specially appointed by the appropriate authority—

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

(ii) to investigate any discharge or suspected discharge of oil or of a mixture containing oil under section eleven of this Act ; or

(iii) to report to it regarding the proper observance of and the adequacy of the prohibitions, restrictions and obligations imposed under section fifteen of this Act ; or

(b) to the effect that any dispensation has been directed, any exemption has been granted, or any conditions have been imposed or that any variation or revocation of any such condition exemption or dispensation has been made under section sixteen of this Act—

shall be *prima facie* evidence of the matters stated therein.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

J. M. NAPIER, Governor's Deputy.