



**POLLUTION OF WATERS BY OIL AND NOXIOUS
SUBSTANCES (CONSISTENCY WITH
COMMONWEALTH) AMENDMENT ACT 1994**

No. 72 of 1994

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A.D. 1994

No. 72 of 1994

An Act to amend the Pollution of Waters by Oil and Noxious Substances Act 1987.

[Assented to 24 November 1994]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Pollution of Waters by Oil and Noxious Substances (Consistency with Commonwealth) Amendment Act 1994*.

(2) The *Pollution of Waters by Oil and Noxious Substances Act 1987* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 3—Interpretation

3. Section 3 of the principal Act is amended—

- (a) by striking out from subsection (1) the definition of "harbor master";
- (b) by striking out "harbor master" from paragraph (b) of the definition of "inspector" in subsection (1) and substituting "port manager";
- (c) by inserting in subsection (1) after the definition of "pleasure vessel" the following definition:

"port manager" means a person holding or acting in a position, the holder of which is designated by the Minister as having responsibility for the management of a harbor;.

Amendment of s. 6—Delegation

4. Section 6 of the principal Act is amended—

- (a) by striking out from subsection (2) "harbor master" twice occurring and substituting, in each case, "port manager";

(b) by striking out "harbor master" from subsection (3)(c) and substituting "port manager".

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

5. Section 8 of the principal Act is amended—

- (a) by striking out from subsection (4)(a)(iii) "60" and substituting "30";
- (b) by striking out from subsection (4)(b)(i) "and is more than 12 nautical miles from the nearest land";
- (c) by striking out from subsection (4)(b)(iii) "100" and substituting "15";
- (d) by striking out from subsection (4)(b)(iv) "an oil discharge monitoring and control system, oily-water separating equipment, oil filtering equipment or other installation" and substituting "equipment";
- (e) by striking out paragraphs (e) and (f) of subsection (4) and substituting the following paragraph:

(e) subject to subsection (4a), the discharge of oil or an oily mixture from a machinery space bilge of a ship that has a gross tonnage of 400 or more if—

- (i) the ship was delivered before 6 July 1993; and
- (ii) the oil or oily mixture did not originate from a cargo pump-room bilge; and
- (iii) the oil or oily mixture is not mixed with oil cargo residues; and
- (iv) the ship is not within a special area; and
- (v) the ship is more than 12 nautical miles from the nearest land; and
- (vi) the ship is proceeding *en route*; and
- (vii) the oil content of the effluent is less than 100 parts per 1 000 000 parts; and
- (viii) the ship has in operation oily-water separating equipment as required by regulations made by virtue of section 267A of the *Navigation Act 1912*;;

(f) by striking out paragraph (h) of subsection (4) and substituting the following paragraph:

(h) the discharge, within a special area from a ship that has a gross tonnage of less than 400 and is not an oil tanker of oil or an oily mixture, if the oil content of the effluent without dilution is less than 15 parts in 1 000 000 parts;;

(g) by inserting after subsection (4) the following subsection:

(4a) Subsection (4)(e) does not apply after—

(a) 6 July 1998; or

(b) the date on which the ship is fitted with equipment of a kind described in Regulation 16 of the amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships 1973 set out in Schedule 13 of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* of the Commonwealth,

whichever is the earlier.

Insertion of s. 10A

6. The following section is inserted after section 10 of the principal Act:

Shipboard oil pollution emergency plan

10A. (1) This section applies to—

(a) a trading ship proceeding on an intra-state voyage; or

(b) an Australian fishing vessel proceeding on a voyage other than an overseas voyage; or

(c) a pleasure vessel,

that—

(d) is an oil tanker with a gross tonnage of 150 or more; or

(e) has a gross tonnage of 400 or more and is not an oil tanker.

(2) In this section—

"prescribed incident", in relation to a ship, has the same meaning as in section 10.

(3) There must be kept on board a ship to which this section applies a shipboard oil pollution emergency plan written in the working language of the master of, and the officers on board, the ship.

(4) A shipboard oil pollution emergency plan must be in accordance with the prescribed form and set out the following particulars:

(a) the procedure to be followed by the master, or any other person having charge, of the ship in notifying a prescribed incident in relation to the ship;

(b) a list of the authorities or persons that are to be notified by persons on the ship if a prescribed incident occurs in relation to the ship;

- (c) a detailed description of the action to be taken, immediately after a prescribed incident, by persons on board the ship to reduce or control any discharge from the ship resulting from the incident;
- (d) the procedures to be followed for co-ordinating with the authorities or persons that have been contacted (whether in Australia or in a country near to the place where the incident occurred) any action taken in combating the pollution caused by the incident and, in particular, the person on board the ship through whom all communications are to be made.

(5) The procedure referred to in subsection (4)(a) must be in accordance with the regulations prescribing, for the purposes of section 10(1), the manner in which a prescribed incident is to be notified.

(6) Subsection (4) does not prevent other relevant particulars from being included in the shipboard oil pollution emergency plan.

(7) If a ship to which this section applies does not have on board a shipboard oil pollution emergency plan, the master of the ship and the owner of the ship are each guilty of an offence.

Penalty: \$50 000.

Amendment of s. 35—Transfer of oil at night

7. Section 35 of the principal Act is amended—

- (a) by striking out "harbor master" from subsection (1)(a) and substituting "port manager";
- (b) by striking out subsections (2) and (3) and substituting the following subsection:

(2) Permission under this section to transfer oil may be given—

- (a) in individual cases or generally to transfers that are carried out in specified circumstances;
- (b) subject to such conditions or limitations as the port manager or Minister thinks fit.

Amendment of s. 39—Evidence of analyst

8. Section 39 of the principal Act is amended—

- (a) by striking out subsection (2) and substituting the following subsection:

(2) Subject to subsection (4), a certificate signed by an analyst appointed under subsection (1) setting out, in relation to a substance, one or more of the following:

- (a) when and from whom the substance was received;
- (b) what labels or other means of identifying the substance accompanied it when it was received;
- (c) what container the substance was in when it was received;

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- (d) a description of the substance received;
 - (e) that he or she has analysed or examined the substance;
 - (f) the date on which the analysis or examination was carried out;
 - (g) the method used in conducting the analysis or examination;
 - (h) the results of the analysis or examination,

is in any proceedings for an offence against this Act proof, in the absence of proof to the contrary, of the matters in the certificate and the correctness of the results of the analysis or examination.;

(b) by inserting after subsection (5) the following subsection:

(6) Subsection (5) does not entitle a person to require an analyst to be called as a witness for the prosecution unless—

- (a) the prosecutor has been given at least 5 days notice of the person's intention to require the analyst to be so called; or
- (b) the court, by order, allows the person to require the analyst to be so called.

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

ROMA MITCHELL Governor