

OIL POLLUTION.

No. 15 of 1961.

AN ACT to prevent the pollution of navigable water
with oil. [7 September 1961.]

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

Short title
and com-
mencement.

1—(1) This Act may be cited as the *Oil Pollution Act 1961*.

(2) This Act shall commence on a day to be fixed by proclamation.

Interpreta-
tion.

2 In this Act, unless the contrary intention appears—

“Convention” means—

(a) the International Convention for the Prevention of Pollution of the Sea by Oil 1954 and includes that Convention as amended by any amendment accepted by Her Majesty on behalf of the Commonwealth; and

(b) any subsequent Convention relating to the same subject and accepted by Her Majesty on behalf of the Commonwealth;

“harbour authority” means a marine board or a harbour trust continued by or constituted under the *Marine Act 1921*;

“harbour master” has the same meaning as in the *Marine Act 1921*;

“master” has the same meaning as in the *Marine Act 1921*;

“occupier”, in relation to a place on land, means the person exercising by his servants or agents or otherwise any right of occupation thereof, or if it has no occupier the owner thereof, and with respect to a vehicle means the person in charge thereof or the owner thereof and not the occupier of the land on or over which the vehicle stands or moves;

“oil” means oil of any description and includes—

(a) spirit produced from oil;

(b) coal tar; and

(c) any mixture of oil with water or any other substance;

“owner” has the same meaning as in the *Marine Act 1921*;

“place on land” includes—

- (a) any structure or apparatus on and any thing or vehicle resting on or moving over land;
- (b) any thing resting on or lying under the bed or shores of any navigable waters; and
- (c) any floating thing other than a vessel which is anchored or attached to the bed or shore of any navigable waters;

“port” has the same meaning as in the *Marine Act 1921*;

“tanker” means a vessel constructed or adapted for carrying a cargo of oil in bulk;

“Tasmanian ship” means any vessel other than one which trades or proceeds to or from a port outside the State;

“the harbour authority” means the harbour authority having jurisdiction in the place to which the context relates;

“the harbour master” means the harbour master having authority in the place to which the context relates;

“the sea” includes estuaries, arms of the sea, creeks, tidal rivers and inland navigable waters;

“vessel” has the same meaning as in the *Marine Act 1921*.

3 If any oil is discharged or escapes into the sea from a vessel, a place on land, or apparatus used for transferring oil from or to a vessel (whether to or from a place on land or to or from another vessel)—

Discharge of oil into waters.
3 & 4 Eliz. II, c. 25, s. 3.

- (a) if the discharge or escape is from a vessel, the owner or master of the vessel;
- (b) if the discharge or escape is from a place on land, the occupier of that place; or
- (c) if the discharge or escape is from such apparatus, the person in charge of the apparatus,

is liable to a penalty of one thousand pounds.

4—(1) Where a person is charged with an offence against section three as owner or master of a vessel it is a defence—

Special defences.
Ibid., s. 4.

- (a) that the oil in question was discharged for the purpose of—
 - (i) securing the safety of the vessel;
 - (ii) preventing damage to the vessel or her cargo; or
 - (iii) saving life,

unless it appears that the discharge was not necessary for the purposes alleged or was not a reasonable step to take in the circumstances; or

(b) that the oil escaped in consequence of—

(i) damage to the vessel; or

(ii) leakage which could not have been avoided or foreseen,

and that all reasonable steps were taken for prompt discovery of the leakage, if any, and after the occurrence of the damage or discovery of the leakage for stopping or reducing the escape of the oil.

(2) Where a person is charged with an offence under section three as the occupier of a place on land or as the person in charge of apparatus it is a defence that the escape of the oil was due to an accident which could not have been prevented or foreseen, and that all reasonable steps were taken for prompt discovery of the escape and for stopping or reducing it.

(3) Where oil is discharged or escapes in consequence of—

(a) the execution of an order for the removal of a vessel or article under section eighty-nine of the *Marine Act 1921*; or

(b) the exercise for the purpose of preventing a nuisance, obstruction or danger to navigation of the powers conferred by paragraph VIII of section sixty-four of the *Marine Act 1921*,

and apart from this subsection the harbour authority or person employed by or acting on its behalf would be liable to a penalty under section three in respect of that discharge or escape, the authority or person shall not be convicted unless it is shown that it or he failed to take such steps (if any) as were reasonable in the circumstances for preventing, stopping, or reducing the discharge or escape.

Removal of oil pollution.

5 Oil that has been discharged into the sea shall be deemed to be a nuisance for the purposes of paragraph VIII of section sixty-four of the *Marine Act 1921*.

Equipment in ships to prevent oil pollution. *Ibid.*, s. 5.

6—(1) For the purpose of preventing discharges and escapes of oil into the sea every Tasmanian ship shall be fitted with such equipment and comply with such other requirements as may be prescribed.

(2) A harbour authority may appoint persons to carry out inspections and tests prescribed for the purposes of this section.

Facilities in harbours for disposal of oil. *Ibid.*, s. 8.

7—(1) In this section “oil reception facilities” means facilities provided under subsection (2).

(2) A harbour authority may—

(a) provide;

- (b) join with any other person or with the Crown in providing; or
- (c) arrange for the provision by any other person or by the Crown of,

facilities for enabling vessels to dispose of waste oil.

(3) A harbour authority may make by-laws in accordance with section one hundred and sixty-eight of the *Marine Act 1921* fixing charges and imposing conditions in respect of the use of oil reception facilities and may thereby require that waste oil disposed of therein shall first be treated to its satisfaction or in a manner approved by it.

(4) Subject to subsection (5) of this section, oil reception facilities shall be open to all vessels subject to compliance with the harbour authority's by-laws made under subsection (3).

(5) The harbour authority or a person providing oil reception facilities by arrangement with the harbour authority is not obliged to make those facilities available—

- (a) for use by tankers;
- (b) for the reception of waste oil disposed of for the purposes of enabling a vessel to undergo repairs; and
- (c) for the reception of ballast water which contains oil and which has not been subject to an effective process for separating the oil from the water.

8—(1) Oil shall not be transferred between sunset and sunrise to or from a vessel in any port unless notice has been given to, and permission in writing obtained from, the harbour master or the harbour authority. Restriction on transfer of oil at night. *Ibid.*, s. 9.

(2) For the purposes of this section a general notice may be given to the harbour master or the harbour authority that such transfers will be frequently carried out at a place and within a period specified in the notice, and a general permission subject to such conditions as the harbour master or the harbour authority thinks fit may be given.

(3) If oil is transferred to or from a vessel in contravention of this section or if a condition attached to the permission given is not observed the master of the vessel, and if the oil is transferred from or to a place on land the occupier of that place, are liable to a penalty of two hundred pounds.

9 If any oil is discharged or escapes from a vessel or place on land into the sea the owner or master of the vessel or the occupier of the place on land shall forthwith inform the harbour authority of all details of the occurrence. Discharges and escapes of oil to be reported. *Ibid.*, s. 10.

Penalty: Two hundred pounds.

10—(1) For the purpose of investigating any known or suspected discharge or escape of oil into the sea the harbour master or any person appointed for the purpose by the harbour authority may— Powers of inspection. *Ibid.*, s. 11.

- (a) go on board and inspect any vessel within the jurisdiction of the harbour authority;

- (b) inspect any records required to be kept in respect of the vessel by this Act or by any law of the country of a contracting government to the Convention for the carrying out of the purposes of the Convention;
- (c) if those records are kept in a language other than English be accompanied and assisted by an interpreter; and
- (d) cause any entry in those records to be copied and require the person by whom the records are kept to certify the copy as a true copy of the entry.

(2) A person exercising a power conferred by subsection (1) of this section shall not unnecessarily detain or delay a vessel from proceeding on her voyage.

(3) For the purpose of investigating any known or suspected discharge or escape of oil into the sea from a place on land a person appointed for that purpose by the harbour authority may—

- (a) enter and inspect that place;
- (b) inspect any records required to be kept under this Act in respect of that place; and
- (c) require the person by whom the records are kept to certify the copy as a true copy of the original.

(4) Any person exercising the powers conferred by subsection (1) or subsection (3) of this section may—

- (a) take samples of any substances that are in, on, or in the vicinity of the vessel or place inspected;
- (b) require the master of the vessel or the occupier of the place or any person representing him to certify the taking of the sample; and
- (c) require the testing of any equipment or apparatus in the ship or place the condition or efficiency of which he considers relevant to the known or suspected discharge or escape.

(5) A person appointed by the harbour authority to report to it regarding the proper observance and the adequacy of the prohibitions, restrictions, and obligations imposed by or under this Act may—

- (a) go aboard any Tasmanian ship or enter any place on land;
- (b) there exercise any power conferred by subsections (1), (3), and (4) of this section;
- (c) require such persons as he thinks fit to answer such questions as he thinks fit; and
- (d) require the production of all books, papers, or documents which he considers important for the purposes of his report.

(6) A person who—

- (a) assaults, resists, hinders, or obstructs any person acting in the exercise of a power conferred by this section;
- (b) fails to comply with any requirement duly made under this section; or
- (c) in giving any answer required under subsection (5) of this section makes a statement which is false or misleading in any particular,

is liable to a penalty of two hundred pounds.

11—(1) Except as provided in section sixteen, proceedings shall not be taken for a penalty under this Act without the approval of the harbour authority. Prosecutions.
Ibid., s. 12.

(2) The approval of the harbour authority for any such proceedings shall be sufficiently proved by a statement in writing purporting to be signed by the secretary of the harbour authority.

(3) The taking of proceedings by an officer or servant of the harbour authority for a penalty under this Act shall be deemed to have been approved by the harbour authority in the absence of proof to the contrary.

12 In any proceedings under this Act—

Evidence.

- (a) any records required to be kept by this Act or by any laws of any contracting government to the Convention for the carrying out of the purposes of the Convention are admissible as evidence of the facts stated in those records;
- (b) a 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, is admissible as evidence of the facts stated in the entry; and
- (c) a document purporting to be a record 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 paragraph (b) shall, unless the contrary is proved, be presumed to be such records or such a certified copy, as the case may be.

13—(1) Where in regard to any requirement prescribed by regulations or by-laws under this Act the harbour authority is satisfied— Dispensations and exemptions.
Cf. *ibid.*,
s. 15.

- (a) that the requirement has been substantially complied with;
- (b) that compliance with the requirement is, in the circumstances of the case, impracticable or unnecessary; or

- (c) that the action taken or the 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 harbour authority may exempt any vessel or class of vessel from any of the provisions of this Act or of any regulations or by-laws made under this Act other than section three.

(3) A dispensation or exemption granted under this section may be revoked by the harbour authority at any time.

(4) Where a dispensation or exemption has been granted under this section the harbour authority may at the same time or any time thereafter attach to the dispensation or exemption any conditions which it thinks proper and may vary or revoke them.

(5) A person who fails to comply with a condition imposed under subsection (4) of this section shall incur the same penalties and consequences as he would for a breach of the provision from which the dispensation or exemption was granted.

Appropriation of penalties. V 12 Geo. V No. 60, s. 162.

Act to bind the Crown. Cf. 3 & 4 Eliz. II, c. 25, s. 16.

Co-ordination with *Inflammable Liquids Act 1929*.

14 All penalties and expenses imposed and recovered under this Act shall be paid to the harbour authority.

15 This Act applies in respect of vessels and places belonging to or in the possession of the Crown.

16—(1) Except as provided in subsection (2) of this section, nothing in this Act affects the operation of the *Inflammable Liquids Act 1929*.

(2) Acts constituting an offence both under this Act and the *Inflammable Liquids Act 1929* shall be prosecuted only under this Act.

(3) An inspector as defined in the *Inflammable Liquids Act 1929* has all the powers, rights, and duties of a person appointed—

- (a) under subsection (2) of section six;
- (b) under subsection (1) or subsection (3) of section ten; or
- (c) to report to the harbour authority under subsection (5) of section ten.

(4) The Chief Inspector of Explosives may require the harbour authority to withdraw or amend—

- (a) any permission given under section eight; and
- (b) any dispensation or exemption given under section thirteen,

and the harbour authority shall comply, with effect from the notification thereof to the owner, master, or occupier concerned.

(5) Notwithstanding section eleven, proceedings for a penalty under this Act may be taken by any person authorized so to do by the Chief Inspector of Explosives.

17—(1) The Governor may make regulations for the purposes of this Act. Regulations.
Cf. *Ibid.*,
ss. 5 & 7.

(2) Regulations made for the purposes of section six may provide that prescribed equipment—

- (a) shall not be installed in a vessel unless it is of a type tested and approved by a person appointed by the harbour authority for that purpose; and
- (b) while installed in a vessel shall not be deemed to satisfy the requirements of the regulations unless it is tested and approved at prescribed times by a person appointed by the harbour authority for that purpose.

(3) The regulations may provide that masters of Tasmanian ships and occupiers of places on land shall keep records for the purposes of this Act, and in particular and without restricting the generality of this subsection requiring—

- (a) the master of a Tasmanian ship to keep records of—
 - (i) any occasion when oil is discharged from the ship for the purpose of securing her safety or of preventing damage to the ship or her cargo or of saving life;
 - (ii) any occasion on which 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; and
 - (iii) the carrying out on board or in connection with the ship of prescribed operations, being operations relating to the ballasting of oil tanks (whether cargo or bunker fuel tanks) and the discharge of ballast therefrom and the cleaning thereof, the separation of oil from water, or from other substances in a mixture containing oil or the disposal of waste oil;
- (b) masters of vessels to keep records relating to the transfer of oil to and from vessels;
- (c) the keeping of records by the occupiers of places on land relating—
 - (i) to the transfer of oil to or from vessels and to, from, or through places on land; and
 - (ii) to the operation of facilities provided at places on land for the disposal of waste

oil, and to discharges of oil occurring in the course of or in connection with such transfers and disposals; and

- (d) persons keeping prescribed records to retain them for a prescribed period and at the end of the prescribed period to transmit them to a prescribed person or place.

(4) For the purposes of subsection (3) of this section the regulations may provide—

- (a) that for failure to keep records as prescribed the owner and master of a vessel;
- (b) that for failure to keep records as prescribed in relation to a place on land, the occupier of that place; and
- (c) that for a contravention of those regulations or for making an entry in a prescribed record which is to his knowledge false or misleading in any particular, a person,

is liable to a penalty of five hundred pounds.

By-laws.

18—(1) Subject to the provisions of section one hundred and sixty-eight of the *Marine Act* 1921, a harbour authority may make by-laws for the purposes of this Act.

(2) By-laws under this section may provide for fees to be paid for any inspection or test under this Act.

(3) The Governor may, on the recommendation of the Chief Inspector of Explosives, repeal any by-law made by a harbour authority under this Act.

DIRECTOR OF AGRICULTURE.

No. 16 of 1961.

AN ACT to provide for the alteration of the title of the office of Secretary for Agriculture and for matters incidental thereto.

[7 September 1961.]

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

Short title.

1 This Act may be cited as the *Director of Agriculture Act* 1961.

Repeal.

2 The *Department of Agriculture Act* 1937 is repealed.

Alteration of title.

3 The title of the office of Secretary for Agriculture is altered to that of "Director of Agriculture".