

**PART 5, SECTIONS 30 TO 35 ARE UNCOMMENCED**

**NORTHERN TERRITORY OF AUSTRALIA**

**MARINE POLLUTION ACT**

As in force at 27 October 2004

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# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 27 October 2004. Any amendments that commence after that date are not included.

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## MARINE POLLUTION ACT

**An Act to protect the marine and coastal environment by minimising intentional and negligent discharges of ship-sourced pollutants into coastal waters, and for related purposes**

### Part 1 Preliminary

#### Division 1 Preliminary matters

##### 1 Short title

This Act may be cited as the *Marine Pollution Act*.

##### 2 Commencement

This Act comes into operation on the day or days fixed by the Administrator by notice in the *Gazette*.

##### 3 Act binds the Crown

This Act binds the Crown not only in right of the Territory but also, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

##### 4 Application

- (1) Subject to subsection (4), this Act applies to all ships in coastal waters.
- (2) **Coastal waters** may be generally described as the area extending from the low water mark on the coast of the Territory to an imaginary line 3 n miles seawards of that mark.
- (3) Subsection (2) is intended only to provide general assistance to a reader of this Act and is not to be taken as replacing or modifying in any way the definition of **coastal waters** in section 6.
- (4) This Act does not apply to:
  - (a) a ship under the control of the Australian Defence Force; or

- (b) a warship, naval auxiliary or other ship owned or operated by a foreign country and used, for the time being, only on government, non-commercial service of the country.

## 5 Overall purpose

- (1) The overall purpose of this Act is to protect the Territory's marine and coastal environment by minimising intentional and negligent discharges of ship-sourced pollutants into coastal waters.
- (2) This purpose is to be achieved primarily by giving effect to relevant provisions of the following annexes of MARPOL:
  - (a) Annex I (which deals with pollution by oil);
  - (b) Annex II (which deals with pollution by noxious liquid substances in bulk);
  - (c) Annex III (which deals with pollution by harmful substances in packaged form);
  - (d) Annex V (which deals with pollution by garbage).
- (3) The purpose is also to be achieved by:
  - (a) providing an approach to protecting the Territory's marine and coastal environment from ship-sourced pollutants complementary to the approach of the Commonwealth and the States of the Commonwealth;
  - (b) making provision about the discharge of sewage from ships;
  - (c) enabling shipping casualties that are polluting, or threatening to pollute, coastal waters, to be dealt with; and
  - (d) imposing severe penalties on persons who pollute the Territory's marine and coastal environment in contravention of this Act.

## Division 2 Interpretation

### 6 Interpretation

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

**agent**, in relation to a ship's owner, has the meaning it has in section 8.

**analyst** means a person:

- (a) who is appointed as an analyst under section 11; or
- (b) who holds a kind of accreditation that is prescribed in relation to analysts in the Regulations.

**authorised officer** means a person who is appointed as an authorised officer under section 51.

**Chief Executive Officer** means the Chief Executive Officer of the Agency allocated primary responsibility for administration of this Act under an Administrative Arrangements Order.

**coastal waters** means the coastal waters of the Territory, within the meaning of the *Coastal Waters (Northern Territory Powers) Act 1980* of the Commonwealth, and includes other waters within the limits of the Territory that are subject to the ebb and flow of the tide.

**Commonwealth Navigation Act** means the *Navigation Act 1912* of the Commonwealth.

**condition** includes restriction.

**discharge** means any release, however caused, from a ship of a harmful substance or effluents containing such substances, and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying, but does not include:

- (a) dumping within the meaning of the Convention for the Prevention of Marine Pollution by Dumping of Waste and Other Matter, done at London on 13 November 1972;
- (b) release of harmful substances directly associated with the exploration, exploitation and associated offshore processing of sea-bed mineral and petroleum resources; or
- (c) release of harmful substances for purposes of legitimate scientific research into pollution abatement or control.

**discharge expenses** means:

- (a) the reasonable costs and expenses incurred by the Territory in:
  - (i) investigating a discharge of a pollutant;
  - (ii) preventing a discharge or minimising the effects of a discharge of a pollutant;



- (iii) treating animals and plants affected by a discharge of a pollutant;
  - (iv) rehabilitating or restoring the Territory's marine and coastal environment; or
  - (v) the exercise by an authorised officer of a power under Division 7 of Part 10 of this Act; or
- (b) an amount reasonably paid by the Territory under section 84 or by the Chief Executive Officer under Part 12.

**environment** means land, air, water, organisms and ecosystems and includes:

- (a) the well-being of humans;
- (b) structures made or modified by humans;
- (c) the amenity values of an area; and
- (d) economic, cultural and social conditions.

**environmental harm** means:

- (a) any harm to or adverse effect on the environment; or
- (b) any potential harm (including the risk of harm and future harm) to or potential adverse effect on the environment,

of any degree or duration.

**executive officer**, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

**harmful substance** has the meaning it has in Part 4.

**IMO** means the International Maritime Organization.

**MARPOL** has the meaning it has in section 7.

**master**, in relation to a ship, means the person having lawful command or charge of the ship, but does not include a person not belonging to the ship who has lawful conduct of the ship.

**material environmental harm** means environmental harm that:

- (a) is not trivial or negligible in nature;

- (b) consists of an environmental nuisance of a high impact or on a wide scale;
- (c) results, or is likely to result, in not more than \$50,000 or the prescribed amount (whichever is greater) being spent in taking appropriate action to prevent or minimise the environmental harm or rehabilitate the environment; or
- (d) results in actual or potential loss or damage to the value of not more than \$50,000 or the prescribed amount (whichever is greater).

**n mile** means an international nautical mile.

**noxious liquid substance** has the meaning it has in Part 3.

**obstruct** includes:

- (a) assault, threaten, abuse, insult, intimidate or hinder; and
- (b) attempt to obstruct.

**occupier**, in relation to a place, includes a person who reasonably appears to be the occupier, or in charge, of the place.

**oil** means petroleum of any form and includes:

- (a) any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, including crude oil from which certain distillate fractions may have been removed or added;
- (b) sludge and oil refuse;
- (c) any oil used in connection with the propulsion and auxiliary machinery of the ship in which that oil is carried;
- (d) refined products, other than petrochemicals, that are subject to the provisions of Annex II of MARPOL;
- (e) substances listed in Appendix 1 to Annex II to MARPOL; and
- (f) a mixture with any oil content.

**oil tanker** means a ship constructed or adapted primarily to carry oil in bulk in its cargo space and includes:

- (a) a ship designed to carry either oil or solid cargoes in bulk; and

- (b) any ship constructed or adapted primarily to carry a cargo of noxious liquid substances in bulk when it is carrying a cargo or part cargo of oil in bulk.

**owner**, in relation to a ship, means the person who owns the ship, whether or not the person is registered as the ship's owner and includes a person:

- (a) who exercises, or purports to exercise, a power of an owner; and
- (b) who operates the ship or causes or allows the ship to be operated by someone else.

**owner**, in relation to a seized object, includes the person from whom the object is seized unless the authorised officer concerned is aware of its actual owner.

**person in control**, in relation to a ship, includes the person who has, or reasonably appears to have, command or charge of the ship.

**place** includes land and premises but does not include a ship.

**pollutant** means any substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, and includes any substance subject to control by MARPOL and sewage.

**premises** includes:

- (a) a building or other structure or part of a building or other structure; and
- (b) land where a building or other structure is situated.

**public place** means any place that:

- (a) the public is entitled to use;
- (b) is open to the public; or
- (c) is used by the public,

whether or not on payment of money.

**related Territory interests** means the Territory interests directly affected or threatened by a maritime casualty as defined in section 81 and includes:

- (a) maritime coastal, port or estuarine activities, including, for example, fishing activities, that are an essential means of livelihood for persons;
- (b) tourist attractions; and
- (c) the health of Territorians and the wellbeing of the Territory.

**serious environmental harm** means environmental harm that is more serious than material environmental harm and includes environmental harm that:

- (a) is irreversible or otherwise of a high impact or on a wide scale;
- (b) damages an aspect of the environment that is of a high conservation value, high cultural value or high community value or is of special significance;
- (c) results or is likely to result in more than \$50,000 or the prescribed amount (whichever is greater) being spent in taking appropriate action to prevent or minimise the environmental harm or rehabilitate the environment; or
- (d) results in actual or potential loss or damage to the value of more than \$50,000 or the prescribed amount (whichever is greater);

**sewage** has the meaning it has in Part 5 and includes human wastes.

**ship:**

- (a) means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms; and
- (b) includes an aircraft when it is on the surface of the water.

**tonnage** means the tonnage of a ship determined in accordance with the International Convention on Tonnage Measurement of Ships.

- (2) If a penalty is specified at the foot of a provision of this Act to be:
- (a) an environmental offence level 1, 2, 3 or 4 – an offence against the provision is designated to be an environmental offence level 1, 2, 3 or 4, respectively, within the meaning of the *Environmental Offences and Penalties Act*; or
  - (b) a number of penalty units – the penalty is to be determined by reference to the *Penalties Act*.
- (3) A reference in this Act to the Act is to be taken to include a reference to the Regulations.

## 7 Meaning of **MARPOL**

- (1) **MARPOL** is the International Convention for the Prevention of Pollution from Ships, 1973:
- (a) as corrected by the procès-verbal of rectification dated 13 June 1978;
  - (b) as modified and added to by the 1978 Pollution Protocol relating to the Convention; and
  - (c) as affected by any amendment made under article 16 of the Convention and accepted by Australia.
- (2) If an amendment is made under article 16 of the Convention and accepted by Australia, the amendment is of no effect for the purposes of this Act until the Minister gives notice of the amendment in the *Gazette*.

## 8 Meaning of **agent**

- (1) An **agent** of a ship owner is the person who, for the owner:
- (a) makes an arrangement for berthing the ship, or loading or unloading cargo on or from the ship, in the Territory; or
  - (b) makes an arrangement for the ship to load bunkers or stores in the Territory.
- (2) The person remains the ship owner's agent until:
- (a) the person, or the ship owner, gives the Chief Executive Officer written notice that the person is no longer the ship's agent;
  - (b) someone else in the Territory is appointed by the ship owner as agent; or

(c) the ship is outside coastal waters.

- (3) If subsection (2)(a) and (b) do not apply, the person again becomes the ship owner's agent when the ship returns to coastal waters.

## **9 Discharge outside coastal waters that enters coastal waters**

- (1) The discharge of a pollutant, whether or not in packaged form, that happens outside coastal waters is taken to be a discharge into coastal waters under this Act if the discharged pollutant enters coastal waters.
- (2) The discharge is taken to happen when the discharged pollutant enters coastal waters.

## **Division 3 Administration**

### **10 Delegation by CEO**

- (1) The Chief Executive Officer may, in writing, delegate to a person, including the person from time to time holding, acting in or performing the duties of an office, designation or position, any of his or her powers and functions under this Act, other than this power of delegation.
- (2) A power or function delegated under this section, when exercised or performed by the delegate, is to be taken to have been exercised or performed by the Chief Executive Officer.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Chief Executive Officer.

### **11 Appointment of analysts**

The Chief Executive Officer may appoint a person who, in his or her opinion, is appropriately qualified, to be an analyst.

### **12 Protection from liability**

A person exercising a power or performing a function or duty conferred or imposed on him or her by or under this Act or an instrument of a legislative or administrative character under this Act does not render the Territory or himself or herself liable in respect of any matter or thing done if the matter or thing was done in good faith for the purposes of this Act.

**Part 2                      Prevention of pollution by oil****13                      Part gives effect to Annex I to MARPOL**

The purpose of this Part is to give effect to relevant provisions of Annex I to MARPOL.

**14                      Discharge of oil into coastal waters prohibited**

- (1) A ship's owner and a ship's master must not intentionally cause or permit the discharge of oil from a ship into coastal waters if:

- (a) serious environmental harm results; and
- (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty:            environmental offence level 1.

- (2) A ship's owner and a ship's master must not cause or permit the discharge of oil from a ship into coastal waters if:

- (a) serious environmental harm results; and
- (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty:            environmental offence level 2.

- (3) A ship's owner and a ship's master must not intentionally cause or permit the discharge of oil from a ship into coastal waters if:

- (a) material environmental harm results; and
- (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty:            environmental offence level 2.

- (4) A ship's owner and a ship's master must not cause or permit the discharge of oil from a ship into coastal waters if:

- (a) material environmental harm results; and

- (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty: environmental offence level 3.

- (5) A ship's owner and a ship's master must ensure that oil is not discharged from the ship into coastal waters.

Penalty: environmental offence level 4.

- (6) An offence against subsection (5) is a regulatory offence.

## **15 Defences**

- (1) Each of the following is a defence to a prosecution for an offence against section 14:

- (a) the discharge was necessary for the purpose of securing the safety of a ship or saving life at sea;
- (b) the discharge of a substance containing oil was made in an attempt to minimise the damage from pollution arising from a specific pollution incident and was approved by an authorised officer;
- (c) the discharge was authorised by an authorised officer for training purposes.

- (2) It is a defence to a prosecution for an offence against section 14 if:

- (a) the discharge resulted from damage, other than intentional damage, to the ship or its equipment;
- (b) there was in place a system of adequate and regular inspection and maintenance of the ship or equipment so as to prevent as far as is reasonably practicable the discharge of oil as a result of damage to the ship or equipment;
- (c) the damage was not such as should reasonably be expected to have been detected and repaired in the course of carrying out the inspection and maintenance; and
- (d) all reasonable precautions were taken after the damage happened or the discharge was discovered to prevent or minimise the discharge of the oil.



(3) For the purposes of subsection (2)(a), damage to a ship or its equipment is intentional damage only if the damage arose in circumstances in which the ship's owner or master:

- (a) acted with intent to cause damage; or
- (b) acted recklessly and with knowledge that damage would probably result.

**16 Certain discharges permissible**

The Regulations may declare that section 14 does not apply in relation to a discharge of oil.

**17 Shipboard oil pollution emergency plan**

(1) The owner and the master of:

- (a) an oil tanker with a gross tonnage of 150 tons or more; or
- (b) a ship, other than an oil tanker, with a gross tonnage of 400 tons or more,

must ensure that there is an approved shipboard oil pollution emergency plan on board the ship.

Penalty: 1,000 penalty units.

(2) In this section, ***approved shipboard oil pollution emergency plan*** means a shipboard oil pollution emergency plan approved by the Chief Executive Officer or an Administration within the meaning of MARPOL.

**Part 3 Prevention of pollution by noxious liquid substances in bulk**

**18 Part gives effect to Annex II to MARPOL**

The purpose of this Part is to give effect to relevant provisions of Annex II to MARPOL.

**19 Application of Part**

This Part applies to all ships carrying noxious liquid substances in bulk.

**20 Definitions**

In this Part:

**mixture** includes ballast water, tank washings and bilge and other residues.

**liquid substance** is a substance having a vapour pressure not exceeding  $2.8 \text{ kp/cm}^2$  at a temperature of  $37.8^\circ \text{ C}$ .

**noxious liquid substance** includes:

- (a) a liquid substance categorised in Annex II to MARPOL as a category A, B, C or D substance; and
- (b) a mixture containing a noxious liquid substance.

**21 Discharge of noxious liquid substances into coastal waters prohibited**

- (1) A ship's owner and a ship's master must not intentionally cause or permit the discharge of a noxious liquid substance from the ship into coastal waters if:
  - (a) serious environmental harm results; and
  - (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty: environmental offence level 1.

- (2) A ship's owner and a ship's master must not cause or permit the discharge of a noxious liquid substance from the ship into coastal waters if:
  - (a) serious environmental harm results; and
  - (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty: environmental offence level 2.

- (3) A ship's owner and a ship's master must not intentionally cause or permit the discharge of a noxious liquid substance from the ship into coastal waters if:
  - (a) material environmental harm results; and

- (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty: environmental offence level 2.

- (4) A ship's owner and a ship's master must not cause or permit the discharge of a noxious liquid substance from the ship into coastal waters if:

- (a) material environmental harm results; and

- (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty: environmental offence level 3.

- (5) A ship's owner and a ship's master must ensure that a noxious liquid substance is not discharged from the ship into coastal waters.

Penalty: environmental offence level 4.

- (6) An offence against subsection (5) is a regulatory offence.

## **22 Defences**

- (1) Each of the following is a defence to a prosecution for an offence against section 21:

- (a) the discharge was necessary for the purpose of securing the safety of a ship or saving life at sea;
- (b) the discharge was for the purpose of combating specific pollution incidents to minimise the damage from pollution and was approved by an authorised officer.

- (2) It is a defence to a prosecution for an offence against section 21 if:

- (a) the discharge resulted from damage, other than intentional damage, to the ship or its equipment;
- (b) there was in place a system of adequate and regular inspection and maintenance of the ship or equipment so as to prevent as far as is reasonably practicable the discharge of noxious liquid substances as a result of damage to the ship or equipment;

- (c) the damage was not such as should reasonably be expected to have been detected and repaired in the course of carrying out the inspection and maintenance; and
  - (d) all reasonable precautions were taken after the damage happened or the discharge was discovered to prevent or minimise the discharge of the noxious liquid substance.
- (3) For the purposes of subsection (2)(a), damage to a ship or its equipment is taken to be intentional damage only if the damage arose in circumstances in which the ship's owner or master:
- (a) acted with intent to cause damage; or
  - (b) acted recklessly and with knowledge that damage would probably result.

### **23 Certain discharges permissible**

The Regulations may declare that section 21 does not apply in relation to a discharge of a noxious liquid substance.

### **24 Certain noxious liquid substances to be treated as oil**

- (1) The Regulations may prescribe a noxious liquid substance that is categorised in Annex II to MARPOL as a category C or D substance as an oil-like substance (the **prescribed oil-like substance**) that may be carried on an oil tanker if the conditions prescribed under the Regulations are satisfied.
- (2) The Regulations may only prescribe a category C or D substance identified by the IMO as an oil-like substance.
- (3) If a prescribed oil-like substance is carried on an oil tanker, Part 2 applies to the substance as if the substance were oil.
- (4) The owner and the master of an oil tanker carrying a prescribed oil-like substance must ensure that the oil tanker complies with and does not contravene the conditions prescribed in relation to the substance under the Regulations.

Penalty: 500 penalty units.

## **Part 4                    Prevention of pollution by packaged harmful substances**

### **25                    Part gives effect to Annex III to MARPOL**

The purpose of this Part is to give effect to relevant provisions of Annex III to MARPOL.

### **26                    Interpretation**

(1) In this Part:

***harmful substance*** means those substances that are identified as marine pollutants in the International Maritime Dangerous Goods Code.

***International Maritime Dangerous Goods Code*** means the Code adopted by the International Maritime Organisation by resolution A.716(17) as amended from time to time.

***jettisoning*** includes leakage and accidental discharge or loss overboard.

***packaged form*** means a form of containment specified for harmful substances in the International Maritime Dangerous Goods Code.

(2) An amendment to the International Maritime Dangerous Goods Code is of no effect until the Minister has published in the *Gazette* a notice that the particular amendment is to be taken to be part of the Code.

(3) The Minister may publish in the *Gazette* a notice that an amendment to the International Maritime Dangerous Goods Code is to be taken to be part of the Code for the purposes of this Act.

### **27                    Jettisoning of harmful substances into coastal waters prohibited**

(1) A ship's owner and a ship's master must not intentionally cause or permit the jettisoning from the ship into coastal waters of a harmful substance carried as cargo in packaged form if:

(a) serious environmental harm results; and

(b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the jettisoning.

Penalty:            environmental offence level 1.

- (2) A ship's owner and a ship's master must not cause or permit the jettisoning from the ship into coastal waters of a harmful substance carried as cargo in packaged form if:

- (a) serious environmental harm results; and
- (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the jettisoning.

Penalty: environmental offence level 2.

- (3) A ship's owner and a ship's master must not intentionally cause or permit the jettisoning from the ship into coastal waters of a harmful substance carried as cargo in packaged form if:

- (a) material environmental harm results; and
- (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the jettisoning.

Penalty: environmental offence level 2.

- (4) A ship's owner and a ship's master must not cause or permit the jettisoning from the ship into coastal waters of a harmful substance carried as cargo in packaged form if:

- (a) material environmental harm results; and
- (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the jettisoning.

Penalty: environmental offence level 3.

- (5) A ship's owner and a ship's master must ensure that a harmful substance carried as cargo in packaged form is not jettisoned from the ship into coastal waters.

Penalty: environmental offence level 4.

- (6) An offence against subsection (5) is a regulatory offence.

## **28 Defences**

The following are defences to a prosecution for an offence against section 27:

- (a) the jettisoning was made for the purpose of securing the safety of a ship or saving life at sea;

- (b) if the jettisoning was the washing of leakages overboard – the jettisoning in accordance with procedures prescribed by the Regulations would have impaired the safety of the ship or persons on board the ship.

## 29 Certain discharges permissible

The Regulations may declare that section 27 does not apply in relation to a the jettisoning from a ship into coastal waters of a harmful substance carried as cargo in packaged form.

## Part 5 Prevention of pollution by sewage

### 30 Definitions

In this Part:

**commencement** means the commencement of Part 1.

**existing ship** means a ship other than a new ship.

**holding tank** means a container or receptacle on a ship designed and constructed to receive waste from a toilet on the ship and keep the waste for disposal.

**large ship** means a ship:

- (a) of 400 tons gross tonnage and above;
- (b) of less than 400 tons gross tonnage that is certified to carry more than 15 persons; or
- (c) that does not have a measured gross tonnage and is certified to carry more than 15 persons.

**new ship** means a ship:

- (a) for which a building contract is placed;
- (b) if there is no building contract – the keel of which is laid;
- (c) if there is no building contract and no keel is laid – for which hull construction has started on or after the commencement; or
- (d) that is under construction but the delivery for which is at least 3 years after the commencement.

**sensitivity zone** means an area of coastal waters prescribed by the Regulations to be a sensitivity zone.

**sewage** means:

- (a) drainage and other wastes from any form of toilets, urinals, and WC scuppers;
- (b) drainage from medical premises (such as a dispensary or a sick bay) via wash basins, wash tubs and scuppers located in medical premises;
- (c) drainage from spaces containing living animals; or
- (d) other waste waters when mixed with the drainages referred to in paragraphs (a) to (c) (inclusive).

**small ship** means a ship that is not a large ship.

**toilet** includes urinal.

### **31 Discharge of sewage from ships into coastal waters prohibited**

- (1) The owner and the master of a large ship, or a small ship in a sensitivity zone, must not intentionally cause or permit the discharge of sewage from the ship into coastal waters if:
  - (a) serious environmental harm results; and
  - (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty: environmental offence level 1.

- (2) The owner and the master of a large ship, or a small ship in a sensitivity zone, must not cause or permit the discharge of sewage from the ship into coastal waters if:
  - (a) serious environmental harm results; and
  - (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty: environmental offence level 2.

- (3) The owner and the master of a large ship, or a small ship in a sensitivity zone, must not intentionally cause or permit the discharge of sewage from the ship into coastal waters if:
  - (a) material environmental harm results; and



- (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty: environmental offence level 2.

- (4) The owner and the master of a large ship, or a small ship in a sensitivity zone, must not cause or permit the discharge of sewage from the ship into coastal waters if:

- (a) material environmental harm results; and

- (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty: environmental offence level 3.

- (5) The owner and the master of a large ship, or a small ship in a sensitivity zone, must ensure that sewage is not discharged from the ship into coastal waters.

Penalty: environmental offence level 4.

- (6) An offence against subsection (5) is a regulatory offence.

## **32 Defences**

- (1) It is a defence to a prosecution for an offence against section 31 if:
  - (a) the discharge resulted from damage, other than intentional damage, to the ship or its equipment;
  - (b) there was in place a system of adequate and regular inspection and maintenance of the ship or equipment so as to prevent as far as is reasonably practicable the discharge of sewage as a result of damage to the ship or equipment;
  - (c) the damage was not such as should reasonably be expected to have been detected and repaired in the course of carrying out the inspection and maintenance; and
  - (d) all reasonable precautions were taken after the damage happened or the discharge was discovered to prevent or minimise the discharge of the sewage.

- (2) For the purposes of subsection (1)(a), damage to a ship or its equipment is intentional damage only if the damage arose in circumstances in which the ship's owner or master:
- (a) acted with intent to cause damage; or
  - (b) acted recklessly and with knowledge that damage would probably result.

### **33 Certain discharges permissible**

The Regulations may declare that section 31 does not apply in relation to a discharge of sewage.

### **34 Ships to have holding tanks**

- (1) The owner of a new ship, other than a small ship, must ensure that the ship is fitted with a toilet and a holding tank connected to the toilet.

Penalty: 500 penalty units.

- (2) The owner of an existing ship, other than a small ship, must ensure that the ship is fitted with a toilet and a holding tank connected to the toilet.

Penalty: 500 penalty units.

- (3) It is a defence to a charge of committing an offence against subsection (2) if the ship was, before the offence occurred, exempted from the application of that subsection.

- (4) An existing ship may be exempted from subsection (2) if the ship's owner produces to the Chief Executive Officer a certificate, from a ship designer, ship builder or marine surveyor, certifying that the ship:

- (a) is unsuitable to be fitted with a holding tank; or
- (b) is fitted with a sewage treatment plant or other device approved by the Chief Executive Officer and the plant or device is fitted in a manner approved by the Chief Executive Officer.

- (5) The Regulations may prescribe the grounds for certifying that a ship is unsuitable to be fitted with a holding tank.

**35 Other laws may also apply**

This Part does not limit another law imposing more stringent requirements about the discharge of sewage into coastal waters.

**Part 6 Prevention of pollution by garbage**

**36 Part gives effect to Annex V to MARPOL**

The purpose of this Part is to give effect to relevant provisions of Annex V to MARPOL.

**37 Definition**

In this Part:

**garbage** means all kinds of victual, domestic and operational waste (other than fresh fish and parts of fish), generated during the normal operation of the ship and liable to be disposed of continuously or periodically, and includes plastics but does not include those substances that are defined or listed in Annexes to MARPOL other than Annex V.

**38 Disposal of garbage into coastal waters prohibited**

- (1) A ship's owner and a ship's master must not intentionally cause or permit the discharge of garbage from the ship into coastal waters if:
- (a) serious environmental harm results; and
  - (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty: environmental offence level 1.

- (2) A ship's owner and a ship's master must not cause or permit the discharge of garbage from the ship into coastal waters if:
- (a) serious environmental harm results; and
  - (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty: environmental offence level 2.

- (3) A ship's owner and a ship's master must not intentionally cause or permit the discharge of garbage from the ship into coastal waters if:
- (a) material environmental harm results; and
  - (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty: environmental offence level 2.

- (4) A ship's owner and a ship's master must not cause or permit the discharge of garbage from the ship into coastal waters, if:
- (a) material environmental harm results; and
  - (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty: environmental offence level 3.

- (5) A ship's owner and a ship's master must ensure that garbage is not discharged from the ship into coastal waters.

Penalty: environmental offence level 4.

- (6) An offence against subsection (5) is a regulatory offence.

### **39 Defences**

Each of the following is a defence to a prosecution for an offence against section 38:

- (a) the disposal was made for the purpose of securing the safety of the ship and the persons on board the ship or saving life at sea;
- (b) the disposal happened because of damage to the ship or its equipment and all reasonable precautions were taken before and after the damage happened to prevent or minimise the disposal;
- (c) the disposal was the accidental loss at sea of a synthetic fishing net, or synthetic material used in the repair of a synthetic fishing net, and all reasonable precautions were taken to prevent the loss.

**40 Certain disposals permissible**

The Regulations may declare that section 38 does not apply in relation to a discharge.

**41 Waste management plans, garbage record book, signage**

- (1) The owner, and the master, of a ship that is 12 m or more in length must ensure that the ship displays the prescribed placards setting out the garbage disposal requirements of MARPOL.

Penalty: 50 penalty units.

- (2) The owner, and the master, of a ship with a gross tonnage of 400 tons or more, or of a ship certified to carry 15 or more persons, must:

- (a) develop a waste management plan in accordance with the Regulations;
- (b) handle garbage under and in accordance with the waste management plan; and
- (c) ensure that the ship is fitted with equipment enabling the waste management plan to be complied with.

Penalty: 500 penalty units.

- (3) The owner, and the master, of:

- (a) a ship with a gross tonnage of 400 tons or more; or
- (b) a ship certified to carry 15 or more persons that is engaged on an international voyage,

must ensure that a garbage record book is maintained on the ship.

Penalty: 500 penalty units.

- (4) An offence against subsection (1), (2) or (3) is a regulatory offence.

**Part 7 Prevention of pollution during transfer of operations****42 Definitions**

In this Part:

***noxious liquid substance*** has the meaning it has in Part 3 and includes a mixture containing a noxious liquid substance.

**transfer apparatus**, for a ship, means apparatus used in the transfer of a pollutant between a ship and another ship or place.

**transfer operation**, for a ship, means any operation involved in preparing for, starting, carrying on, or finishing, a transfer of a pollutant:

- (a) from the ship to another ship or from another ship to the ship;  
or
- (b) from a ship to a place or from a place to a ship.

### **43 Discharge of pollutant into coastal waters prohibited**

- (1) A ship's owner and a ship's master must not intentionally cause or permit the discharge of a pollutant from the ship into coastal waters during a transfer operation if:
  - (a) serious environmental harm results; and
  - (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty: environmental offence level 1.

- (2) A ship's owner and a ship's master must not cause or permit the discharge of a pollutant from the ship into coastal waters during a transfer operation if:
  - (a) serious environmental harm results; and
  - (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty: environmental offence level 2.

- (3) A ship's owner and a ship's master must not intentionally cause or permit the discharge of a pollutant from the ship into coastal waters during a transfer operation if:
  - (a) material environmental harm results; and
  - (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty: environmental offence level 2.

- (4) A ship's owner and a ship's master must not cause or permit the discharge of a pollutant from the ship into coastal waters during a transfer operation if:

- (a) material environmental harm results; and
- (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the discharge.

Penalty: environmental offence level 3.

- (5) A ship's owner and a ship's master must ensure that a pollutant is not discharged from the ship into coastal waters during a transfer operation.

Penalty: environmental offence level 4.

- (6) An offence against subsection (5) is a regulatory offence.

#### **44 Defences**

Each of the following is a defence to a prosecution for an offence against section 43:

- (a) the discharge happened because of operator error by someone not under the master's direction and the master took all reasonable precautions after the discharge happened or was discovered to minimise the discharge;
- (b) the discharge happened because of a fault in transfer apparatus not operated at the master's direction and the master took all reasonable precautions after the discharge happened or was discovered to prevent or minimise the discharge;
- (c) the discharge happened because of a fault in transfer apparatus brought onto the ship and operated at the master's direction if:
  - (i) the master took all reasonable steps to ensure that the apparatus was in good working order immediately before the transfer operation started; and
  - (ii) the master took all reasonable precautions after the discharge happened or was discovered to prevent or minimise the discharge;
- (d) a defence available under another Part for a discharge of the relevant pollutant.

**45 Restrictions on transfer operations at night**

(1) A ship's owner and a ship's master must ensure that a transfer operation in relation to the ship is not conducted between sunset and sunrise unless an authorised officer:

- (a) has been given notice of the operation; and
- (b) has given written approval for it.

Penalty: environmental offence level 2.

(2) Despite subsection (1), an authorised officer may give a general approval under subsection (1) for transfer operations to be carried out at a place where transfers are frequently and regularly carried out.

(3) The approval may:

- (a) be given for a period stated in the notice; and
- (b) be subject to the conditions the authorised officer thinks fit.

(4) If an approval is given under this section in relation to a ship, the ship's owner and the ship's master must ensure that a transfer operation in relation to the ship is conducted in accordance with the conditions of the approval.

Penalty: 1,000 penalty units.

**46 Liability if more than one ship**

If:

- (a) a discharge happens from 2 or more ships in relation to a transfer operation involving oil or noxious liquid substances in bulk; and
- (b) it is not reasonably practicable to identify the oil or noxious liquid substance that has discharged from a particular ship,

all of the oil or noxious liquid substance discharged is taken, for the purposes of this Part and sections 85, 86, 88 and 94 to have been discharged from each of the ships.



**47 Keeping of records about transfer**

- (1) A ship's owner, a ship's master or the occupier of a place to or from which a pollutant is transferred must keep the records he or she is required to keep under the Regulations.

Penalty: 500 penalty units.

- (2) If an event required under the Regulations to be recorded by a ship's owner or master or the occupier of a place to or from which a pollutant is transferred occurs, he or she must, without delay, record the event in the way prescribed under the Regulations.

Penalty: 500 penalty units.

**Part 8 Facilities for collecting waste etc.**

**48 CEO may arrange for provision of reception facilities**

The Chief Executive Officer may provide, join with someone else in providing or arrange for the provision of reception facilities for residues, including but not limited to oil, noxious liquid substances, sewage and garbage.

**49 CEO may direct person to provide reception facilities**

- (1) The Chief Executive Officer may give a notice under subsection (2) to the owner or occupier of:

(a) a port or terminal; or

(b) an establishment at which ships are:

(i) repaired or other work is performed on ships, if the repair or work involves the disposal of oily mixtures, mixtures containing noxious liquid substances, oil residues, residues of noxious liquid substances or sewage; or

(ii) berthed, docked or otherwise at the establishment.

- (2) A notice may direct an owner or occupier of a port, terminal or establishment to:

(a) provide facilities for the reception or disposal of residues by ships berthed, docked or otherwise at the port, terminal or establishment;

(b) maintain the facilities in good order and condition; and

- (c) make the facilities available to enable ships to dispose of the residues.
- (3) A notice under subsection (2):
    - (a) may state a time within which a direction is to be complied with; and
    - (b) is to be signed by the Chief Executive Officer.
  - (4) An owner or occupier must comply with a notice under subsection (2).

Penalty: 5,000 penalty units.

- (5) If a court is satisfied on finding a person guilty of an offence against subsection (4) that the person continued to contravene, or to fail to comply with, the provision after the date when he or she was notified of the alleged offence, the Court may, in addition to the penalty specified for the offence, impose a further penalty in respect of each day during which the offence continued to be committed after the first day on which it was committed not exceeding \$1,500 for each day during which the offence continues.
- (6) An owner's or occupier's obligation to comply with a notice under subsection (2) continues until the direction given by the notice is complied with even though, in a particular case, the notice specifies a time by which compliance is required and the time has passed.
- (7) A charge against an owner or occupier for a contravention of subsection (4) continuing after a finding of guilt may state the date of the last finding of guilt and the day or period during which the contravention continued.
- (8) In this section:

**residues** include oil, noxious liquid substances, sewage and garbage.

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

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## Part 9 Reporting of discharges etc.

### 50 Duty to report certain incidents

- (1) A ship's master must, without delay, notify an authorised officer of a reportable incident in the way prescribed in the Regulations.

Penalty: 1,000 penalty units.

- (2) If the ship's master cannot comply with subsection (1), the ship's owner or the owner's agent must notify, without delay, an authorised officer of the reportable incident in the way prescribed in the Regulations, unless the owner or owner's agent has a reasonable excuse.

Penalty: 1,000 penalty units.

- (3) A ship's master, ship's owner or owner's agent who has notified an authorised officer of the reportable incident must within the time prescribed in the Regulations give a report in a form approved by the Chief Executive Officer to an authorised officer about the incident if asked to do so by an authorised officer.

Penalty: 1,000 penalty units.

- (4) A notice given under subsection (1) or (2) or a report given under subsection (3) may not, without the consent of the person charged, be admitted in evidence in a prosecution for an offence against section 14, 21, 27, 31, 34, 38 or 43.

- (5) In this section:

**reportable incident** means:

- (a) a discharge or probable discharge from a ship of oil or a noxious liquid substance; or
- (b) the jettisoning from a ship of a harmful substance that is carried in packaged form,

if the discharge or jettisoning occurs while the ship is in coastal waters, but does not include a discharge that is prescribed in the Regulations to be exempted from this definition.

## **Part 10            Enforcement**

### **Division 1        Appointment of authorised officers**

#### **51                Appointment of authorised officers**

- (1) The Chief Executive Officer may appoint as an authorised officer a person who in the opinion of the Chief Executive Officer has the necessary experience or expertise.
- (2) An authorised officer may be appointed for a term specified in the instrument of appointment.
- (3) An authorised officer holds office on the conditions specified in the instrument of appointment.
- (4) An authorised officer may resign by signed notice of resignation given to the Chief Executive Officer.

#### **52                Identity cards**

- (1) The Chief Executive Officer must give each authorised officer an identity card.
- (2) The identity card is to:
  - (a) contain a recent photograph of the authorised officer;
  - (b) be signed by the authorised officer; and
  - (c) include an expiry date.
- (3) A person who ceases to be an authorised officer must return the identity card to the Chief Executive Officer within 21 days after the person ceases to be an authorised officer, unless the person has a reasonable excuse.

Penalty:        100 penalty units.

### **Division 2        Powers and functions of authorised officers generally**

#### **53                Functions of authorised officers**

An authorised officer has the following functions:

- (a) to investigate discharges prohibited by this Act;
- (b) to monitor compliance with this Act;

- (c) to monitor transfer operations;
- (d) to examine ships using coastal waters, so as to minimise discharges;
- (e) to take action to remove a pollutant discharged into coastal waters or mitigate its effect on the Territory's marine and coastal environment.

**54      Authorised officers subject to directions from CEO**

An authorised officer is subject to the directions of the Chief Executive Officer in exercising the powers of an authorised officer.

**55      Limitation on powers of authorised officer**

- (1) The powers of an authorised officer may be limited:
  - (a) under the Regulations;
  - (b) by a condition of his or her appointment; or
  - (c) by notice of the Chief Executive Officer given to the authorised officer.
- (2) Notice under subsection (1)(c) may be given orally but must be confirmed in writing as soon as practicable.

**56      Production or display of authorised officer's identity card**

- (1) Before performing a function or exercising a power in relation to:
  - (a) a person; or
  - (b) land, a vehicle, ship or premises,the authorised officer must produce his or her identity card to:
  - (c) the person; or
  - (d) a person apparently in charge of the land, vehicle, ship or premises,as the case may be, if the person requests to view the card.
- (2) If a request is made to view the authorised officer's card:
  - (a) the authorised officer; and
  - (b) a person authorised by the officer under section 62(1)(h),

is not entitled to perform a function or exercise a power in relation to the person, land, vehicle or premises until the card is produced to the person making the request.

### **Division 3      Boarding of ships and entry of places**

#### **57      Boarding of ships**

- (1) An authorised officer may board a ship at any time to find out whether this Act is being or has been complied with.
- (2) An authorised officer may also board a ship at any time if the officer has reasonable grounds for suspecting that:
  - (a) the ship is being, or has been, used in the commission of an offence against this Act; or
  - (b) the ship, or a document or other object in or on the ship, may provide evidence of the commission of an offence against this Act.
- (3) However, an authorised officer must not board a ship if to do so would put the ship, or someone on the ship, at risk from damage or injury.
- (4) If the ship is moving or about to move, the authorised officer may signal the person in command of the ship or, if no person is in command of the ship, the person in control of the ship, to stop the ship or not to move it.
- (5) To enable the ship to be boarded, the authorised officer may:
  - (a) act with any necessary and reasonable help and force; and
  - (b) require the person in control of the ship to give reasonable help to the officer.
- (6) A person must obey a signal under subsection (4), unless the person has a reasonable excuse.

Penalty:      500 penalty units.
- (7) A person must comply with a requirement under subsection (5)(b), unless the person has a reasonable excuse.

Penalty:      500 penalty units.

- (8) Without limiting subsection (6), it is a reasonable excuse for a person to disobey a signal under subsection (4) if:
- (a) the person reasonably believes that to obey the signal immediately would put the ship, or someone on the ship, at risk from damage or injury; and
  - (b) the person obeys the signal as soon as it is practicable to obey the signal.

**58      Entry to place by authorised officers**

Subject to section 59, an authorised officer may for the purposes of this Act enter a place at any time.

**59      Residential premises may only be entered with consent or warrant**

An authorised officer must not enter residential premises at a place except:

- (a) with the consent of the owner or occupier of the premises; or
- (b) under a warrant issued under section 61.

**60      Consent to entry to residential premises**

- (1) Before seeking the consent of an occupier of residential premises to an authorised officer entering the place under this Part, the authorised officer must inform the occupier:
- (a) of the purpose of the entry;
  - (b) that anything found and seized may be used in evidence in court; and
  - (c) that the occupier is not required to consent.

- (2) The power of entry given to an authorised officer under this section is in addition to the powers of entry given to an authorised officer under other provisions of this Act.

**61      Warrant to enter residential premises**

- (1) A Justice who is satisfied, on the application of an authorised officer, that there is reasonable cause to permit the officer to enter residential premises at a place with a view to exercising a power under this Act, may issue a warrant in relation to the premises directed to the authorised officer.

- (2) A warrant issued under subsection (1) is, for a period of one month from its issue, sufficient authority:
  - (a) to the authorised officer to whom it is directed and a person authorised under section 62(1)(h) to enter the residential premises specified in the warrant; and
  - (b) to that authorised officer and that person to exercise in respect of the residential premises specified in the warrant powers under this Act.
- (3) If it is impracticable for an authorised officer to apply in person to a Justice for a warrant under subsection (1):
  - (a) the officer may make the application to a Justice by telephone; and
  - (b) the Justice may issue the warrant on that application.
- (4) If a Justice issues a warrant under subsection (3):
  - (a) the Justice is to complete and sign the warrant, inform the authorised officer by telephone of its terms and record on the warrant the Justice's reasons for issuing it; and
  - (b) the authorised officer must:
    - (i) complete in duplicate a form of warrant in the terms provided by the Justice;
    - (ii) write on it the name of the Justice and the date and time of its issue; and
    - (iii) forward one of the copies to the Justice.
- (5) On receiving the copy referred to in subsection (4)(b), the Justice must:
  - (a) compare it with the warrant signed by the Justice; and
  - (b) if satisfied that they are in substance identical, note this on the warrant and forward both the warrant and the copy to the Chief Executive Officer.
- (6) A form of warrant prepared by an authorised officer under subsection (4)(b) has, if it is in substance identical with the terms of the warrant signed by the Justice, the same authority as that of a Justice's warrant issued under subsection (1).



## **Division 4      Search, seizure etc.**

### **62      Authorised officer's general powers for ships and places**

- (1) An authorised officer who boards a ship or enters a place under this Part (including residential premises at a place or a place used only for living quarters on a ship) may:
- (a) search a part of the ship or place;
  - (b) inspect, examine, test, measure, photograph or film anything in or on the ship or place or require an object to be tested or measured;
  - (c) take samples of a pollutant, substance or object in or on the ship or place;
  - (d) record, measure, test or analyse the release of a pollutant into coastal waters from the ship;
  - (e) copy a document in or on the ship or place;
  - (f) take onto or into the ship or place any persons, equipment and materials the authorised officer reasonably requires for exercising a power under this Act;
  - (g) install or maintain equipment and materials in or on the ship or place that the authorised officer reasonably requires for a monitoring program for the release of pollutants into coastal waters from the ship;
  - (h) require the ship's master, a person in or on the ship or an occupier of the place, to give the authorised officer reasonable help for the exercise of the powers specified in paragraphs (a) to (g) (inclusive); or
  - (j) for a ship – by written notice given to the person in control of the ship, require the person:
    - (i) to bring the ship to a stated place; and
    - (ii) to remain in control of the ship at the place for a reasonable time,to enable the officer to exercise the powers referred to in paragraphs (a) to (g) (inclusive).
- (2) If, for any reason, it is not practicable to make a requirement under subsection (1)(j) by written notice, the requirement may be made orally and confirmed by written notice as soon as practicable.

- (3) An authorised officer must not enter a part of a ship that is used only as a living area, or exercise powers under subsection (1)(a) to (g) (inclusive) in relation to the part, unless the authorised officer is accompanied by the master or other person in control of the ship.
- (4) Subsection (3) does not apply if the master or other person is unavailable or unwilling to accompany the authorised officer or the authorised officer is unable for another reason to comply with the subsection.

### **63      Power to seize objects**

- (1) An authorised officer who under this Part boards a ship or enters a place, including a place on a ship used only as a living area or residential premises at a place, may seize an object in or on the ship or place if the officer believes, on reasonable grounds:
  - (a) the object is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the object being:
    - (i) concealed, lost or destroyed; or
    - (ii) used to commit, continue or repeat the offence.
- (2) Having seized an object, an authorised officer may:
  - (a) remove the object from the place where it was seized to another place; or
  - (b) leave the object at the place where it was seized but restrict access to the object.
- (3) If an authorised officer restricts access to a seized object, a person must not tamper with the object without the approval of the Chief Executive Officer.

Penalty:      500 penalty units.

### **64      Procedure after seizure of evidence**

- (1) This section does not apply to a ship detained under section 65.
- (2) As soon as practicable after an object is seized by an authorised officer under this Part, the officer must give a receipt for it to the person from whom it was seized.
- (3) The receipt must describe generally each object seized and its condition.

- (4) If, for any reason, it is not practicable to comply with subsection (2), the officer must leave the receipt at the place of seizure in a reasonably secure way and in a conspicuous position.
- (5) Subsection (2) does not apply if:
  - (a) the object is unattended when seized;
  - (b) the object's owner is unknown; and
  - (c) the owner cannot be found after reasonable inquiries (given the object's value) have been made.
- (6) Until a seized object is returned or otherwise finally dealt with, an authorised officer must allow a person who would be entitled to a seized object if it were not in the officer's possession:
  - (a) to inspect it; and
  - (b) if it is a document – to make copies of it.
- (7) The officer must return a seized object to the person at the end of:
  - (a) 6 months; or
  - (b) if a prosecution for an offence involving it is started within 6 months – the prosecution for the offence and an appeal, if any, in relation to the offence.
- (8) Despite subsection (7), the officer must return the seized object to the person immediately the officer is no longer satisfied it is necessary to retain it as evidence.
- (9) However, the officer need not return the seized object if the officer believes, on reasonable grounds, it is necessary to retain it to prevent its use in committing an offence.

## **Division 5      Detaining of ships**

### **65      Power to detain ship**

- (1) An authorised officer may detain a ship if the officer has clear grounds for believing an offence against section 14, 21, 27, 31, 38 or 43 has occurred because of acts or omissions in relation to the ship in coastal waters.
- (2) The authorised officer may, after detaining a ship, order the ship's master to move the ship to a stated place that it is reasonable to move it to.

- (3) The ship's master must comply with the order, unless the master has a reasonable excuse.

Penalty:        1,000 penalty units.

- (4) The authorised officer may, acting with any necessary and reasonable help and force, escort the ship to the place.

- (5) If, before the ship is released from detention, the ship leaves the place, the ship's owner and master each commit an offence, unless there was a reasonable excuse for the ship leaving the place.

Penalty:        1,000 penalty units.

## **66        Procedure after detention of ship**

As soon as practicable after a ship is detained by an authorised officer under section 65, the officer must give to the ship's master a notice in a form approved by the Chief Executive Officer stating that the ship:

- (a) is detained; and
- (b) may be released on giving the security in the manner and form, determined or to be determined by the Chief Executive Officer under section 86.

## **Division 6        Power to require information to be given**

### **67        Power to require name and address**

- (1) An authorised officer may require a person to state the person's name and address if the officer:
- (a) finds the person committing an offence against this Act; or
- (b) finds the person in circumstances that lead, or has information that leads, the officer to suspect on reasonable grounds the person has just committed an offence against this Act.
- (2) When making the requirement, the authorised officer must warn the person it is an offence to fail to state the person's name and address unless the person has a reasonable excuse.
- (3) The authorised officer may require the person to give evidence of the correctness of the person's name or address if the officer suspects on reasonable grounds that the stated name or address is false.

- (4) A person must comply with a requirement under subsection (1) or (3), unless the person has a reasonable excuse.

Penalty:      500 penalty units.

- (5) The person does not commit an offence against this section if:
- (a) the authorised officer required the person to state the person's name and address on suspicion of the person having committed an offence against this Act; and
- (b) the person is not found guilty of committing the offence.

### **68      Power to require information from certain persons**

- (1) If an authorised officer suspects on reasonable grounds that:
- (a) an offence against this Act has happened; and
- (b) a person may be able to give information about the offence,
- the authorised officer may require the person to give information about the suspected offence.
- (2) When making a requirement under subsection (1), the authorised officer must inform the person it is an offence to fail to give the information unless the person has a reasonable excuse.

### **69      Power to require production of documents**

- (1) An authorised officer may require a person to produce to the officer for inspection a document required to be kept by the person:
- (a) under this Act;
- (b) under the Commonwealth Navigation Act; or
- (c) under the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* of the Commonwealth.

- (2) The person must produce the document for inspection, unless he or she has a reasonable excuse.

Penalty:      500 penalty units.

- (3) The authorised officer may keep the document to make a copy of it.
- (4) If the authorised officer makes a copy of the document, or of an entry in the document, the officer may require the person required to keep the document to certify the copy as a true copy of the document or entry.

- (5) The person required to keep the document must comply with a requirement made under subsection (4), unless the person has a reasonable excuse.

Penalty:      500 penalty units.

- (6) The authorised officer must return the document to the person as soon as practicable after making the copy.

## **Division 7      Powers in an emergency**

### **70      Authorised officer's powers in an emergency**

- (1) If an authorised officer is satisfied on reasonable grounds that:
- (a) a discharge of pollutant into coastal waters has happened or is likely to happen; and
  - (b) urgent action is necessary to prevent or minimise the discharge and its effect on the Territory's marine and coastal environment,
- the authorised officer may:
- (c) direct a person to take stated reasonable action within a stated reasonable time; or
  - (d) take the action or authorise someone else to take the action.
- (2) Without limiting subsection (1), reasonable action includes action:
- (a) to remove, destroy or disperse a discharged pollutant;
  - (b) to prevent the pollutant from reaching a stated place on water or land;
  - (c) to mitigate damage or injury caused to a stated place or object on water or land by the pollutant; and
  - (d) to require any person:
    - (i) to do something that assists with an action referred to in paragraph (a), (b) or (c); or
    - (ii) to stop doing something that may interfere with action referred to in paragraph (a), (b) or (c).
- (3) The direction may be given orally or by written notice.

- (4) If the direction is given orally, the authorised officer must, as soon as practicable, confirm the direction by written notice given to the person.
- (5) If the authorised officer decides to take the action, the officer may:
  - (a) board a ship or enter a place and take the action; and
  - (b) in taking the action, exercise any of the powers of an authorised officer (other than investigatory powers) under this Part.
- (6) The authorised officer may exercise the powers referred to in subsection (5) with any necessary and reasonable help and force.
- (7) If a person or object is obstructing or preventing an authorised officer from boarding a ship or entering a place or taking action on or at a ship or place while the authorised officer is exercising or attempting to exercise the powers referred to in subsection (5), a member of the Police Force may, if asked by the authorised officer, using necessary and reasonable force:
  - (a) remove the person or object from the place; and
  - (b) take all reasonable measures to ensure the person or object does not again obstruct or prevent the action being taken.
- (8) In exercising or attempting to exercise the powers referred to in subsection (5), an authorised officer must take all reasonable steps to ensure the member causes as little inconvenience, and does as little damage, as is practicable in the circumstances.
- (9) This section does not limit a power an authorised officer has apart from this section.
- (10) If an authorised officer authorises a person to take action under subsection (1)(d):
  - (a) the person may exercise the powers referred to in subsection (5)(a); and
  - (b) the officer must inform the person:
    - (i) of the action the person is authorised to take;
    - (ii) of the person's powers under this section; and
    - (iii) in general terms, of section 83.

- (11) Subsections (6), (7) and (8) (so far as they relate to the power referred to in subsection (5)(a)) apply to a person authorised to take action under subsection (1)(d) as if the person were an authorised officer.

## **71 Authorised officer may direct emergency release of pollutant**

- (1) An authorised officer may give a written direction to a person to release a pollutant into coastal waters if the officer is satisfied:
- (a) it is necessary and reasonable to release the pollutant because of an emergency; and
  - (b) there is no other practicable alternative to the release.
- (2) The authorised officer may impose reasonable conditions on the direction.
- (3) A person to whom a direction is given must:
- (a) comply with the direction, unless the person has a reasonable excuse; and
  - (b) take all reasonable and practicable precautions to prevent or minimise:
    - (i) harm being caused to the Territory's marine and coastal environment; and
    - (ii) loss or damage to property.

Penalty: environmental offence level 3.

- (4) A person to whom a direction is given does not contravene this Act merely because the person complies with the direction.

## **Part 11 Offences in relation to enforcement**

### **72 Person given direction in emergency must comply**

- (1) An owner or master of a ship to whom a direction is given under section 70(1)(c) must comply with the direction, unless he or she has a reasonable excuse.

Penalty: environmental offence level 3.



- (2) A person, other than an owner or master of a ship, must not intentionally fail to comply with a direction under section 70(1)(c) if:
- (a) serious environmental harm results from the failure to comply with the direction; and
  - (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the failure to comply with the direction.

Penalty: environmental offence level 1.

- (3) A person, other than an owner or master of a ship, must not fail to comply with a direction under section 70(1)(c) if:
- (a) serious environmental harm results from the failure to comply with the direction; and
  - (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the failure to comply with the direction.

Penalty: environmental offence level 2.

- (4) A person, other than an owner or master of a ship, must not intentionally fail to comply with a direction under section 70(1)(c) if:
- (a) material environmental harm results from the failure to comply with the direction; and
  - (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the failure to comply with the direction.

Penalty: environmental offence level 2.

- (5) A person, other than an owner or master of a ship, must not fail to comply with a direction under section 70(1)(c) if:
- (a) material environmental harm results from the failure to comply with the direction; and

- (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the failure to comply with the direction.

Penalty: environmental offence level 3.

- (6) A person, other than an owner or master of a ship, must not fail to comply with a direction under section 70(1)(c).

Penalty: environmental offence level 4.

### **73 Person must help in emergency if asked to do so**

- (1) If an authorised officer is taking action under section 70 and the officer requires a person to give reasonable help to the officer under section 62(1)(h) in the exercise of a power, the person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Penalty: 500 penalty units.

- (2) If the help required is the answering of a question or producing of a document (other than a document required to be held, kept or produced by the person under this Act), it is not a reasonable excuse for the person to fail to answer the question, or produce the document, on the ground that complying with the requirement might tend to incriminate the person.
- (3) When making a requirement referred to in subsection (2), the authorised officer must inform the person of the following:
- (a) the person is obliged to answer the question or produce the document despite the rule of law about privilege against self-incrimination;
  - (b) the person may answer the question or produce the document subject to the objection that complying with the requirement might tend to incriminate the person;
  - (c) if the person makes the objection – the answer or producing of the document may not be admitted in evidence against the person in a prosecution for an offence against this Act, other than an offence (constituted by the giving of the answer or producing of the document) against section 77 or 78.
- (4) If, before giving the answer or producing the document, the person makes the objection, the answer or producing of the document is not admissible in evidence against the person in a prosecution for an offence against this Act, other than an offence (constituted by

the giving of the answer or producing of the document) against section 77 or 78.

#### **74 Failure to help authorised officer other than in emergency**

- (1) If an authorised officer (other than an officer taking action under section 70) requires a person under section 62(1)(h) to give reasonable help to the officer in relation to the exercise of a power specified under section 62(1)(a) to (g) (inclusive), the person must comply with the requirement, unless he or she has a reasonable excuse.

Penalty: 500 penalty units.

- (2) If the help required is the answering of a question or producing of a document (other than a document required to be held, kept or produced by the person under this Act), it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

#### **75 Failure to obey direction**

If an authorised officer requires a person to do something under section 62(1)(j), the person must comply with the requirement, unless the person has a reasonable excuse.

Penalty: 500 penalty units.

#### **76 Failure to answer questions**

- (1) If an authorised officer (other than an authorised officer taking action under section 70) requires a person to answer a question under section 68(1), the person must comply with the requirement, unless the person has a reasonable excuse.

Penalty: 500 penalty units.

- (2) It is a reasonable excuse for the person to fail to answer the question if complying with the requirement might tend to incriminate the person.
- (3) The person does not commit an offence against this section if the information sought by the authorised officer:
- (a) is not in fact relevant to an offence that happened; or
  - (b) is about a suspected offence that did not happen.

**77 False, misleading or incomplete documents**

- (1) A person must not give to an authorised officer a document containing information the person knows is false, misleading or incomplete in a material particular.

Penalty: 1,000 penalty units.

- (2) Despite subsection (1), a person may give the document if, when giving the document, the person:
- (a) informs the authorised officer, to the best of the person's ability, how the document is false, misleading or incomplete; and
  - (b) gives the correct information to the officer if the person has, or can reasonably obtain, the correct information.
- (3) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was false, misleading or incomplete to the person's knowledge.

**78 False or misleading information**

- (1) A person must not:
- (a) state anything to an authorised officer the person knows is false or misleading in a material particular; or
  - (b) omit from a statement made to an authorised officer anything without which the statement is, to the person's knowledge, misleading in a material particular.

Penalty: 1000 penalty units.

- (2) It is enough for a complaint against a person for an offence against subsection (1)(a) or (b) to state that the statement made was false or misleading to the person's knowledge.

**79 Obstruction of authorised persons**

A person must not obstruct:

- (a) an authorised officer; or
- (b) a person who is authorised by an authorised officer under section 70(1)(d) to take action,

in the exercise of a power under this Act, unless the person has a reasonable excuse.

Penalty: 500 penalty units.

## 80 Impersonation of authorised officer

A person must not pretend to be an authorised officer.

Penalty: 500 penalty units.

## Part 12 Power to intervene if maritime casualty

### 81 Definitions

In this Part:

***Australian Maritime Safety Authority*** has the meaning it has in the *Australian Maritime Safety Authority Act 1990* of the Commonwealth.

***cargo*** includes ballast and ships' stores and fuel.

***Intervention Convention*** means the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.

***maritime casualty*** means:

- (a) a collision of ships;
- (b) a stranding or other incident of navigation; or
- (c) any other event on board a ship or external to it,

resulting in material damage or imminent threat of material damage to a ship or cargo.

### 82 Power to take action if maritime casualty

- (1) If the Chief Executive Officer is satisfied, following a maritime casualty or acts related to a maritime casualty, that there is grave and imminent danger to the Territory coastline, or to related Territory interests, from the discharge or threat of discharge of pollutant into coastal waters that may reasonably be expected to result in major harmful consequences, he or she may take the measures he or she thinks are necessary to prevent, minimise or eliminate the danger.

- (2) Before taking measures under subsection (1), the Chief Executive Officer must, to the greatest extent practicable:
- (a) ensure the exercise of the power will not involve a threat to human life; and
  - (b) unless he or she is of the opinion that the power to intervene must be exercised urgently:
    - (i) have regard to Australia's obligations under the Intervention Convention;
    - (ii) consult with the Australian Maritime Safety Authority; and
    - (iii) consult with the relevant ship's owner.
- (3) The measures that the Chief Executive Officer may take under subsection (1) include taking, with the Minister's written approval, action, whether or not directions have been issued under subsection (4) in relation to the ship:
- (a) to move the ship or part of the ship to another place;
  - (b) to remove cargo from the ship;
  - (c) to salvage the ship, part of the ship or any of the ship's cargo;
  - (d) to sink or destroy the ship or part of the ship; or
  - (e) to take over control of the ship or part of the ship.
- (4) The measures that the Chief Executive Officer may take under subsection (1) include the issuing of a direction to a ship's owner, a ship's master, or a salvor in possession of a ship requiring or prohibiting the doing of anything in relation to the ship, including:
- (a) the movement of the ship or part of the ship;
  - (b) the removal of cargo from the ship;
  - (c) the taking of salvage measures in relation to the ship, part of the ship or any of the ship's cargo;
  - (d) the sinking or destruction of the ship or part of the ship;
  - (e) the sinking, destruction or discharging into the sea of any of the ship's cargo; and
  - (f) the handing over of control of the ship or part of the ship.

- (5) The Chief Executive Officer must not issue a direction under subsection (4)(d) without the Minister's written approval.
- (6) Without limiting subsection (4), a direction may:
  - (a) require that anything be done in accordance with the direction, with the approval, or in accordance with the instructions, of a stated person; or
  - (b) prohibit the doing of anything other than in accordance with the direction, with the approval, or in accordance with the instructions, of a stated person.
- (7) This section does not authorise the taking of measures against a warship or other ship owned or operated by a foreign country and used, for the time being, only on government non-commercial service.
- (8) The Minister and the Chief Executive Officer must, in relation to the exercise of a power under this section:
  - (a) have regard to the matters specified in subsection (2); and
  - (b) have regard to:
    - (i) the extent and probability of imminent damage if the power is not exercised;
    - (ii) the likelihood of the exercise of the power being effective; and
    - (iii) the extent of the damage likely to be caused by the exercise of the power.
- (9) This section does not limit any other right or power the Territory has apart from this section.

## **Part 13            Damage and compensation**

### **Division 1        Damage, compensation and recovery of costs**

#### **83                Authorised officer to give notice of damage**

- (1) If:
  - (a) an authorised officer damages anything in the exercise of a power under this Act; or

- (b) a person who is authorised by an authorised officer to take action under this Act damages anything in taking the action, the authorised officer must promptly give written notice of the particulars of the damage.
- (2) The notice must be given:
- (a) if the object is a ship or is on a ship – to the ship's master; or
- (b) in any other case – to the person who appears to the authorised officer to be the object's owner.
- (3) If the authorised officer believes the damage was caused by a latent defect in the object or other circumstances beyond the officer's control, the officer may state this in the notice.
- (4) If, for any reason, it is not practicable to comply with subsection (2), the authorised officer must:
- (a) leave the notice at the place where the damage happened; and
- (b) ensure the notice is left in a reasonably secured way in a conspicuous position.
- (5) This section does not apply to damage the authorised officer believes, on reasonable grounds, is trivial.

## **84 Compensation**

- (1) A person may claim compensation from the Territory if the person incurs loss or expense because of the exercise or purported exercise of a power under Part 10, including, for example, in complying with a requirement made of the person under that Part.
- (2) Payment of compensation may be claimed and ordered:
- (a) in a proceeding brought in a court with jurisdiction for the recovery of compensation; or
- (b) in a proceeding for an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.



- (4) The Regulations may prescribe matters that may or are to be taken into account by the court when considering whether it is just to order the payment of compensation.

**85      Recovery of discharge expenses and expenses incurred in an emergency**

- (1) The Territory may, in a court of competent jurisdiction, recover discharge expenses as a debt due and payable from:
- (a) the master and owner of the ship from which the pollutant was discharged or was likely to have been discharged; and
  - (b) other persons causing the discharge.
- (2) The Territory may, in a court of competent jurisdiction, recover the costs incurred by an authorised officer or by a person authorised under section 70(1)(d) in taking action under section 70 in relation to a discharge of a pollutant.
- (3) Costs referred to in subsection (2) are recoverable as a debt due and payable by:
- (a) the master and owner of the ship from which the pollutant was discharged or was likely to have been discharged; and
  - (b) other persons causing the discharge of the pollutant.

**Division 2      Financial securities or guarantees if ship detained**

**86      Detained ship must be released on giving security**

- (1) The Chief Executive Officer must release a ship detained by an authorised officer if a security or guarantee is given under this section.
- (2) The amount of the security must be enough, in the Chief Executive Officer's opinion, to cover:
- (a) the Territory's discharge expenses in relation to the ship;
  - (b) the penalty likely to be payable if a successful prosecution for an offence against section 14, 21, 27, 31, 34, 38 or 43 were to be taken; and
  - (c) interest on the discharge expenses.

- (3) The security may be provided in one or more of the following forms, or in another form, the Chief Executive Officer considers appropriate:
  - (a) a bank guarantee;
  - (b) a bond;
  - (c) an insurance policy.
- (4) The Chief Executive Officer must make a decision about the amount and form of security or guarantee within a reasonable time.

### **87 Other ways detained ship may be released**

- (1) A ship detained by an authorised officer must also be released if:
  - (a) a proceeding is started for a discharge offence involving the ship and the proceeding is discontinued;
  - (b) a proceeding started for a discharge offence involving the ship is concluded, whether or not an appeal is pending, without anyone being found guilty or discharge expenses being awarded against anyone;
  - (c) a proceeding for a discharge offence involving the ship is concluded and all discharge expenses ordered to be paid and all penalties imposed have been paid;
  - (d) the Chief Executive Officer has sought to recover discharge expenses as a debt and the amount of the expenses has been paid; or
  - (e) the Chief Executive Officer decides for any other reason the ship should be released.
- (2) In this section, **discharge offence** means an offence against section 14, 21, 27, 31, 38 or 43.

### **88 Claims on security**

- (1) This section applies if the Territory incurs discharge expenses in relation to a discharge of a pollutant from a ship into coastal waters.
- (2) The Chief Executive Officer may recover the discharge expenses by making a demand against the security or part of it.
- (3) Before making the demand against the security, the Chief Executive Officer must give to the security giver a written notice under this section.

- (4) The notice is to:
- (a) outline the action taken;
  - (b) state the amount to be demanded against the security; and
  - (c) invite the person to make written representations to the Chief Executive Officer to show, within a stated time of at least 30 days, why the demand should not be made.
- (5) If, after considering all written representations made within the stated time, the Chief Executive Officer decides grounds still exist to make the demand for the amount or a lesser amount, the Chief Executive Officer must immediately give written notice to the security giver of the decision.
- (6) The notice is to:
- (a) state the reasons for the decision;
  - (b) state that the security giver may appeal against the decision to the appropriate court within 30 days; and
  - (c) enclose a copy of section 89.
- (7) If notice is given under subsection (6), the Chief Executive Officer must not make the demand until:
- (a) the time to appeal against the decision has ended; and
  - (b) if an appeal is made against the decision – the appeal is finally decided.
- (8) If the Chief Executive Officer makes the demand, the security provider:
- (a) is not required to inquire into the correctness or lawfulness of the Chief Executive Officer's demand; and
  - (b) must pay the security, or the part of it demanded, to the Territory.
- (9) In this section:

**security giver** means the ship's owner or other person who arranged for the security to be given.

**security provider** means the person providing the security.

## **89            Appeals**

- (1) A person whose interests are affected by a decision under section 88 may appeal to:
  - (a) if the amount the Chief Executive Officer seeks to claim or realise is an amount not more than the amount of the monetary limit that could be recovered for a debt under the *Local Court Act* – the Local Court; or
  - (b) in any other case – the Supreme Court.
- (2) An appeal is to be by way of a rehearing but a party to an appeal may present new evidence at the appeal hearing.
- (3) Costs of the appeal lie in the court's discretion.

## **Part 14            Offences and proceedings**

### **Division 1        Offences committed by actions of others**

#### **90            Responsibility for acts or omissions of representatives**

- (1) If, in a proceeding for an offence against this Act, it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show:
  - (a) the act or omission was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (2) An act or omission done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is to be taken, in a proceeding for an offence against this Act, to have been done or omitted to be done also by the person, unless the person proves the person took all reasonable steps to prevent the act or omission.
- (3) In this section:

***representative***, in relation to a person, means:

- (a) if the person is a corporation – an executive officer, employee or agent of the corporation; or
- (b) if the person is an individual – an employee or agent of the individual.

**state of mind**, in relation to a person, includes:

- (a) the person's knowledge, intention, opinion, belief or purpose;  
and
- (b) the person's reasons for the intention, opinion, belief or purpose.

**91            Executive officers must ensure corporation complies with Act**

- (1) The executive officers of a corporation must ensure that the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each executive officer of the corporation:
  - (a) commits an offence, namely, the offence of failing to ensure that the corporation complies with this Act; and
  - (b) is liable to the penalty that may be imposed if a natural person had contravened the provision.
- (3) Evidence that the corporation has committed an offence against this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with this Act.
- (4) However, it is a defence for an executive officer to prove that:
  - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence – the officer took all reasonable steps to ensure the corporation complied with the provision; or
  - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

**Division 2            Commencement of proceedings and penalties**

**92            Limitation on time for starting summary proceedings**

A proceeding for an offence against this Act by way of summary proceeding under the *Justices Act* must start:

- (a) within 2 years after the commission of the offence; or
- (b) within 2 years after the offence comes to the complainant's knowledge, but within 3 years after the commission of the offence.

### **93 Continuing offences**

If a court is satisfied on finding a person guilty of an offence against a provision of this Act that the person continued to contravene, or to fail to comply with, the provision after the date when he or she was notified of the alleged offence, the Court may, in addition to the penalty, if any, specified for the offence, impose a further penalty in respect of each day during which the offence continued to be committed after the first day on which it was committed not exceeding:

- (a) if the offence is an environmental offence level 1 – \$25,000;
- (b) if the offence is an environmental offence level 2 – \$10,000;
- (c) if the offence is an environmental offence level 3 – \$5,000;
- (d) if the offence is an environmental offence level 4 – \$500; or
- (e) if the penalty is expressed as a number of penalty units and the offence is not an offence against section 49(4) – \$500.

### **94 Court may make orders about compensation and other matters**

- (1) If the court finds the defendant has discharged a pollutant into coastal waters in contravention of this Act, the court may order the defendant to do either or both of the following:
  - (a) pay to the Territory the amount the Territory could have recovered under section 85;
  - (b) take stated action to rehabilitate or restore the Territory's marine and coastal environment damaged because of the contravention.
- (2) An order under subsection (1) is in addition to any penalty or other order the court may make or impose under this Act.
- (3) In particular, this section does not limit the court's powers under the *Sentencing Act* or any other law.

## **Division 3 Evidence**

### **95 Evidentiary provisions**

- (1) This section applies to a proceeding under this Act.

- (2) Unless a party, by reasonable notice, requires proof of:
- (a) the appointment of the Chief Executive Officer or an authorised officer or analyst; or
  - (b) the authority of the Chief Executive Officer or an authorised officer to do anything under this Act,
- the appointment or authority is to be presumed.
- (3) A signature purporting to be the signature of the Chief Executive Officer, an authorised officer or analyst is evidence of the signature it purports to be.
- (4) A certificate purporting to be signed by the Minister stating that a stated person is or was the Chief Executive Officer at a time or during a stated period is evidence of the matter stated in the certificate.
- (5) A certificate purporting to be signed by the Chief Executive Officer stating any of the following matters is evidence of the matter:
- (a) a stated document is:
    - (i) an appointment or approval or a copy of an appointment or approval;
    - (ii) a direction or decision, or a copy of a direction or decision, given or made under this Act; or
    - (iii) a record or document, a copy of a record or document, or an extract from a record or document, kept under this Act;
  - (b) on a stated day, or during a stated period, a stated person was or was not the holder of an approval or a stated approval;
  - (c) a stated approval was or was not in force on a stated day or during a stated period;
  - (d) on a stated day, a stated person was given a stated order or direction under this Act;
  - (e) a stated amount is payable under this Act by a stated person and has not been paid;
  - (f) a stated substance is a pollutant;

- (g) an instrument, equipment or installation was used in accordance with conditions prescribed by the Regulations for its use;
  - (h) a type of document is a document prescribed in the Regulations.
- (6) In a complaint, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.
- (7) The production by the prosecutor of a signed analyst's report stating any of the following matters is evidence of them:
- (a) the analyst took, or received from a stated person, the sample referred to in the report;
  - (b) the analyst analysed the sample on a stated day, or during a stated period, and at a stated place;
  - (c) the results of the analysis.
- (8) An instrument, equipment or installation prescribed by the Regulations that is used by an authorised officer or analyst in accordance with the conditions (if any) prescribed in the Regulations is taken to be accurate and precise in the absence of evidence to the contrary.
- (9) In a proceeding in which the Chief Executive Officer applies to recover the costs and expenses incurred by him or her in relation to the discharge of a pollutant, a certificate by the Chief Executive Officer stating that stated costs and expenses were incurred and the way and purpose for which they were incurred, is evidence of the matters stated in the certificate.

**96 Analyst's certificate or report produced by defendant**

- (1) The production by the defendant in a prosecution of a signed analyst's report stating any of the following matters is evidence of them:
- (a) the analyst took, or received from a stated person, the sample referred to in the report;
  - (b) the analyst analysed the sample on a stated day, or during a stated period, and at a stated place;
  - (c) the results of the analysis.



- (2) The defendant must send a copy of the report to the prosecutor at least 7 days before the day set down for the hearing.

## **Part 15            Miscellaneous**

### **97            Service of documents**

- (1) A document may be served on a ship's master by leaving it:
  - (a) if, at the time of service, there is a person on board who is apparently in charge of the ship – with the person, after explaining to the person the purpose of the document; or
  - (b) otherwise – in a reasonably secure way in a conspicuous position near the ship's controls.
- (2) If a document is required or permitted to be served on a ship's master and there is no master or apparently there is no master, the document may be served on:
  - (a) the ship's owner; or
  - (b) the owner's agent.
- (3) A document is taken to be served on all owners of a ship if it is served on:
  - (a) an owner of the ship;
  - (b) the ship's master; or
  - (c) an owner's agent.
- (4) Nothing in this section affects:
  - (a) the operation of another law that requires or permits service of a document other than as provided in this section; or
  - (b) the court's power to authorise service of a document other than as provided in this section.

### **98            Codes of practice**

- (1) For the purpose of providing practical guidance on any matter relating to this Act, the Minister may by notice in the *Gazette*, approve a code of practice.
- (2) A code of practice may consist of a code, standard, rule, specification or provision relating to matters in this Act formulated, prepared or adopted by the Agency allocated primary responsibility

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for administration of this Act under an Administrative Arrangements Order and may apply, incorporate or refer to a document formulated or published by a body or authority as in force at the time the code of practice is approved or as amended, formulated or published from time to time.

- (3) A notice under subsection (1) is to indicate where a copy of the approved code of practice to which it relates, and all documents incorporated or referred to in the code, may be inspected by members of the public without charge, and the times during which it may be inspected.
- (4) The Chief Executive Officer is to ensure that a code of practice adopted, referred to or incorporated by section 26 or under this section or the Regulations is made available for inspection or purchase by a member of the public:
  - (a) at an office of the Agency; and
  - (b) during the normal business hours of the Agency.

## **99 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the Regulations may make provision for the following:
  - (a) marine pollution and issues about marine pollution;
  - (b) a matter necessary or convenient for giving further effect to MARPOL or another treaty, convention or international agreement or document about marine pollution;
  - (c) the way in which the tonnage of a ship is decided;
  - (d) keeping oil pollution emergency plans, including shipboard oil pollution emergency plans;
  - (e) the standard of holding tanks;
  - (f) the standard of reception facilities;

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- (g) keeping records, including, for example, an oil or cargo record book and a garbage record book, and the nature of the entries to be made in the records;
  - (h) the period for which, and the place at which, the records must be kept;
  - (j) records that must be sent to the Chief Executive Officer and their custody or disposal after receipt;
  - (k) imposition of fees;
  - (m) taking and analysis of samples by an analyst;
  - (n) ensuring the integrity and security of samples;
  - (p) prescribing the cost of labour used for a purpose connected with a discharge of pollutant;
  - (q) prescribing penalties for offences against the Regulations, designating an offence against the Regulations to be an environmental offence level 3 or level 4 within the meaning of the *Environmental Offences and Penalties Act* or designating an offence against the Regulations to be a regulatory offence;
  - (r) prescribing a person or body to be an enforcement agency for the purposes of the Fines and Penalties (Recovery) Act;
  - (s) provide for the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence (other than an environmental offence within the meaning of the Environmental Offences and Penalties Act) against this Act or the Regulations and for the service of a notice relating to payment of the amount on a person alleged to have committed the offence and the particulars to be included in that notice.
- (3) Without limiting subsection (1) or (2), a regulation may also be made:
- (a) giving effect to Annex II, regulation 8 to MARPOL;
  - (b) declaring a stated liquid substance is:
    - (i) designated in Annex II, Appendix II; and
    - (ii) categorised as a category A, B, C or D substance;
  - (c) removing a stated noxious liquid substance from Appendix II;

- (d) declaring a stated liquid substance has been provisionally assessed under Annex II, regulation 3(4) as a category A, B, C or D substance;
  - (e) recategorising a category A, B, C or D substance; and
  - (f) for a category A substance – declaring a residual concentration stated in the regulation is taken to be the residual concentration prescribed for the substance in Appendix II, column III or IV.
- (4) The Regulations may provide that contravention of a regulation is an offence, including a regulatory offence, and prescribe a penalty of not more than 100 penalty units.
- (5) The Regulations may incorporate or adopt by reference the provisions of any document, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether:
- (a) wholly or partly, or as amended by the Regulations;
  - (b) as formulated, issued, prescribed or published at the time the Regulations are made or at any time before then; or
  - (c) as amended after the making of the Regulations.
- (6) If the Regulations specify in accordance with subsection (5)(c) that a document, standard, rule, specification or method that is incorporated in or adopted by the Regulations may incorporate amendments made to it after the Regulations were made, an amendment to the document, standard, rule, specification or method is of no effect until the Minister has published in the *Gazette* a notice that the particular amendment is to be incorporated in the Regulations.

## **100 Repeal**

The Ordinances specified in the Schedule are repealed.

**Schedule Ordinances repealed**

section 100

*Prevention of Pollution of Waters by Oil Ordinance 1962* No. 27, 1962

*Prevention of Pollution of Waters by Oil Ordinance 1970* No. 19, 1971

*Prevention of Pollution of Waters by Oil Ordinance 1972* No. 13, 1972

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**ENDNOTES**
**1****KEY**

Key to abbreviations

**amd = amended**  
**app = appendix**  
**bl = by-law**  
**ch = Chapter**  
**cl = clause**  
**div = Division**  
**exp = expires/expired**  
**f = forms**  
**Gaz = Gazette**  
**hdg = heading**  
**ins = inserted**  
**lt = long title**  
**nc = not commenced**

**od = order**  
**om = omitted**  
**pt = Part**  
**r = regulation/rule**  
**rem = remainder**  
**renum = renumbered**  
**rep = repealed**  
**s = section**  
**sch = Schedule**  
**sdiv = Subdivision**  
**SL = Subordinate Legislation**  
**sub = substituted**

**2****LIST OF LEGISLATION*****Marine Pollution Act 1999 (Act No. 43, 1999)***

Assent date            10 November 1999  
 Commenced            pt 5: nc; rem: 25 June 2003 (*Gaz* G25, 25 June 2003, p 2)

***Fines and Penalties (Recovery) (Consequential Amendments) Act 2001 (Act No. 60, 2001)***

Assent date            11 December 2001  
 Commenced            1 January 2002 (s 2, s 2 *Fines and Penalties (Recovery) Act 2001* (Act No. 60, 2001) and *Gaz* G50, 19 December 2001, p 3)

***Statute Law Revision Act 2001 (Act No. 62, 2001)***

Assent date            11 December 2001  
 Commenced            11 December 2001

***Statute Law Revision Act 2002 (Act No. 18, 2002)***

Assent date            7 June 2002  
 Commenced            7 June 2002

***Statute Law Revision Act (No. 2) 2004 (Act No. 54, 2004)***

Assent date            15 September 2004  
 Commenced            27 October 2004 (*Gaz* G43, 27 October 2004, p 3)

**3****LIST OF AMENDMENTS**

s 7                    amd No. 62, 2001, s 11  
 s 26                  amd No. 18, 2002, s 3  
 s 41                  amd No. 18, 2002, s 3  
 s 99                  amd No. 60, 2001, s 18; No. 54, 2004, s 7