

# Navigation (No. 2)

No. 117 of 1970

An Act to make Provision for and in relation to Preventing, and Dealing with the Effects of, Pollution by Oil of the Australian Coast, Australian Coastal Waters and Australian Reefs.

[Assented to 11 November 1970]

**B**E it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title  
and citation.

1.—(1.) This Act may be cited as the *Navigation Act (No. 2) 1970*.

(2.) The *Navigation Act 1912–1968*,\* as amended by the *Navigation Act 1970*,† is in this Act referred to as the Principal Act.

(3.) Section 1 of the *Navigation Act 1970* is amended by omitting sub-section (3.).

(4.) The Principal Act, as amended by this Act, may be cited as the *Navigation Act 1912–1970*.

Commence-  
ment.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Parts.

3. Section 5 of the Principal Act is amended by omitting the words—

“Part VIIA.—Prevention of Pollution of the Coast and Coastal Waters by Oil (Sections 329D–329K).”

and inserting in their stead the words—

“Part VIIA.—Prevention, etc., of Pollution by Oil of Australian Coast, Coastal Waters and Reefs (Sections 329D–329L).”.

Interpretation.

4. Section 6 of the Principal Act is amended by omitting from sub-section (1.) the definition of “tidal water”.

Interpretation.

5. Section 294 of the Principal Act is amended by adding at the end thereof the following definition:—

“‘Tidal water’ means a part of the sea, or a part of a river within the ebb and flow of the tide at ordinary spring tides, but does not include a harbour.”.

\* Act No. 4, 1913, as amended by No. 32, 1919; No. 1, 1921; No. 8, 1925; No. 8, 1926; No. 49, 1934; No. 30, 1935; No. 1, 1943; No. 80, 1950; No. 109, 1952; No. 96, 1953; No. 46, 1956; No. 36, 1958; No. 96, 1961; No. 1, 1965; No. 93, 1966; No. 60, 1967; and No. 62, 1968.

† Act No. 1, 1970.

6. Part VIIA. of the Principal Act is repealed and the following Part inserted in its stead:—

“ PART VIIA.—PREVENTION, ETC., OF POLLUTION BY OIL OF AUSTRALIAN COAST, COASTAL WATERS AND REEFS.

“ 329D.—(1.) In this Part—

Interpretation.

‘ Australian coastal waters ’ means Australian territorial waters and the territorial waters of any Territory not forming part of the Commonwealth, and includes any internal waters, being tidal waters, of Australia or such a Territory;

‘ Australian reef ’ means a reef in Australian coastal waters or a reef outside Australian coastal waters but forming part of the continental shelf adjacent to the Australian coast;

‘ continental shelf ’ has the same meaning as in the Convention entitled “ Convention on the Continental Shelf ” and dated the twenty-ninth day of April, One thousand nine hundred and fifty-eight;

‘ oil ’ means oil of any description, and includes—

(a) spirit produced from oil;

(b) coal tar; and

(c) any mixture containing oil, spirit produced from oil or coal tar and water or any other substance;

‘ Territory ’ means a Territory of the Commonwealth, other than the Territory of Papua or the Territory of New Guinea;

‘ the Australian coast ’ includes the coast of any Territory not forming part of the Commonwealth, the coast of any island forming part of Australia or of such a Territory and the shores of any internal waters, being tidal waters, of Australia, of such a Territory or of such an island;

‘ tidal waters ’ means a part of the sea, or a part of a river within the ebb and flow of the tide.

“(2.) Where oil has been, is being or is likely to be, discharged, intentionally or otherwise, from a ship, the discharge or likely discharge of the oil from the ship shall, for the purposes of this Part, be deemed to be an escape or likely escape of oil from the ship.

“ 329E.—(1.) Where oil is escaping from, or the Minister is satisfied that oil is likely to escape from, a ship, then, for the purpose of preventing, or reducing the extent of, the pollution or likely pollution by the oil of any Australian coastal waters, any part of the Australian coast or any Australian reef, the Minister may, by notice in writing addressed to the owner of the ship and served in accordance with the next succeeding section, do all or any of the following things:—

Powers of Minister.

(a) require such action to be taken in relation to the ship or its cargo, or the ship and its cargo, as is specified in the notice;

- (b) prohibit the removal of the ship from a place specified in the notice except with, and in accordance with, the approval of the Minister; or
- (c) prohibit the removal from the ship of any cargo, or any cargo specified in the notice, except with, and in accordance with, the approval of the Minister.

“(2.) The Minister shall specify in a notice under the last preceding sub-section, in relation to any requirement specified in the notice under paragraph (a) of that sub-section, the time by which the requirement is to be complied with.

“(3.) Without limiting the generality of paragraph (a) of sub-section (1.) of this section, the action that the Minister may, under that sub-section, require to be taken in relation to a ship includes—

- (a) action to prevent the escape of oil from the ship;
- (b) the removal of oil from the ship, or a specified part of the ship, in such manner, if any, as is specified by the Minister to such place, if any, as is so specified; and
- (c) the removal of the ship to a place specified by the Minister.

“(4.) Nothing in this section shall be construed as preventing the service under sub-section (1.) of this section of more than one notice in respect of a ship.

“(5.) Where a notice has been served under sub-section (1.) of this section in respect of a ship (including a notice that has been varied under this sub-section), the Minister may, by further notice in writing addressed to the owner of the ship and served in accordance with the next succeeding section, revoke or vary the earlier notice and, where the earlier notice is varied, it has effect as varied from the time when the other notice is so served.

“(6.) This section does not apply in relation to a ship not registered in Australia unless the ship is in Australian coastal waters.

“(7.) In this section, ‘ cargo ’ includes ballast and ship’s stores and fuel.

Service of  
notices.

“ 329F. Service of a notice under the last preceding section in respect of a ship shall be effected—

- (a) by serving it personally on the owner of the ship or, if the owner is a company, on a director, secretary or other officer of the company;
- (b) by serving it personally on the agent of the ship or, if the agent is a company, on a director, secretary or other officer of the company; or

- (c) by serving it personally on the master of the ship or, if for any reason (including the absence of the master from the ship) it is not practicable to serve the notice on the master, by handing it to any person on board the ship who appears to be an officer of the ship.

“ 329G.—(1.) Where—

Offences.

- (a) a notice under sub-section (1.) of section three hundred and twenty-nine E of this Act is served in respect of a ship; and
- (b) a requirement specified in the notice under paragraph (a) of that sub-section is not complied with before the time specified in the notice as the time by which the requirement is to be complied with,

the owner of the ship is guilty of an offence against this Part punishable upon conviction by a fine not exceeding the amount that, under sub-section (3.) of this section, is the prescribed amount in relation to the ship together with an amount not exceeding the prescribed amount in respect of each period of twenty-four hours included in the period that, under sub-section (3.) of this section, is the default period in relation to the requirement.

“ (2.) Where—

- (a) a notice under sub-section (1.) of section three hundred and twenty-nine E of this Act is served in respect of a ship; and
- (b) a prohibition specified in the notice under paragraph (b) or (c) of that sub-section is contravened,

the owner of the ship is guilty of an offence against this Part punishable upon conviction by a fine not exceeding the amount that, under the next succeeding sub-section, is the prescribed amount in relation to the ship.

“ (3.) In this section—

‘ the default period ’, in relation to a requirement specified in a notice under sub-section (1.) of section three hundred and twenty-nine E of this Act served in respect of a ship, being a requirement that is not complied with before the time specified in the notice as the time by which the requirement is to be complied with, means the period commencing at that time and ending at the time when the requirement is complied with or, if the owner of the ship proves that, after a particular time, compliance with the requirement was not possible or compliance with the requirement would not have prevented oil escaping from the ship, that last-mentioned time;

‘ the prescribed amount ’, in relation to a ship, means an amount of Two thousand dollars or, if the Court is satisfied that the quantity

of oil on board the ship was not less than five thousand tons, an amount ascertained in accordance with the following table:—

Quantity of oil on board the ship	Amount
	\$
5,000 tons or more but less than 50,000 tons .. .. .	4,000
50,000 tons or more but less than 100,000 tons .. .. .	6,000
100,000 tons or more .. .. .	8,000

“(4.) A reference in the last preceding sub-section to the quantity of oil on board a ship shall be read as a reference to the quantity of oil being carried in bulk in the ship as cargo or as ship’s fuel—

- (a) at the time when the notice under sub-section (1.) of section three hundred and twenty-nine E of this Act in respect of the ship was served; or
- (b) if oil had escaped from the ship before that time—immediately before oil first escaped from the ship.

“(5.) It is a defence to a prosecution for an offence against this Part if the person charged with the offence proves—

- (a) that his failure to comply with the notice resulted from the need to save life at sea; or
- (b) that compliance with the notice was not possible.

Punishment  
of offences.

“329H.—(1.) An offence against this Part may be prosecuted summarily or upon indictment, but an offender is not liable to be punished more than once in respect of the same offence.

“(2.) Where proceedings for an offence against this Part are brought in a court of summary jurisdiction, the court may commit the defendant for trial or, with the consent of the defendant, determine the proceedings.

Powers of  
Minister in  
case of  
non-compliance  
with notice.

“329J.—(1.) Where a requirement specified in a notice served under section three hundred and twenty-nine E of this Act in respect of a ship is not complied with, the Minister may, whether or not the owner of the ship has been convicted of an offence against this Part by reason of the requirement not having been complied with, cause such things to be done as he thinks proper for the carrying out of the action required by the notice to be carried out.

“(2.) Where—

- (a) a notice under sub-section (1.) of section three hundred and twenty-nine E of this Act is served in respect of a ship which is not a ship to which the next succeeding section applies;
- (b) a requirement specified in the notice is not complied with or a prohibition specified in the notice is contravened; and
- (c) oil escapes from the ship by reason of the requirement not having been complied with or by reason of the prohibition having been contravened,

the Minister may, whether or not the owner of the ship has been convicted of an offence against this Part by reason of the requirement not having

been complied with or by reason of the prohibition having been contravened, cause such things to be done as he thinks proper to prevent, or reduce the extent of, the pollution by the oil of any Australian coastal waters, any part of the Australian coast or any Australian reef, or to remove or reduce the effects of the pollution by the oil of any such waters, coast or reef.

“(3.) Subject to the next succeeding sub-section, the amount of any expense or other liability incurred by the Minister in, or by reason of, the exercise of his powers under either of the last two preceding sub-sections in relation to a ship—

- (a) is a debt due to the Commonwealth by, and may be recovered by the Commonwealth from, the owner of the ship; and
- (b) is a charge upon the ship, which, except where the ship is not registered in Australia and is not in Australian coastal waters, may be detained by a person authorized by the Minister and may be so detained until the amount is paid or security for the payment of the amount is provided to the satisfaction of the Minister.

“(4.) The last preceding sub-section does not apply in relation to the amount of any expense or other liability incurred by the Minister in, or by reason of, the exercise of his powers under sub-section (2.) of this section in relation to oil that has escaped from a ship where—

- (a) the failure of the owner of the ship to comply with the notice under sub-section (1.) of section three hundred and twenty-nine E of this Act resulted from the need to save life at sea; or
- (b) compliance with the notice was not possible.

“329K.—(1.) This section applies to a ship carrying oil in bulk as cargo. Prevention, &c.,  
of pollution  
caused by  
escape of oil.

“(2.) Where oil escapes from a ship to which this section applies (whether in Australian coastal waters or elsewhere), the Minister may (whether or not a notice has been served in respect of the ship under section three hundred and twenty-nine E of this Act and whether or not any notice so served has been complied with) cause such things to be done as he thinks proper to prevent, or reduce the extent of, the pollution by the oil of any Australian coastal waters, any part of the Australian coast or any Australian reef, or to remove or reduce the effects of the pollution by the oil of any such waters, coast or reef.

“(3.) Subject to the next succeeding sub-section, where the Minister has incurred expenses or other liabilities in the exercise of his powers under the last preceding sub-section in relation to any oil that has escaped from a ship, the total amount of those expenses and liabilities, or, where the escape of oil did not occur as a result of the actual fault or privity of the owner, that total amount to the extent that it does not exceed the maximum liability applicable to the ship under sub-section (5.) of this section in relation to that incident—

- (a) is a debt due to the Commonwealth by, and may be recovered by the Commonwealth from, the owner of the ship; and

- (b) is a charge upon the ship, which, except where the ship is not registered in Australia and is not in Australian coastal waters, may be detained by a person authorized by the Minister and may be so detained until the amount is paid or security for the payment of the amount is provided to the satisfaction of the Minister.

“(4.) The last preceding sub-section does not apply in relation to a ship, or the owner of a ship, where the owner of the ship proves that the escape of the oil—

- (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character;
- (b) was wholly caused by an act or omission done by a third party with intent to cause damage; or
- (c) was wholly caused by the negligence or other wrongful act of any government, or other authority, responsible for the maintenance of lights or other navigational aids in the exercise of its functions in relation to those lights or aids.

“(5.) For the purposes of sub-section (3.) of this section, the maximum liability applicable to a ship in relation to an incident that resulted in the escape of oil from the ship is—

- (a) an amount calculated by multiplying the sum of One hundred and twenty dollars by the tonnage factor applicable to the ship; or
- (b) the amount of Twelve million six hundred thousand dollars,

whichever is the less.

“(6.) Where oil has escaped from two or more ships and it is not reasonably practicable to identify the oil that has escaped from a particular ship, all oil that has escaped from those ships shall, for the purposes of this section, be deemed to have escaped from each of those ships, but the Commonwealth is not, by virtue of this sub-section, entitled to recover from the owners of those ships amounts that, in the aggregate, exceed the total amount of the expenses and liabilities incurred by the Minister in the exercise of his powers under sub-section (2.) of this section in relation to the oil.

“(7.) In this section—

- ‘adjusted net tonnage’, in relation to a ship, means the number of tons that would be the net tonnage of the ship if, in ascertaining that tonnage by reference to the gross tonnage of the ship in accordance with the normal rules for measuring the tonnage of ships, no deduction were made from the gross tonnage of the ship in respect of engine-room space;
- ‘incident’ means an occurrence, or a series of occurrences having the same origin;
- ‘owner’, in relation to a ship from which oil has escaped, means the owner of the ship at the time the incident that caused the escape

occurred, or, if the incident consisted of a series of occurrences having the same origin, at the time of the first of the occurrences; 'third party', in relation to a ship, means any person other than—

- (a) the owner of the ship;
- (b) a servant or agent of the owner of the ship; or
- (c) the master, an officer or any other member of the crew of the ship or of any other ship also owned by the owner of the ship;

'tonnage factor', in relation to a ship, means a number equal to the number of tons included in the adjusted net tonnage of the ship or, if the ship cannot be measured in accordance with the normal rules for measuring the tonnage of ships, a number equal to forty per centum of the number of tons of oil that the ship is capable of carrying in bulk as cargo.

“(8.) For the purposes of the definition of 'tonnage factor' in the last preceding sub-section, one ton of oil shall be deemed to occupy forty cubic feet of space.

“329L. This Part shall be read and construed as being in addition to, and not in derogation of or in substitution for, any other law of the Commonwealth or of a State or Territory of the Commonwealth.”.

Saving of  
other laws.

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