



ANNO VICESIMO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1979

No. 24 of 1979

An Act to amend the Prevention of Pollution of Waters by Oil Act, 1961-1975.

[Assented to 15th March, 1979]

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

1. (1) This Act may be cited as the "Prevention of Pollution of Waters by Oil Act Amendment Act, 1979". Short titles.

(2) The Prevention of Pollution of Waters by Oil Act, 1961-1975, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Prevention of Pollution of Waters by Oil Act, 1961-1979".

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

3. The long title to the principal Act is amended by inserting after the passage "Pollution of the Sea by Oil, 1954," the passage "and to provide for the prevention of pollution of certain inland waters by oil,". Amendment of long title of principal Act.

4. Section 3 of the principal Act is amended—

(a) by inserting in subsection (1) after the definition of "agent" the following definition:— Amendment of principal Act, s. 3— Interpretation.

"apparatus" includes a pipeline, a structure on land, any receptacle used for the storage of oil and any apparatus used in the exploration for, or recovery of, oil;

(b) by striking out from subsection (1) from the definition of "mile" the passage "six thousand and eighty feet" and inserting in lieu thereof the passage "1 852 metres";

(c) by striking out from subsection (1) from paragraph (a) of the definition of "the jurisdiction" the passage "creeks, rivers" and inserting in lieu thereof the word "estuaries";

(d) by striking out from subsection (1) paragraph (b) of the definition of "the jurisdiction" and inserting in lieu thereof the following paragraph:—

(b) the rivers, creeks, watercourses, lakes and other inland waters of the State;;

(e) by striking out from subsection (1) from paragraph (c) of the definition of "the jurisdiction" the passage "one marine league" and inserting in lieu thereof the passage "three miles";

and

(f) by striking out subsection (3).

Repeal of
s. 5 of
principal Act
and enactment
of section in its
place.

5. Section 5 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Discharge of
oil into
waters.

5. (1) Where there is a discharge of oil or of any mixture containing oil into any waters of the jurisdiction, the following persons shall be jointly and severally liable for the discharge:—

(a) if the discharge is from a ship—the owner, the agent and the master of the ship;

(b) if the discharge is from a vehicle—the person who has undertaken to transport the oil or the mixture containing oil by means thereof;

or

(c) if the discharge is from any apparatus—the person who has the control of the use of that apparatus.

(2) Where there is a discharge of oil or of any mixture containing oil into any waters of the jurisdiction, the following persons shall, subject to the provisions of this Act, be guilty of an offence—

(a) if the discharge is from a ship—the owner, the agent and the master of the ship;

(b) if the discharge is from a vehicle—the person who has undertaken to transport the oil or the mixture containing oil by means thereof;

or

(c) if the discharge is from any apparatus—the person who has the control of the use of that apparatus.

Penalty: Fifty thousand dollars.

Repeal of
s. 6 of
principal Act.

6. Section 6 of the principal Act is repealed.

Repeal of
s. 7 of
principal Act
and enactment
of sections in
its place.

7. Section 7 of the principal Act is repealed and the following sections are enacted and inserted in its place:—

Removal and
prevention
of oil
pollution.

7. Where there has been, or the Minister is of the opinion that there is likely to be, a discharge of oil or of any mixture containing oil from a ship, vehicle or any apparatus into any waters of the jurisdiction, the Minister—

(a) may take such action or cause such things to be done as he thinks fit for the removal of any substance from the waters or land affected by the discharge, or for the prevention of the discharge;

and

(b) subject to this Act, may recover as a debt in a court of competent jurisdiction the amount of the costs and expenses reasonably incurred by him in exercising his powers under this section from any person or persons liable under section 5 of this Act for the discharge, or who would have been so liable had the discharge occurred.

7a. (1) Without derogating from the provisions of section 7 of this Act, where there has been, or the Minister is of the opinion that there is likely to be, a discharge of oil or of any mixture containing oil from a ship, vehicle or any apparatus into any waters of the jurisdiction, the Minister may, by notice in writing addressed to and served upon any person or persons liable under section 5 of this Act for the discharge, or who would be so liable if the discharge occurred, from time to time direct—

Minister may
require
certain action
to be taken.

- (a) that any operation or activity involving the use of the ship, vehicle or apparatus be terminated;
 - (b) that the ship, vehicle or apparatus be removed in a specified manner to a specified place;
 - (c) that the ship, vehicle or apparatus may not be removed except with the approval of the Minister and in accordance with his directions;
 - (d) that all or a specified part of the oil contained in the ship, vehicle or apparatus be removed in a specified manner to a specified place;
 - (e) that the oil from the ship, vehicle or apparatus may not be removed except with the approval of the Minister and in accordance with his directions;
 - (f) that all or a specified part of the oil in the ship, vehicle or apparatus be retained there;
 - (g) that no oil, or no further oil, or no oil in excess of a specified amount, be received into the ship, vehicle or apparatus;
 - (h) that any restrictions specified in the notice be complied with in the reception, removal or transfer of oil into, from, or within the ship, vehicle or apparatus;
 - (i) that any equipment or machinery ancillary to the ship, vehicle or apparatus be operated or put into operating condition;
 - (j) that specified repair or reconstruction work be carried out on the ship, vehicle or apparatus;
- or
- (k) that such other specified action be taken in relation to the ship, vehicle or apparatus, or any oil or cargo, as the Minister thinks fit.

(2) Where a notice is served upon a person under subsection (1) of this section, and the notice is not complied with, that person shall be guilty of an offence.

Penalty: Fifty thousand dollars.

(3) The Minister may at any time revoke a notice given by him under subsection (1) of this section.

(4) If a direction contained in a notice given by the Minister under subsection (1) of this section is not complied with in accordance with the requirements of the notice, the Minister may cause the direction to be complied with and, for that purpose, any person authorized by the Minister in that behalf, using only such force as is necessary, may enter and take possession of such places and do or cause to be done such things as full and proper compliance with the direction may require.

(5) Subject to this Act, the Minister may recover the amount of the costs and expenses reasonably incurred by him in exercising his powers under subsection (4) of this section from any person or persons to whom notice was given under subsection (1) of this section, as a debt in a court of competent jurisdiction.

(6) In this section "cargo" of a ship includes ballast and ship's stores and fuel.

Service of
notices.

7b. (1) A notice under section 7a of this Act may be served—

(a) upon the owner of a ship by serving it personally or, if the owner is a company, by serving it upon a director, secretary or other officer of the company, or by serving it upon the agent or master of the ship in accordance with this section;

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

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

or

(d) where it is not reasonably practicable to serve the owner or the master of a ship by those means—

(i) by transmitting the contents of the notice to the master of the ship;

or

(ii) by affixing the notice to the ship in such a manner that the notice would be reasonably conspicuous to persons on board the ship.

(2) A statement in writing, purporting to be made and signed by a person employed as a communications officer whose duties include the transmission of messages to ships at sea, that he caused the contents of a notice given under section 7a of this Act to be transmitted to a ship at sea, shall be deemed, in the absence of proof to the contrary, to be proof of service of the notice on the master of the ship.

(3) A statement in writing, purporting to be made and signed by such a communications officer, that he received a clear acknowledgment of the receipt of the contents of a notice from some person purporting to be on board the ship shall be deemed, in the absence of proof to the contrary, to be proof that acknowledgment was so given.

(4) A notice under section 7a of this Act may be served upon the person who has undertaken to transport oil or a mixture containing oil by means of the vehicle—

- (a) by serving it personally or, if that person is a company, by serving it upon a director, secretary or other officer of the company;
- (b) by handing it to any person who appears to be the driver, or person in charge, of the vehicle;
- or
- (c) where it is not reasonably practicable to effect service by either of those means, by affixing the notice to the vehicle in a conspicuous place.

(5) A notice under section 7a of this Act may be served upon the person who has the control of the use of any apparatus—

- (a) by serving it personally or, if that person is a company, by serving it upon a director, secretary or other officer of the company;
- (b) by handing it to any person who appears to be in charge of the apparatus;
- or
- (c) where it is not reasonably practicable to effect service by either of those means, by affixing it to the apparatus in a conspicuous place.

7c. In any proceedings it shall be a defence to a charge of an offence against this Act if the defendant proves that the alleged offence—

- (a) resulted from the need to save life;
- (b) resulted from an act of war, civil war, hostilities, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible nature;
- (c) resulted from the carrying out, or an attempt to carry out, a direction of the Minister;
- or
- (d) was wholly caused by the negligent, unlawful or malicious act or omission of some other person, not being the servant or agent of the defendant.

7d. (1) A person shall not be liable to pay any costs or expenses incurred by the Minister in the exercise of his powers under section 7 or 7a of this Act where the act or omission giving rise to the exercise by the Minister of his powers—

- (a) resulted from the need to save life;
- (b) resulted from an act of war, civil war, hostilities, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible nature;

Defences.

Limitation of liability to Minister for costs and expenses.

(c) was wholly caused by the malicious act or omission of some other person, not being the servant or agent of that first-mentioned person;

or

(d) was wholly caused by the negligence or failure of any government or other authority in carrying out its functions.

(2) A person shall not be liable to pay any costs or expenses incurred by the Minister in the exercise of his powers under section 7 or 7a of this Act in respect of preventing a discharge of oil or of a mixture containing oil that the Minister believed was likely to occur, if that person proves—

(a) that there was no reasonable likelihood of such a discharge occurring;

(b) that the directions given by the Minister were unreasonable;

or

(c) that the manner in which the Minister exercised those powers was unreasonable.

(3) Where a person is liable to pay any amount to the Minister pursuant to section 7 or 7a of this Act by virtue of any discharge of oil from a ship carrying oil in bulk as cargo, that was wholly caused by the negligence of some other person, the maximum amount for which he shall be liable is—

(a) an amount calculated by multiplying the amount of one hundred and twenty dollars by the adjusted net tonnage of the ship;

or

(b) the amount of twelve million six hundred thousand dollars, whichever is the lesser amount.

(4) Where there has been a discharge of oil from two or more ships carrying oil in bulk as cargo that was wholly caused by the negligence of some person other than the person or persons liable to pay the costs or expenses incurred by the Minister in relation to that discharge, and it is not reasonably practicable to establish the amount of oil that has been discharged from a particular ship, then, for the purposes of this Act, all the oil that has been discharged from those ships shall be deemed to have been discharged from each of those ships, but the Minister is not, by virtue of this subsection, entitled to recover amounts that in the aggregate exceed the total amount recoverable had the oil been discharged from one ship only.

(5) In this section—

“adjusted net tonnage”, in relation to a ship, means the net tonnage of the ship including the tonnage of its engine-room, calculated in accordance with the rules from time to time adopted by the Commonwealth for the purpose of determining the tonnage of ships, on the basis of—

(a) the measurements of the ship obtained in accordance with those rules;

or

(b) where it is not reasonably practicable so to obtain the measurements—the measurements of the ship as specified in any register, or in any other document that relates to the ship.

7e. (1) Any amount recoverable by the Minister pursuant to section 7 or 7a of this Act in respect of a ship or vehicle shall be a charge upon that ship or vehicle. Detention of ship or vehicle.

(2) The Minister may cause any ship or vehicle referred to in subsection (1) of this section to be detained until the amount recoverable by the Minister is paid, or security for payment of that amount is given to the satisfaction of the Minister.

(3) Where a ship or vehicle that is being detained pursuant to this section is moved from any place without the consent of the Minister, the master of the ship, or the person in charge of the vehicle, as the case may be, shall be guilty of an offence.

Penalty: Ten thousand dollars.

8. Section 10 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “and shall be liable upon conviction to a fine not exceeding ten thousand dollars” and inserting in lieu thereof at the foot of that subsection the passage “Penalty: Ten thousand dollars.”; Amendment of principal Act, s. 10—
Reporting and investigation of discharging oil.

(b) by inserting after subsection (1) the following subsection:—

(1a) If any discharge of oil, or of any mixture containing oil, occurs from any vehicle or apparatus—

(a) into any waters of the jurisdiction;

or

(b) onto any land in circumstances where there is a reasonable likelihood that the oil will escape into any waters of the jurisdiction,

the person or persons liable for that discharge, or who would be liable for that discharge if it occurred, pursuant to section 5 of this Act, shall forthwith inform the Minister of all details of the occurrence.

Penalty: Ten thousand dollars.;

(c) by striking out from subsection (2) the passage “the harbour master of any port, or any officer or employee of the Minister having charge of any district,” and inserting in lieu thereof the passage “the harbormaster of any port”;

(d) by inserting in subsection (3) after the passage “enter and inspect any” the passage “vehicle or”;

(e) by striking out from subsection (3) the passage “in respect of such place” and inserting in lieu thereof the passage “in respect of such vehicle or place, and any other records relevant to the investigation,”;

and

(f) by striking out subsection (4) and inserting in lieu thereof the following subsection:—

(4) A person, in addition to exercising any of the powers conferred upon him under subsections (2) and (3) of this section, for the purposes of any investigation—

(a) may take samples of any substance;

(b) may require a person to certify the taking of a sample;

and

(c) may test any equipment or apparatus.

Amendment of
principal Act,
s. 11—
Oil reception
facilities.

9. Section 11 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “with the Crown” and inserting in lieu thereof the passage “or authority”;

(b) by striking out from subsection (1) the passage “by the Crown” and inserting in lieu thereof the word “authority”;

and

(c) by striking out from subsection (3) the passage “all ships” and inserting in lieu thereof the passage “any ship”.

Amendment of
principal Act,
s. 12—
Restrictions
on transfer
of oil at night.

10. Section 12 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “the harbour master” and inserting in lieu thereof the passage “the harbormaster”;

and

(b) by striking out from subsection (2) the passage “the harbour master” and inserting in lieu thereof the passage “the harbormaster”.

Amendment of
principal Act,
s. 15—
Dispensations
and exemptions.

11. Section 15 of the principal Act is amended by inserting in subsection (2) after the passage “any ship or class of ship” the passage “, any vehicle or class of vehicle, or any apparatus or class of apparatus”.

Amendment of
principal Act,
s. 16—
Evidence.

12. Section 16 of the principal Act is amended—

(a) by striking out from paragraph (c) the passage “the owner, agent or master of a ship pursuant to” and inserting in lieu thereof the passage “a person pursuant to subsection (1) or (1a) of”;

(b) by striking out from subparagraph (iii) of paragraph (d) the passage “the owner, agent or master of a ship pursuant to” and inserting in lieu thereof the passage “a person pursuant to subsection (1) or (1a) of”;

and

(c) by striking out paragraph (e) and inserting in lieu thereof the following paragraph:—

(e) an allegation in a complaint that a specified person is, or was on a specified day—

(i) the owner, agent or master of a specified ship;

(ii) the person who had undertaken to transport oil, or any mixture containing oil, by means of a specified vehicle;

or

(iii) the person who had the control of the use of any specified apparatus,

shall be accepted by the court as evidence of the truth of the allegation unless the contrary is proved.

13. Section 17 of the principal Act is amended by striking out from subsection (1) the passage “for the recovery of a penalty”.

Amendment of principal Act, s. 17—
Proceedings for offences.

14. Section 18 of the principal Act is amended—

(a) by striking out from paragraph (a) the passage “by the appropriate authority” and inserting in lieu thereof the passage “or authorized by the Minister”;

Amendment of principal Act, s. 18—
Evidence of administrative acts.

(b) by striking out from subparagraph (iii) of paragraph (a) the word “it” and inserting in lieu thereof the word “him”;

and

(c) by inserting in paragraph (a) after subparagraph (iii) the following subparagraphs:—

(iv) to do certain things on behalf of the Minister under section 7a of this Act;

or

(v) to detain any ship or vehicle under section 7e of this Act;

or.

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

K. D. SEAMAN, Governor