

## VICTORIA.



ANNO NONO

## ELIZABETHÆ SECUNDÆ REGINÆ.

No. 6705.

An Act relating to the Prevention of the Pollution of Navigable Waters by Oil, and for purposes connected therewith.

[13th December, 1960.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. (1) This Act may be cited as the *Navigable Waters (Oil Pollution) Act 1960*. Short title.
- (2) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*. Commencement.
2. (1) Sub-section (2) of section one hundred and ten of the *Geelong Harbor Trust Act 1958* shall be repealed. Amendment of No. 6262 s. 110.
- (2) Sub-section (2) of section sixty-three of the *Harbor Boards Act 1958* shall be repealed. Amendment of No. 6268 s. 63.
- (3) In section one hundred and fifty-five of the *Melbourne Harbor Trust Act 1958* the words beginning "and every person" and ending at the end of the section shall be repealed. Amendment of No. 6312 s. 155. Repeal of special provisions re discharge of oil in harbors.
3. (1) This

- Act to bind Crown.            3. (1) This Act shall bind the Crown.
- Application.            (2) This Act shall apply to all ships within the jurisdiction :  
Provided that sections nine, ten and fifteen of this Act shall not apply to ships trading or proceeding to or from a port outside the jurisdiction.
- Interpretation.        4. (1) In this Act unless inconsistent with the context or subject-matter—
- “ Appropriate authority.”        “ Appropriate authority ” means—
- (a) in relation to the Port under the *Geelong Harbor Trust Act 1958*, the Geelong Harbor Trust Commissioners ;
  - (b) in relation to the Port under the *Melbourne Harbor Trust Act 1958*, the Melbourne Harbor Trust Commissioners ;
  - (c) in relation to the Port under the *Portland Harbor Trust Act 1958*, the Portland Harbor Trust Commissioners ;
  - (d) in relation to any port under the *Harbor Boards Act 1958*, the appropriate harbor board under that Act ; and
  - (e) in relation to any port proclaimed under section seven of the *Marine Act 1958* (other than those referred to in the foregoing paragraphs), the port officer ; and
  - (f) in relation to any navigable waters within the jurisdiction but not within any port aforesaid, the Marine Board of Victoria under the *Marine Act 1958*.
- “ Discharge.”            “ Discharge ” means any discharge or escape, howsoever caused.
- “ Master.”                “ Master ”, in respect of a ship, includes every person having lawfully or in fact the command, charge or management of the ship for the time being.
- “ Mixture containing oil.”        “ Mixture containing oil ” means a mixture of oil, as herein defined, with water or any other substance.
- “ Occupier.”              “ Occupier ” in relation to a place on land means the person exercising by himself or his servants or agents any right of occupation thereof, or if it has no occupier means the owner thereof, and in relation to a vehicle includes the person in charge thereof and the owner thereof but does not include the occupier of the land on or over which the vehicle stands or moves.
- “ Oil.”                    “ Oil ” means oil of any description and includes spirit produced therefrom and coal tar.

“ Oil

- “ Oil residues ” means those parts of a mixture containing oil which remain after undergoing a separation process. “ Oil residues.”
- “ Place on land ” includes any structure or apparatus on land, and any thing or vehicle resting on or moving over land, and anything resting on or lying under the bed shore or bank of any navigable waters, and also includes anything afloat (other than a ship) if it is anchored or attached to the bed shore or bank of any navigable waters. “ Place on land.”
- “ Prescribed ” means prescribed by this Act or the regulations thereunder. “ Prescribed.”
- “ Regulations ” means regulations made under this Act. “ Regulations.”
- “ Ship ” includes every description of vessel or craft. “ Ship.”
- “ Tanker ” means a ship constructed or adapted for carrying a cargo of oil in bulk. “ Tanker.”
- “ The Convention ” means the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, and includes that Convention as amended from time to time by any amendment accepted by Australia. “ The Conventions.”
- “ The jurisdiction ” means the sea lying within the territorial limits and the ports and navigable waters of the State of Victoria. “ The jurisdiction.”

(2) Any discharge of oil or of any mixture containing oil onto or into any lands or waters or any structure or thing shall, if the whole or any part of such oil or mixture containing oil eventually enters any waters within the jurisdiction, be deemed for all purposes under this Act to be a discharge into the said waters within the jurisdiction of the said oil or mixture containing oil, or of so much of the same as enters the said waters within the jurisdiction.

5. Except as is provided in section two of this Act, the provisions of this Act shall be read and construed as being in aid of and not in derogation of or in substitution for any provision contained in any other Act or in any by-law rule or regulation made under any other Act.

Application of this Act.

6. If any discharge of oil or of any mixture containing oil into any waters within the jurisdiction occurs from any ship or from any place on land or from any apparatus used for transferring oil from or to any ship (whether to or from a place on land or to or from another ship) then subject to the provisions of this Act—

Discharge of oil into waters within jurisdiction.

- (a) if the discharge is from a ship, the owner, the agent and the master of the ship severally ; or
- (b) if the discharge is from a place on land, the occupier of that place ; or

(c) if

- (c) if the discharge is from apparatus used for transferring oil from or to a ship, the person in charge of the apparatus—

shall be guilty of an offence against this Act and liable to a penalty of not more than One thousand pounds.

Special  
defences.

7. (1) Where the owner agent or master of a ship is charged with an offence against section six of this Act it shall be a defence to prove—

- (a) that the discharge of oil or mixture containing oil was necessary for the purpose of securing the safety of the ship or of preventing damage to the ship or cargo or of saving life and was a reasonable step to take in the circumstances ; or

- (b) that the oil or mixture containing oil escaped—

- (i) in consequence of damage to the ship and that all reasonable steps were taken after the occurrence of the damage for stopping or reducing the escape of the oil or mixture ; or

- (ii) in consequence of leakage which could not have been foreseen and avoided and that all reasonable steps were taken for prompt discovery of the leakage and after such discovery for stopping or reducing the escape of the oil or mixture.

(2) Where the occupier of a place on land or the person in charge of any apparatus is charged with an offence under section six of this Act it shall be a defence to prove that the escape of the oil or mixture containing oil was due to accident which could not have been foreseen and avoided, and that all reasonable steps were taken for prompt discovery of the escape of the oil or mixture and after such discovery for stopping or reducing such escape.

Removal  
of oil  
pollution.

8. (1) Where any discharge of oil or of any mixture containing oil occurs as referred to in section six of this Act, the appropriate authority may take such action as it deems appropriate to remove disperse destroy or mitigate the pollution caused by the oil so discharged or the oil contained in any mixture so discharged or any substance other than water contained in any such mixture and may recover all costs and expenses incurred in and about such removal dispersal destruction or mitigation from either the owner agent or master of the vessel from which

the

the discharge occurs or from the occupier of the place on land from which the discharge occurs or from the person in charge of the apparatus from which the discharge occurs (as the case requires).

(2) Such costs and expenses may be recovered in a court of competent jurisdiction as for money paid.

(3) Proceedings under this section shall be in addition to and not in derogation of or in substitution for any proceedings which may be taken apart from this section.

9. (1) Every ship shall be fitted with such equipment for the prevention of the discharge of oil or any mixture containing oil into any waters within the jurisdiction and shall comply with such requirements relating or incidental to such prevention as may be prescribed by regulations made by the Governor in Council upon the recommendation of the appropriate authority.

Equipment  
in ships to  
prevent oil  
pollution.

(2) Where any regulations made pursuant to this section require ships to be fitted with prescribed equipment the regulations may provide—

- (a) for inspection of ships to which the regulations apply by persons appointed by the appropriate authority for that purpose ;
- (b) that prescribed equipment shall not be installed in a ship to which the regulations apply unless it is of a type tested and approved by a person appointed by the appropriate authority for that purpose ;
- (c) that equipment so tested and approved, while installed in such a ship, shall not be treated as satisfying the requirements of the regulations unless, at such times as may be prescribed, it is tested and approved by a person appointed by the appropriate authority for that purpose ; and
- (d) for payment of such fees for the inspection provided for in paragraph (a) of this sub-section and the carrying out of tests provided for in paragraphs (b) and (c) of this sub-section as are prescribed.

(3) If, in the case of any ship, the provisions of any regulation under this section which applies to that ship are contravened, both the owner and the master of the ship shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding Five hundred pounds.

10. (1) The Governor in Council upon the recommendation of the appropriate authority may make regulations requiring the owner or agent of a ship or the occupier of a place on land to

Keeping  
of oil  
records.

keep

keep or cause to be kept such records of the nature hereinafter described, and such other records, for the purposes of this Act, as may be prescribed.

(2) The regulations may require the owner or agent of a ship to keep or cause to be kept records—

- (a) of any occasion on which oil or a mixture containing oil is discharged from the ship for the purpose of securing its safety or of preventing damage to the ship or cargo or of saving life ;
- (b) of any occasion on which oil or a mixture containing oil is found to be escaping or to have escaped from the ship in consequence of damage to the ship or by reason of leakage ;
- (c) of the carrying out, on board or in connexion with the ship, of such operations as may be prescribed, including operations relating to—
  - (i) the ballasting of oil tanks (whether cargo or bunker fuel tanks) and the discharge of ballast from, and the cleaning of, those tanks ;
  - (ii) the separation of oil from water or from other substances in any mixture containing oil ;
  - (iii) the disposal of any oil or water or any other substance arising from operations relating to any of the matters specified in sub-paragraphs (i) and (ii) of this paragraph ; and
  - (iv) the disposal of any other oil residues ; and
- (d) relating to the transfer of oil to or from the ship.

(3) The regulations may require the occupier of any place on land to keep or cause to be kept records relating to—

- (a) the transfer of oil or a mixture containing oil from or to any ship and to from or through that place on land ;
- (b) the operation of facilities provided at that place on land for the disposal of oil residues from any ship ; and
- (c) any discharge of oil or a mixture containing oil occurring in the course of or in connexion with any such transfer of oil or disposal of oil residues.

(4) The regulations may—

- (a) prescribe the form in which those records shall be kept and the nature of the entries to be made therein ;
- (b) require

- (b) require the person keeping those records to retain them for a prescribed period ;
- (c) require that person, at the end of the prescribed period, to transmit those records to a place or person determined by or under the regulations ; and
- (d) provide for the custody or disposal of those records after their transmission to that place or person.

(5) Any person who makes any entry in any records required to be kept pursuant to this section which is to his knowledge false or misleading in any particular shall be guilty of an offence against this Act and be liable to a penalty of not more than Five hundred pounds.

11. (1) If any discharge of oil or of any mixture containing oil occurs from any ship or from any place on land into any waters within the jurisdiction, the owner, the agent and the master of the ship from which such discharge occurs or the occupier of the place on land from which such discharge occurs shall forthwith inform the appropriate authority of all details of the occurrence, and, if the appropriate authority is not so informed, the owner, the agent and the master of the ship severally or (as the case may be) the occupier of that place shall be guilty of an offence against this Act and liable to a penalty of not more than Two hundred pounds.

Reporting  
and  
investigation  
of discharges  
of oil, &c.

(2) The harbor master or port officer of any port or any officer or employee of the appropriate authority may where any discharge of oil or any mixture containing oil into any waters within the jurisdiction occurs or where he has reasonable cause to suspect that any such discharge has occurred—

- (a) go on board and inspect any ship being within the jurisdiction ;
- (b) inspect any records required to be kept in respect of that ship by this Act or any regulation made thereunder or by any law of any Contracting Government to the Convention for the carrying out of the purposes of the Convention ;
- (c) if those records are kept in a language other than English, be accompanied and assisted by an interpreter ; and
- (d) cause any entry in any such records to be copied and require the person by whom the records are to be kept to certify the copy as a true copy of the entry :

Provided that a person exercising any powers conferred by this section shall not unnecessarily detain or delay the ship from proceeding on any voyage.

(3) The port officer or any person appointed in that behalf by the appropriate authority may, where any discharge of oil or mixture containing oil from any place on land into any waters within the jurisdiction

jurisdiction has occurred or where he has reasonable cause to suspect that any such discharge has occurred, enter and inspect the place on land, inspect any records required to be kept under this Act in respect of that place, cause any entry in any such records to be copied and require the person by whom the records are to be kept to certify the copy as a true copy of the entry.

(4) Any person making an inspection under sub-section (2) or sub-section (3) of this section may take samples of any substances or mixtures of substances being in on or in the vicinity of the ship or place on land inspected, and may require the master of the ship or the occupier of the place on land, or a person representing that master or occupier, to certify the taking of those samples, and may require the testing of any equipment or apparatus in the ship or on the place on land, the condition or efficiency of which he considers relevant to the discharge or suspected discharge.

(5) Any person who assaults resists hinders or obstructs any person acting in the exercise of any power conferred by or under this section or who fails to comply with any requirement duly made under this section shall be guilty of an offence against this Act and shall be liable to a penalty of not more than Two hundred pounds.

Oil reception facilities.

12. (1) Any appropriate authority in such places as it deems necessary may provide facilities for enabling ships to dispose of oil residues, or may join with any other person including the Crown in providing such facilities, or may arrange for the provision of such facilities by any other person including the Crown.

(2) The Governor in Council, on the recommendation of the appropriate authority, may make regulations for or with respect to fixing charges and imposing conditions in respect of the use of any such facilities.

(3) Any such facilities shall be open to all ships for the disposal of oil residues on payment of such charges and subject to compliance with such conditions as may be fixed and imposed in accordance with sub-section (2) of this section :

Provided that—

(a) ships disposing of oil residues for purposes of undergoing repairs and tankers shall not be entitled as of right to use such facilities ;

(b) such facilities shall not be available as of right for the disposal of any mixture containing oil which has not been subjected to an effective process for separating the oil from such mixture.

(4) The



(4) The appropriate authority may require the owner or occupier of any oil terminal, oil depot, oil installation or other similar establishment used for the loading or unloading of oil in bulk and the owner or occupier of any establishment at which ships are repaired or any other work is performed in relation to ships involving the disposal of oil residues—

- (a) to provide facilities of a standard satisfactory to the appropriate authority for the disposal of oil residues by ships berthed, docked or otherwise being at any such establishment ;
- (b) to maintain all such facilities in good order and condition ;
- (c) to make all such facilities available for enabling ships to dispose of oil residues.

13. (1) No oil shall be transferred between sunset and sunrise from or to a ship (whether to or from a place on land or to or from another ship) in any waters within the jurisdiction unless notice of the transfer has been given to and permission in writing obtained from the harbor master or other person having charge of those waters or the appropriate authority.

Restrictions  
on transfer  
of oil at  
night.

(2) In the case of a transfer of oil to be performed at a place where such transfers are frequently and regularly carried out, the notice may be a general notice that transfers will be carried out within a period specified in the notice, and the permission may be general and subject to such conditions as the harbor master or other person having charge of those waters or the appropriate authority thinks fit.

(3) If any oil is transferred to or from any ship in contravention of this section, or if any condition attached to any permission given is not observed, the owner, the agent and the master of the ship and, if the oil is transferred from or to a place on land, the occupier of that place shall be severally guilty of an offence against this Act and liable to a penalty of not more than Two hundred pounds.

14. (1) The Governor in Council, on the recommendation of the appropriate authority, may make regulations not inconsistent with this Act for or with respect to prescribing any matters which by this Act are required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations.

(2) The regulations may prescribe penalties not exceeding Five hundred pounds for offences against the regulations.

(3) Any regulations made under this Act may be made either in respect of all or any one or more of the classes of ships or other things or matters to which the regulations relate and different

provisions

provisions may be made by any such regulations in respect of different classes of ships or other such things or matters.

(4) All regulations made under this Act shall be published in the *Government Gazette* and shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then sitting and if Parliament is not then sitting then within fourteen days after the next meeting of Parliament, and a copy thereof shall be posted to each Member of Parliament.

Inspection  
and report.

15. (1) Any person appointed by any appropriate authority to report to it regarding the proper observance of and the adequacy of the prohibitions restrictions and obligations imposed by or under this Act may go on board any ship, or may enter any place on land, and may inspect any records required to be kept under this Act and may cause any entry in such records to be copied and require the person by whom the records are to be kept to certify the copy as a true copy of such entry, and may inspect and test any equipment required to be fitted pursuant to this Act and may require any person in or upon or concerned with any such ship or place on land to answer such questions and require the production of such books, papers or documents as he considers relevant to the purpose of his report.

(2) Any person who assaults resists hinders or obstructs any person acting in the exercise of any power conferred by or under this section, or who fails to comply with any requirement duly made under this section, or who in giving any answer required under this section makes a statement which is false or misleading in any particular, shall be guilty of an offence against this Act and shall be liable to a penalty of not more than Two hundred pounds.

Dispensations  
and  
exemptions.

16. (1) Where, in respect of any requirement prescribed by regulations made under this Act, the appropriate authority is satisfied—

- (a) that the requirement has been substantially complied with ; or
- (b) that compliance with the requirement is, in the circumstances of the case, impracticable or unnecessary ; or
- (c) that the action taken or provision made with regard to the subject matter of the requirement is as effective as, or more effective than, actual compliance with the requirement—

it may direct that compliance with that requirement be dispensed with.

(2) An

(2) An appropriate authority may exempt any ship or class of ship from any of the provisions of this Act (other than section six) or of any regulations made under this Act.

(3) Whenever any dispensation has been directed or any exemption has been granted under this section, the appropriate authority may, at the same time or any time thereafter, impose in consideration of such dispensation or exemption any conditions which it deems appropriate, and may vary or revoke any such condition, and a breach of any such condition shall incur the same penalties and consequences as a breach of the statutory provision or regulation from which the dispensation or exemption was directed or granted.

(4) Any dispensation or exemption directed or granted under this section may be revoked by the appropriate authority at any time.

17. In any proceedings under this Act—

- (a) any records required to be kept by this Act or any regulations made thereunder or by any laws of any Contracting Government to the Convention for the carrying out of the purposes of the Convention shall be *prima facie* evidence of the facts stated in those records ;
- (b) any copy of an entry in any such records which purports to be certified by the person by whom those records are required to be kept to be a true copy of the entry shall be *prima facie* evidence of the facts stated in the entry ;
- (c) any document purporting to be records kept in pursuance of any of the requirements referred to in this section or purporting to be such a certified copy as is mentioned in paragraph (b) of this section shall, in the absence of evidence to the contrary, be deemed to be such records or such a certified copy (as the case may be).

Admissible evidence.

18. All penalties recovered for any offence against this Act or the regulations shall be paid into the funds of the appropriate authority or, where the said authority is constituted under the *Marine Act 1958*, into the Consolidated Revenue.

Application of penalties.

19. Any proceedings for an offence against this Act or the regulations may be taken by an officer or person authorized in that behalf by the appropriate authority.

Proof of certain matters not required.

20. A statement

Evidence of  
administrative  
acts.

20. A statement in writing purporting to be signed by an officer or person authorized by the appropriate authority—

(a) to the effect that any person has been generally or specially appointed by the appropriate authority—

(i) to carry out all or any of the inspections and tests referred to in section nine of this Act ;  
or

(ii) to investigate any discharge or suspected discharge of oil or of a mixture containing oil under section eleven of this Act ; or

(iii) to report to it regarding the proper observance of and the adequacy of the prohibitions restrictions and obligations imposed under section fifteen of this Act ; or

(iv) to take proceedings for offences against this Act or the regulations—

(b) to the effect that any dispensation has been directed, any exemption has been granted, or any conditions have been imposed or that any variation or revocation of any such condition exemption or dispensation has been made under section sixteen of this Act—

shall be *prima facie* evidence of the matters stated therein.

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