



ANNO QUADRAGESIMO

# ELIZABETHAE II REGINAE

A.D. 1991

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No. 59 of 1991

**An Act to amend the Pollution of Waters by Oil and Noxious Substances Act 1987 and the Marine Act 1936.**

[Assented to 28 November 1991]

The Parliament of South Australia enacts as follows:

## Short title

1. This Act may be cited as the *Pollution of Waters by Oil and Noxious Substances (Miscellaneous) Amendment Act 1991*.

## Commencement

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

## Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the part in which the reference occurs.

## PART I

### AMENDMENT OF POLLUTION OF WATERS BY OIL AND NOXIOUS SUBSTANCES ACT 1987

#### Prohibition of discharge of oil or oily mixtures into State waters

4. Section 8 of the principal Act is amended—

(a) by striking out from paragraph (a) of subsection (1) “\$50 000” and substituting “\$200 000”;

(b) by striking out from paragraph (b) of subsection (1) “\$250 000” and substituting “\$1 000 000”;

(c) by striking out from paragraph (b) of subsection (4) “has a gross tonnage of 400 or more and”;

and

(d) by striking out paragraph (i) of subsection (4).

**Oil residues**

5. Section 9 of the principal Act is amended—

(a) by striking out from paragraph (a) of subsection (1) “\$50 000” and substituting “\$200 000”;

and

(b) by striking out from paragraph (b) of subsection (1) “\$250 000” and substituting “\$1 000 000”.

**Duty to report certain incidents involving oil or an oily mixture**

6. Section 10 of the principal Act is amended—

(a) by striking out from subsection (1) “\$5 000” and substituting “\$50 000”;

(b) by striking out from paragraph (c) of subsection (3) “\$5 000” and substituting “\$50 000”;

(c) by striking out from paragraph (d) of subsection (3) “\$25 000” and substituting “\$250 000”;

(d) by striking out from subsection (6) “\$5 000” and substituting “\$20 000”;

(e) by striking out from subsection (7) “\$5 000” and substituting “\$20 000”;

and

(f) by striking out from subsection (8) “\$5 000” and substituting “\$20 000”.

**Oil record book**

7. Section 11 of the principal Act is amended—

(a) by striking out from paragraph (a) of subsection (4) “\$5 000” and substituting “\$20 000”;

(b) by striking out from paragraph (b) of subsection (4) “\$25 000” and substituting “\$100 000”;

(c) by striking out from subsection (5) “\$5 000” and substituting “\$20 000”;

and

(d) by striking out from subsection (7) “\$5 000” and substituting “\$20 000”.

**False entries in oil record book**

8. Section 12 of the principal Act is amended by striking out “\$10 000” and substituting “\$20 000”.

**Oil record book to be retained**

9. Section 13 of the principal Act is amended—

(a) by striking out from paragraph (a) of subsection (2) “\$5 000” and substituting “\$20 000”;

and

(b) by striking out from paragraph (b) of subsection (2) “\$25 000” and substituting “\$100 000”.

**Prohibition of discharge of substances into State waters****10. Section 18 of the principal Act is amended—**

(a) by striking out from paragraph (a) of subsection (1) “\$50 000” and substituting “\$200 000”;

and

(b) by striking out from paragraph (b) of subsection (1) “\$250 000” and substituting “\$1 000 000”.

**Duty to report certain incidents involving certain substances****11. Section 20 of the principal Act is amended—**

(a) by striking out from subsection (1) “\$5 000” and substituting “\$50 000”;

(b) by striking out from paragraph (c) of subsection (3) “\$5 000” and substituting “\$50 000”;

(c) by striking out from paragraph (d) of subsection (3) “\$25 000” and substituting “\$250 000”;

(d) by striking out from subsection (6) “\$5 000” and substituting “\$20 000”;

(e) by striking out from subsection (7) “\$5 000” and substituting “\$20 000”;

and

(f) by striking out from subsection (8) “\$5 000” and substituting “\$20 000”.

**Cargo record book****12. Section 21 of the principal Act is amended—**

(a) by striking out from paragraph (a) of subsection (4) “\$5 000” and substituting “\$20 000”;

(b) by striking out from paragraph (b) of subsection (4) “\$25 000” and substituting “\$100 000”;

(c) by striking out from subsection (5) “\$5 000” and substituting “\$20 000”;

and

(d) by striking out from subsection (8) “\$5 000” and substituting “\$20 000”.

**False entries in cargo record book**

**13. Section 22 of the principal Act is amended by striking out “\$10 000” and substituting “\$20 000”.**

**Cargo record book to be retained****14. Section 23 of the principal Act is amended—**

(a) by striking out from paragraph (a) of subsection (2) “\$5 000” and substituting “\$20 000”;

(b) by striking out from paragraph (b) of subsection (2) “\$25 000” and substituting “\$100 000”;

(c) by striking out from paragraph (a) of subsection (4) “\$5 000” and substituting “\$20 000”;

and

(d) by striking out from paragraph (b) of subsection (4) “\$10 000” and substituting “\$100 000”.

**Insertion of Part IIIA**

15. The following Part is inserted after section 24 of the principal Act:

**PART IIIA****CONSTRUCTION OF SHIPS****DIVISION I— PRELIMINARY****Preliminary**

24a. (1) In this Part, unless the contrary intention appears—

“Annex I” means Annex I to the Convention:

“Annex II” means Annex II to the Convention.

(2) This Part applies to—

(a) a trading ship proceeding on an intra-state voyage;

(b) an Australian fishing vessel proceeding on a voyage other than an overseas voyage;

and

(c) a pleasure vessel.

**DIVISION II—SHIPS CARRYING OR USING OIL****Interpretation**

24b. (1) Except insofar as the contrary intention appears, an expression that is used in this Division and in the Convention, including Annex I but not including any other Annex to the Convention, (whether or not a particular meaning is assigned to it by the Convention) has, in this Division, the same meaning as in the Convention.

(2) For the purposes of this Division, a ship is not to be taken to comply with the provisions of Annex I if it does not comply with the regulations and orders referred to in section 24c.

**Regulations to give effect to Regulations 13 to 19 (inclusive) of Annex I**

24c. (1) The regulations may make provision for and in relation to giving effect to Regulations 13 to 19 (inclusive) of Annex I.

(2) Without limiting the generality of subsection (1), regulations made for the purposes of that subsection may empower the Minister to make orders with respect to any matter for or in relation to which provision may be made by the regulations by virtue of this section.

(3) Orders made in pursuance of regulations made under subsection (1) are subject to disallowance by Parliament.

(4) Sections 10, 11 and 12 of the *Subordinate Legislation Act 1978* apply in relation to orders made in pursuance of regulations made under subsection (1) as if references in those sections to regulations were references to such orders.

(5) Where an order made in pursuance of the regulations made under subsection (1) is inconsistent with a provision of this Act or the regulations, the latter prevails and the former is, to the extent of the inconsistency, of no force or effect.

**Ship construction certificates**

24d. Where, on receipt of declarations of survey in respect of a ship, the Minister is satisfied that the ship is constructed in accordance with the provisions of Annex I, the Minister may, whether or not the ship is required by Annex I to be constructed in accordance with those provisions, issue in respect of the ship a ship construction certificate in the prescribed form attesting such compliance.

**Alteration, etc., of construction of ships and cancellation of certificates**

24e. (1) Where the construction of a ship in respect of which a ship construction certificate issued under section 24d is in force is altered, or such a ship is damaged, in a manner which affects its compliance with the provisions of Annex I, the master or owner of the ship must, within seven days after the construction of the ship is altered or the ship is damaged, as the case may be, give a notice in writing of the alteration or damage to such person, and in such form, as are prescribed and, if the notice is not so given, the master and the owner of the ship are each guilty of an offence punishable upon conviction by a fine not exceeding—

(a) if the offender is a natural person—\$5 000;

or

(b) if the offender is a body corporate—\$25 000.

(2) Where a notice required to be given under subsection (1) is not given within the period referred to in that subsection, the following provisions of this subsection have effect:

(a) the obligation to give the notice continues, notwithstanding that that period has expired, until the notice is given;

(b) the master and the owner of the ship are each guilty of a separate and further offence in respect of each day during which the notice is not given, being a day after the expiration of that period;

(c) the penalty applicable to each such separate and further offence is a fine not exceeding—

(i) if the offender is a natural person—\$5 000;

or

(ii) if the offender is a body corporate—\$25 000.

(3) Where the Minister has reason to believe that—

(a) the report of a surveyor concerning a ship in respect of which a ship construction certificate issued under section 24d is in force was fraudulently or erroneously made or obtained;

(b) a ship construction certificate has been issued under section 24d in respect of a ship upon false or erroneous information;

(c) the construction of the ship in respect of which a ship construction certificate issued under section 24d is in force has been altered, or such a ship has been damaged, in a manner which affects its compliance with the provisions of Annex I;

or

(d) the owner of the ship in respect of which a ship construction certificate issued under section 24d is in force has failed to comply with section 24f in respect of the ship,

the Minister may, by instrument, cancel the certificate.

(4) Where the Minister cancels a ship construction certificate issued by the Minister in respect of a ship, the certificate is of no force or effect after the Minister has given notice in writing of the cancellation addressed to the owner, agent or master of the ship and served in accordance with the regulations.

(5) Where a ship construction certificate issued in respect of a ship is cancelled under this section, the Minister may, by notice in writing addressed to the owner, agent or master of the ship and served in accordance with the regulations, require the certificate to be delivered up to the Minister or to such other person as the Minister specifies, and the Minister may detain the ship until the requirement is complied with.

#### **Ships to be surveyed periodically**

24f. (1) The owner of a ship in respect of which a ship construction certificate issued under section 24d is in force must, at least once during each period that is a prescribed period in relation to the ship for the purposes of this section, cause the ship to be surveyed for the purpose of ensuring its compliance with the provisions of Annex I.

(2) Where the owner of a ship in respect of which a ship construction certificate issued under section 24d is in force fails to comply with subsection (1) in relation to the ship and to a period that is a prescribed period in relation to the ship, the owner is guilty of an offence punishable on conviction by a fine not exceeding—

(a) if the owner is a natural person—\$8 000;

or

(b) if the owner is a body corporate—\$40 000.

#### **Requirement for ship construction certificates**

24g. (1) This section applies to—

(a) a trading ship proceeding on an intra-state voyage;

(b) an Australian fishing vessel proceeding on a voyage other than an overseas voyage;

or

(c) a pleasure vessel,

that is—

(d) an oil tanker which has a gross tonnage of 150 or more;

or

(e) a ship, other than an oil tanker, which has a gross tonnage of 400 or more.

(2) The master of a ship to which this section applies must not begin a voyage unless there is in force in respect of the ship a ship construction certificate.

Penalty: \$40 000 or imprisonment for 4 years, or both.

(3) The owner of a ship to which this section applies must not permit the ship to begin a voyage unless there is in force in respect of the ship a ship construction certificate.

Penalty: (a) if the offender is a natural person—\$40 000, or imprisonment for 4 years, or both;

(b) if the offender is a body corporate—\$200 000.

(4) The regulations may exempt ships included in a prescribed class of ships from the application of subsection (1), either absolutely or subject to conditions.

(5) In this section "ship construction certificate" means—

(a) a ship construction certificate issued under section 24d;

(b) a ship construction certificate issued under section 267B of the Navigation Act, 1912;

(c) a ship construction certificate issued under a law of another State or of the Northern Territory and being a certificate of the kind prescribed as acceptable for the purposes of this Division;

(d) an International Oil Pollution Prevention Certificate issued to a foreign ship under section 267C of the Navigation Act, 1912;

or

(e) an International Oil Pollution Prevention Certificate issued to an Australian ship under the law of a country other than Australia giving effect to Regulation 6 of Annex I.

(6) The owner of a ship to which this section applies in respect of which a ship construction certificate is in force must cause the certificate to be carried on board the ship.

Penalty: \$5 000.

### DIVISION III—SHIPS CARRYING NOXIOUS LIQUID SUBSTANCES IN BULK

#### **Interpretation**

24h. (1) Except insofar as the contrary intention appears, an expression that is used in this Division and in the Convention, including Annex II but not including any other Annex to the Convention, (whether or not a particular meaning is assigned to it by the Convention) has, in the Division, the same meaning as in the Convention.

(2) For the purposes of this Division, a ship is not to be taken to comply with the provisions of Annex II if it does not comply with the regulations and orders referred to in section 24i.

#### **Regulations to give effect to Regulation 13 of Annex II**

24i. (1) The regulations may make provision for and in relation to giving effect to Regulation 13 of Annex II.

(2) Without limiting the generality of subsection (1), regulations made for the purposes of that subsection may empower the Minister to make orders with respect to any matter for or in relation to which provision may be made by the regulations by virtue of this section.

(3) Orders made in pursuance of regulations made under subsection (1) are subject to disallowance by Parliament.

(4) Sections 10, 11 and 12 of the *Subordinate Legislation Act 1978* apply in relation to orders made in pursuance of regulations made under subsection (1) as if references in those sections to regulations were references to such orders.

(5) Where an order made in pursuance of the regulations made under subsection (1) is inconsistent with a provision of this Act or the regulations, the latter prevails and the former is, to the extent of the inconsistency, of no force or effect.

**Chemical tanker construction certificates**

24j. Where, on receipt of declarations of survey in respect of a ship, the Minister is satisfied that the ship is constructed in accordance with the provisions of Annex II, the Minister may, whether or not the ship is required by Annex II to be constructed in accordance with those provisions, issue in respect of the ship a chemical tanker construction certificate in the prescribed form attesting such compliance.

**Alteration, etc., of construction of ships and cancellation of certificates**

24k. (1) Where the construction of a ship in respect of which a chemical tanker construction certificate issued under section 24j is in force is altered, or such a ship is damaged, in a manner which affects its compliance with the provisions of Annex II, the master or owner of the ship must, within seven days after the construction of the ship is altered or the ship is damaged, as the case may be, give a notice in writing of the alteration or damage to such person, and in such form, as are prescribed and, if the notice is not so given, the master and the owner of the ship are each guilty of an offence punishable upon conviction by a fine not exceeding—

(a) if the offender is a natural person—\$5 000;

or

(b) if the offender is a body corporate—\$25 000.

(2) Without limiting the generality of subsection (1), a ship in respect of which a chemical tanker construction certificate is in force is, for the purposes of that subsection, to be taken to be damaged if the ship becomes unfit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.

(3) Where a notice required to be given under subsection (1) is not given within the period referred to in that subsection, the following provisions of this subsection have effect:

(a) the obligation to give the notice continues, notwithstanding that the period has expired, until the notice is given;

(b) the master and the owner of the ship are each guilty of a separate and further offence in respect of each day during which the notice is not given, being a day after the expiration of that period;

(c) the penalty applicable to each such separate and further offence is a fine not exceeding—

(i) if the offender is a natural person—\$5 000;

or

(ii) if the offender is a body corporate—\$25 000.

(4) Where the Minister has reason to believe that—

(a) the report of a surveyor concerning a ship in respect of which a chemical tanker construction certificate issued under section 24j is in force was fraudulently or erroneously made or obtained;

(b) a chemical tanker construction certificate has been issued under section 24j in respect of a ship upon false or erroneous information;

(c) the construction of a ship in respect of which a chemical tanker construction certificate issued under section 24j is in force has been altered, or such a ship has been damaged, in a manner which affects its compliance with the provisions of Annex II;

or



- (d) the owner of a ship in respect of which a chemical tanker construction certificate issued under section 24j is in force has failed to comply with section 24l in respect of the ship,

the Minister may, by instrument, cancel the certificate.

(5) Where the Minister cancels a chemical tanker construction certificate issued by the Minister in respect of a ship, the certificate is of no force or effect after the Minister has given notice in writing of the cancellation addressed to the owner, agent or master of the ship and served in accordance with the regulations.

(6) Where a chemical tanker construction certificate issued in respect of a ship is cancelled under this section, the Minister may, by notice in writing addressed to the owner, agent or master of the ship and served in accordance with the regulations, require the certificate to be delivered up to the Minister or to such other person as the Minister specifies, and the Minister may detain the ship until the requirement is complied with.

#### **Ships to be surveyed periodically**

24l. (1) The owner of a ship in respect of which a chemical tanker construction certificate issued under section 24j is in force must, at least once during each period that is a prescribed period in relation to the ship for the purposes of this section, cause the ship to be surveyed for the purpose of ensuring its compliance with the provisions of Annex II.

(2) Where the owner of a ship in respect of which a chemical tanker construction certificate issued under section 24j is in force fails to comply with subsection (1) in relation to the ship and to a period that is a prescribed period in relation to the ship, the owner is guilty of an offence punishable on conviction by a fine not exceeding—

(a) if the owner is a natural person—\$8 000;

or

(b) if the owner is a body corporate—\$40 000.

#### **Requirement for chemical tanker construction certificates**

24m. (1) Where a trading ship proceeding on an intra-state voyage is constructed or adapted so that it can carry as cargo, or part cargo, in bulk any substance that, for the purposes of Part III is a substance in Category A, B, C or D, the master of that ship must not begin a voyage, and the owner of that ship must not permit that ship to begin a voyage, unless there is in force in respect of that ship a chemical tanker construction certificate.

Penalty: (a) if the offender is a natural person—\$40 000, or imprisonment for 4 years, or both;

or

(b) if the offender is a body corporate—\$200 000.

(2) The regulations may exempt ships included in a prescribed class of ships from the application of subsection (1), either absolutely or subject to conditions.

(3) In this section “chemical tanker construction certificate” means—

(a) a chemical tanker construction certificate issued under section 24j;

(b) a chemical tanker construction certificate issued under section 267Q of the Navigation Act, 1912;

(c) a chemical tanker construction certificate issued under a law of another State or of the Northern Territory and being a certificate of a kind prescribed as acceptable for the purposes of this Division;

or

(d) an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk issued to a foreign ship under section 267R of the Navigation Act, 1912.

(4) The owner of a ship of the kind referred to in subsection (1) in respect of which a chemical tanker construction certificate is in force must cause the certificate to be carried on board the ship.

Penalty: \$5 000.

#### DIVISION IV—REGULATIONS

##### Regulations

24n. (1) The Governor may make regulations prescribing matters—

(a) required or permitted by this Part to be prescribed;

or

(b) necessary or expedient to be prescribed for carrying out or giving effect to this Part.

(2) The regulations may make provision for or in relation to a matter by applying, adopting or incorporating either wholly or in part or with modifications, any regulations, rules, codes, orders, instructions or other subordinate legislation made, determined or issued under any other Act or under any Act of the Parliament of the Commonwealth.

##### Discharge of oil into waters from vehicles, etc.

16. Section 26 of the principal Act is amended—

(a) by striking out from subsection (1) “\$50 000” and substituting “\$200 000”;

and

(b) by striking out from subsection (2) “\$50 000” and substituting “\$200 000”.

##### Notification of discharge

17. Section 27 of the principal Act is amended—

(a) by striking out from subsection (1) “\$5 000” and substituting “\$20 000”;

(b) by striking out from subsection (2) “\$5 000” and substituting “\$20 000”;

and

(c) by striking out from subsection (3) “\$5 000” and substituting “\$20 000”;

##### Removal and prevention of pollution

18. Section 28 of the principal Act is amended by striking out from subsection (3) “\$50 000” and substituting “\$200 000”.

##### Detention of ship, vehicle or apparatus

19. Section 30 of the principal Act is amended by striking out from subsection (3) “\$10 000” and substituting “\$50 000”.

##### Insertion of s. 32a

20. The following section is inserted after section 32 of the principal Act:

**Recovery of damages**

32a. (1) If, because of a discharge prohibited by this Act, a person (including the Board)—

(a) suffers loss of or damage to property;

or

(b) incurs costs or expenses in preventing or mitigating or in attempting to prevent or mitigate any loss of or damage to property (including the property of another),

the person may recover from the appropriate person, or any person whose act caused the discharge, the amount of the loss or damage and the expense incurred as a debt in a court of competent jurisdiction.

(2) In this section—

“appropriate person” means—

(a) in relation to a discharge to which Part II or III applies—the owner or the master of the ship concerned;

or

(b) in relation to a discharge to which Part IV applies—the relevant person in relation to the discharge within the meaning of that Part.

**Powers of inspectors**

21. Section 33 of the principal Act is amended by striking out subsection (3) and substituting the following subsections:

(3) A person must not, without reasonable excuse, hinder or obstruct or refuse or fail to comply with a requirement made of the person by an inspector under subsection (1) or (2).

Penalty: \$8 000.

(3A) A person must not, in answering a question that the person is required to answer under subsection (1) or (2), make a statement that is false or misleading in a material particular.

Penalty: \$20 000.

**Oil reception facilities**

22. Section 34 of the principal Act is amended by striking out from subsection (4) “\$5 000” and substituting “\$20 000”.

**Transfer of oil at night**

23. Section 35 of the principal Act is amended by striking out from subsection (4) “\$2 000” and substituting “\$8 000”.

**Regulations**

24. Section 41 of the principal Act is amended—

(a) by striking out from paragraph (f) (i) of subsection (1) “\$2 000” and substituting “\$8 000”;

and

(b) by striking out from paragraph (f) (ii) of subsection (1) “\$5 000” and substituting “\$20 000”.

**PART II****AMENDMENT OF MARINE ACT 1936****Repeal of Part VA**

**25. Part VA of the principal Act is repealed.**

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

**ROMA MITCHELL Governor**