

Queensland



**TRANSPORT OPERATIONS
(MARINE POLLUTION) ACT
1995**

Act No. 2 of 1995

Queensland



TRANSPORT OPERATIONS (MARINE POLLUTION) ACT 1995

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SCHEDULE

DICTIONARY

Queensland



Transport Operations (Marine Pollution) Act 1995

Act No. 2 of 1995

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

[Assented to 3 March 1995]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Division 1—Introduction

Short title

1. This Act may be cited as the *Transport Operations (Marine Pollution) Act 1995*.

Commencement

2.(1) This Act, other than section 50(1) and (2) commences on a day to be fixed by proclamation.

(2) Section 50(1) commences on 1 January 1998.

(3) Section 50(2) commences on 1 January 2000.

Division 2—Act's overall purpose

Overall purpose

3.(1) The overall purpose of this Act is to protect Queensland's marine and coastal environment by minimising deliberate 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—

- Annex I (which deals with pollution by oil)
- Annex II (which deals with pollution by noxious liquid substances in bulk)
- Annex III (which deals with pollution by harmful substances in packaged form)

- Annex V (which deals with pollution by garbage).
- (3) The purpose is also to be achieved by—
- (a) providing an approach to protecting Queensland’s marine and coastal environment from ship-sourced pollutants complementary to the approach of the Commonwealth and the other States; and
 - (b) making provision about the discharge of sewage from ships; and
 - (c) giving power to deal with shipping casualties that are polluting, or threatening to pollute, coastal waters; and
 - (d) enhancing, through education processes, industry and community awareness of the effects of ship-sourced pollutants on Queensland’s marine and coastal environment; and
 - (e) providing for the imposition of severe penalties on persons who pollute Queensland’s marine and coastal environment in contravention of this Act.

Division 3—Interpretation

Definitions—the dictionary

4.(1) A dictionary in the Schedule defines particular words used in this Act.¹

(2) Definitions found elsewhere in the Act are signposted in the dictionary.²

Words and expressions used in MARPOL and this Act

5.(1) Words and expressions used in MARPOL (other than in an annex) and this Act have the same meanings in this Act they have in MARPOL.

¹ In some Acts, definitions are contained in a dictionary that appears as the last Schedule and forms part of the Act—*Acts Interpretation Act 1954*, section 14.

² The signpost definitions in the dictionary alert the reader to the terms defined elsewhere in the Act and tell the reader where the section definitions can be found. For example, the definition ‘ “MARPOL” see section 6’ tells the reader that the term “MARPOL” is defined in section 6.

(2) Subsection (1) applies—

- (a) whether or not a particular word or expression is defined in MARPOL; and
- (b) subject to sections 25, 34, 41, 54 and 60.

(3) Except as far as the context or subject matter otherwise indicates or requires, if a word or expression is defined in MARPOL (other than in an annex) and this Act—

- (a) this Act's definition does not limit or exclude, but may extend, the meaning of the word or expression given under MARPOL; and
- (b) the definitions are to be read in the context of each other and the other provisions of this Act, but, if the definitions so read are inconsistent, the MARPOL definition is displaced.

Meaning of “MARPOL”

6.(1) “MARPOL” is the International Convention for the Prevention of Pollution from Ships, 1973—

- (a) as corrected by the Procés-Verbal of Rectification dated 13 June 1978; and
- (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) A regulation must be made before the commencement of this Act setting out a copy of the English text of the provisions of MARPOL as in force at the commencement.

(3) If an amendment to MARPOL is made under Article 16 of the Convention and accepted by Australia, a regulation must be made setting out the English text of the provisions of MARPOL as in force at that time.

(4) However, in interpreting this Act, MARPOL is taken to be the copy of the English text from time to time set out in the regulations.

Meaning of “agent”

7.(1) An “agent” of a ship owner is the person who, for the owner—

- (a) performs a function under the *Marine Safety Act 1994* or Chapter 5A (Port Infrastructure) of the *Transport Infrastructure Act 1994*; or
- (b) makes an arrangement for berthing the ship, or loading or unloading cargo on or from the ship, in the State; or
- (c) makes an arrangement for the ship to load bunkers or stores in the State.

(2) The person remains the ship owner’s agent until—

- (a) the person, or the ship owner, gives the chief executive written notice that the person is no longer the ship’s agent; or
- (b) someone else in the State is appointed by the ship owner as agent; or
- (c) the ship goes 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.

Division 4—Operation of Act**Act binds all persons**

8. This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

Discharge outside coastal waters that enters coastal waters

9.(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.

PART 2—INFORMATION ABOUT THIS ACT

Why this Act was enacted

10.(1) In 1973, the international community responded to worldwide concern about the threat to the marine environment and coastlines posed by the discharge of ship-sourced pollutants.

(2) The international community's response was the International Convention for the Prevention of Pollution from Ships, 1973.

(3) The Convention, for the first time, set international standards for the proper construction of ships designed to carry oil and noxious substances and laid down rules about the level of discharges that may be made into the sea without risk to the marine environment.

(4) The Convention, as amended, is known as MARPOL.³

(5) MARPOL was ratified by Australia in 1987.

(6) This Act gives effect to MARPOL by—

- (a)** enacting as part of Queensland's law provisions to give effect to relevant provisions of MARPOL; and
- (b)** providing a legislative framework in which the provisions can be enforced.

(7) This approach complements the approach adopted by the Commonwealth and the other States.

Queensland's jurisdiction

11.(1) The body of law governing Australian waters is extremely complex and this section is intended to provide only a very general overview of the State's jurisdiction in the territorial sea.

(2) Queensland's jurisdiction in the territorial sea is limited under the *Coastal Waters (State Powers) Act 1980* (Cwlth).

(3) Because of this limitation, this Act only deals with discharges from ships that happen, or are taken to happen, in the first 3 n miles of the

³ See section 6 for the precise meaning of MARPOL for this Act.

territorial sea and other coastal waters subject to the ebb and flow of the tide.

(4) These waters are referred to as coastal waters⁴ in this Act.

(5) Waters beyond the 3 n mile limit come under Commonwealth jurisdiction to the extent that Australia has jurisdiction.

The ships this Act applies to

12. This Act applies to all ships in coastal waters.

Ship construction, survey and certification

13. Issues about ship construction, survey and certification are generally dealt with under the Marine Safety Act.

How this Act interacts with other environmental laws

14.(1) This Act deals with the discharge of pollutants into coastal waters happening from ships or because of transfer operations involving ships.

(2) If a pollutant is discharged into coastal waters from another source, other environmental laws may apply.⁵

PART 3—MARINE POLLUTION STRATEGIES

Division 1—Development and approval of strategies

Development and approval of marine pollution strategies

15.(1) The chief executive must, from time to time, develop for the Minister's approval strategies designed to give effect to the Transport

4 See the dictionary in the Schedule for the precise meaning of coastal waters for this Act.

5 See, for example, the *Environmental Protection Act 1994*.

Coordination Plan to protect Queensland's marine and coastal environment from the effects of the deliberate, negligent or accidental discharge of ship-sourced pollutants into coastal waters.

(2) In developing marine pollution strategies, the chief executive must take reasonable steps to engage in public consultation.

(3) The Minister may, at any time, direct the chief executive to prepare new marine pollution strategies for the Minister's approval or to amend marine pollution strategies in the way the Minister directs.

(4) The Minister may approve marine pollution strategies submitted for approval or require the chief executive to amend the strategies in the way the Minister directs.

(5) The Minister must table a copy of each marine pollution strategy, and each amendment of a marine pollution strategy, approved by the Minister in the Legislative Assembly within 5 sitting days after its approval.

Contents of marine pollution strategies

16.(1) Marine pollution strategies must include—

- (a) a statement of the specific objectives sought to be achieved; and
- (b) proposals for the provision of marine pollution prevention initiatives and related marine operational initiatives; and
- (c) criteria for deciding priorities for government spending on marine pollution prevention initiatives and related marine operational initiatives, and options for raising the necessary finance; and
- (d) appropriate performance indicators for deciding whether, and to what extent, the objectives of the strategies have been achieved.

(2) Marine pollution strategies must take account of—

- (a) Australia's international obligations about marine pollution prevention, including its obligations under MARPOL; and
- (b) agreements or arrangements between the State and the Commonwealth, other States and local governments about marine pollution prevention initiatives.

Division 2—Marine pollution prevention and response programs**Development and approval of marine pollution prevention and response programs**

17.(1) Before the start of each financial year, the chief executive must develop for the Minister's approval marine pollution prevention and response programs for the year and for 1 or more later years.

(2) Marine pollution prevention and response programs must include—

- (a) the policies, projects and financial provisions for carrying out marine pollution strategies; and
- (b) the performance targets to be achieved.

(3) Marine pollution prevention and response programs may include proposals to spend amounts on programs other than marine pollution if the spending may contribute to the minimisation of marine pollution in coastal waters.

(4) In developing marine pollution prevention and response programs, the chief executive must take reasonable steps to consult with government agencies, port authorities, local governments, sectors of the maritime industry and community and interest groups that, in the chief executive's opinion, would be affected by the programs.

(5) Marine pollution prevention and response programs are to be made publicly available in the way decided by the Minister.

(6) The Minister may at any time direct the chief executive to amend marine pollution prevention and response programs.

(7) The Minister may approve marine pollution prevention and response programs that are submitted for approval or require the chief executive to amend the programs in the way the Minister directs.

Consistency with marine pollution strategies

18.(1) Subject to directions of the Minister, marine pollution prevention and response programs must be consistent with marine pollution strategies.

(2) If the Minister gives a direction under this section that results in a marine pollution prevention and response program being inconsistent with a

marine pollution strategy, the Minister must table a copy of the direction in the Legislative Assembly within 5 sitting days after it is given.

Report on operation of marine pollution prevention and response programs

19. Each annual report of the department must include a report on the operation of the marine pollution prevention and response programs during the financial year to which the annual report relates.

Division 3—Obligations of marine pollution strategies

Division's purpose

20. This Division is intended to ensure value for money for resources applied to preventing marine pollution.

Obligations about marine pollution

21. The chief executive must ensure marine pollution strategies are developed in a way that—

- (a) takes into account national and international benchmarks and international best practice; and
- (b) promotes, within overall transport operations, the safe transport of persons and goods and the protection and conservation of Queensland's marine and coastal environment.

Report on giving effect to s 21

22. The department's annual report must include a report on the way in which effect has been given to section 21 during the financial year to which the report relates.

PART 4—PREVENTION OF POLLUTION BY OIL

Division 1—Purpose of Part

Part gives effect to Annex I to MARPOL

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

Division 2—Interpretation

Definitions for Part

24. In this Part—

“**discharge offence**” means an offence against section 26(1) or 27(1).

“**oil**” includes an oily mixture.

Words and expressions used in Annex I to MARPOL and this Part

25.(1) Words and expressions used in Annex I to MARPOL and this Part have the same meanings in this Part they have in the Annex.

(2) Subsection (1) applies whether or not a particular word or expression is defined in Annex I.

(3) Except as far as the context or subject matter otherwise indicates or requires, if a word or expression is defined in Annex I to MARPOL and this Part—

- (a) this Part’s definition does not limit or exclude, but may extend, the meaning of the word or expression given under Annex I; and
- (b) the definitions are to be read in the context of each other and the other provisions of this Act, but, if the definitions so read are inconsistent, the Annex I definition is displaced.

Division 3—Discharge of oil prohibited**Discharge of oil into coastal waters prohibited**

26.(1) If oil is discharged from a ship into coastal waters, the ship's owner and master each commit an offence.⁶

Maximum penalty—3 500 penalty units.

(2) Subsection (1) applies despite sections 23 and 24 of the Criminal Code.⁷

Oil residues

27.(1) If any oil residues that cannot be discharged from a ship into coastal waters without contravening section 26(1) are not retained on board the ship while the ship is in coastal waters, the ship's master and owner each commit an offence.⁸

Maximum penalty—3 500 penalty units.

Example—

A ship leaves Port A with a quantity of oil residues held in a tank or space and, without leaving coastal waters, arrives at Port B with a lesser quantity in the tank or space. This subsection places an onus on the ship's master to explain why there is a discrepancy in the quantity.

(2) If an event contravenes subsection (1) and section 26(1), the ship's owner and master cannot be punished for the event under both provisions.

⁶ See Annex I, regulation 9(1). For other substances treated as oil, see section 38.

⁷ Section 23 of the Code deals with a person's criminal responsibility for an act or omission that happens independently of the person's will or for an event which is accidental. Section 24 of the Code deals with a person's criminal responsibility for an act or omission done under an honest and reasonable, but mistaken, belief in the state of things.

⁸ See Annex I, regulation 9(6).

Division 4—Defences

Defences to discharge offence

28.(1) Each of the following is a defence⁹ to a prosecution for a discharge offence—

- (a) the discharge was necessary for the purpose of securing the safety of a ship or saving life at sea;
- (b) the discharge resulted from damage, other than intentional damage, to the ship or its equipment and all reasonable precautions were taken after the damage happened or the discharge was discovered to prevent or minimise the discharge of the oil;
- (c) for an oily mixture—the discharge was made to combat specific pollution incidents to minimise the damage from pollution and was approved by an authorised officer;
- (d) the discharge was authorised by an authorised officer for training purposes.

(2) For subsection (1)(b), 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.

Division 5—Exemptions

Certain discharges permissible

29.(1) The regulations may exempt discharges from the operation of the discharge offences.

(2) However, a regulation may be made only if it gives effect to an

⁹ See Annex I, regulation 11.

exemption allowed under MARPOL.

Example—

The regulations may prescribe that oil may be discharged outside specified areas, at a rate and under conditions prescribed under MARPOL. A discharge made outside the area, at the prescribed rate and under the prescribed conditions does not contravene this Act.

Division 6—General

Shipboard oil pollution emergency plan

30. If a ship does not have on board a shipboard oil pollution emergency plan, the ship's owner and master each commit an offence.

Maximum penalty—850 penalty units.

PART 5—PREVENTION OF POLLUTION BY NOXIOUS LIQUID SUBSTANCES IN BULK

Division 1—Purpose and application of Part

Part gives effect to Annex II to MARPOL

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

Application of Part

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

Division 2—Interpretation**Definitions for Part**

33. In this Part—

“**Annex II**” means Annex II to MARPOL.

“**discharge offence**” means an offence against section 35(1).

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

“**noxious liquid substance**” includes—

- (a) a liquid substance declared by regulation to be designated in Appendix II to Annex II and categorised as a Category A, B, C or D substance; and
- (b) a mixture containing a noxious liquid substance.

“**oil**” has the meaning it has in Part 4.¹⁰

Words and expressions used in Annex II to MARPOL and this Part

34.(1) Words and expressions used in Annex II to MARPOL and this Part have the same meanings in this Part they have in the Annex.

(2) Subsection (1) applies whether or not a particular word or expression is defined in Annex II.

(3) Except as far as the context or subject matter otherwise indicates or requires, if a word or expression is defined in Annex II to MARPOL and this Part—

- (a) this Part’s definition does not limit or exclude, but may extend, the meaning of the word or expression given under Annex II; and
- (b) the definitions are to be read in the context of each other and the other provisions of this Act, but, if the definitions so read are inconsistent, the Annex II definition is displaced.

¹⁰ Part 4 is about prevention of pollution by oil—see section 24.

Division 3—Discharge of noxious liquid substances prohibited**Discharge of noxious liquid substances into coastal waters prohibited**

35.(1) If a noxious liquid substance is discharged from a ship into coastal waters, the ship's owner and master each commit an offence.¹¹

Maximum penalty—3 500 penalty units.

(2) Subsection (1) applies despite sections 23 and 24 of the Criminal Code.¹²

Division 4—Defences**Defences to discharge offence**

36.(1) Each of the following is a defence¹³ to a prosecution for a discharge offence—

- (a) the discharge was necessary for the purpose of securing the safety of a ship or saving life at sea;
- (b) the discharge resulted from damage, other than intentional damage, to the ship or its equipment and 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;
- (c) 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) For subsection (1)(b), 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

¹¹ See Annex II, regulations 5(1), (2), (3) and (4).

¹² See footnote 7 for information about sections 23 and 24 of the Code.

¹³ See Annex II, regulation 6.

- (b) acted recklessly and with knowledge that damage would probably result.

Division 5—Exemptions

Certain discharges permissible

37.(1) The regulations may exempt discharges from the operation of the discharge offence.

(2) However, a regulation may be made only if it gives effect to an exemption allowed under MARPOL.

Example—

The regulations may prescribe that noxious liquid substances may be discharged outside specified areas, at a rate and under conditions prescribed under MARPOL. A discharge made outside the area, at the prescribed rate and under the prescribed conditions does not contravene this Act.

Division 6—General

Certain noxious liquid substances to be treated as oil

38.(1) The regulations may prescribe 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 conditions prescribed under the regulations are satisfied.¹⁴

(2) However, 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, section 26 applies to a discharge of the substance as if the substance were oil.

(4) If an oil tanker carrying a prescribed oil-like substance contravenes the conditions prescribed under the regulations, the ship’s owner and master each commit an offence.

Maximum penalty—850 penalty units.

¹⁴ See Annex II, regulation 14.

PART 6—PREVENTION OF POLLUTION BY PACKAGED HARMFUL SUBSTANCES

Division 1—Purpose of Part

Part gives effect to Annex III to MARPOL

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

Division 2—Interpretation

Definitions for Part

40. In this Part—

“**discharge offence**” means an offence against section 42(1).

“**harmful substance**” see MARPOL.¹⁵

Words and expressions used in Annex III to MARPOL and this Part

41.(1) Words and expressions used in Annex III to MARPOL and this Part have the same meanings in this Part they have in the Annex.

(2) Subsection (1) applies whether or not a particular word or expression is defined in Annex III.

(3) Except as far as the context or subject matter otherwise indicates or requires, if a word or expression is defined in Annex III to MARPOL and this Part—

- (a) this Part’s definition does not limit or exclude, but may extend, the meaning of the word or expression given under Annex III; and
- (b) the definitions are to be read in the context of each other and the

¹⁵ See Annex III, regulation 1.

other provisions of this Act, but, if the definitions so read are inconsistent, the Annex III definition is displaced.

Division 3—Jettisoning of harmful substance prohibited

Jettisoning of harmful substances into coastal waters prohibited

42.(1) If a harmful substance carried as cargo in packaged form is jettisoned from a ship into coastal waters, the ship's owner and master each commit an offence.¹⁶

Maximum penalty—3 500 penalty units.

(2) A harmful substance is taken to have been jettisoned if it is discharged into coastal waters because of a leakage of the substance.

(3) Subsection (1) applies despite sections 23 and 24 of the Criminal Code.¹⁷

Division 4—Defences

Defences to discharge offence

43. The following are defences¹⁸ to a prosecution for a discharge offence—

- (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 regulation would have impaired the safety of the ship or persons on board the ship.

¹⁶ See Annex III, regulation 7(1).

¹⁷ See footnote 7 for information about sections 23 and 24 of the Code.

¹⁸ See Annex III, regulation 7(1) and (2).

*Division 5—Exemptions***Certain discharges permissible**

44. The regulations may exempt discharges from the operation of the discharge offence.

**PART 7—PREVENTION OF POLLUTION BY
SEWAGE***Division 1—Interpretation***Definitions for Part**

45. In this Part—

“**commencement**” means the commencement of Part 1, Divisions 2 to 4.

“**discharge offence**” means an offence against section 47.

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

“**high sensitivity zone**” means an area of coastal waters declared by regulation to be a high sensitivity zone.

“**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 of 200 tons gross tonnage and above.

“**length overall**” of a ship see section 46.

“**low sensitivity zone**” means the area of coastal waters not declared to be high or moderate sensitivity zones.

“**medium ship**” means a ship that is not a large ship or small ship.

“**moderate sensitivity zone**” means an area of coastal waters declared by regulation to be a moderate sensitivity zone.

“new ship” means a ship—

- (a) for which a building contract is placed; or
- (b) if there is no building contract—the keel of which is laid; or
- (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.

“small ship” means a ship less than 10 m in length overall.

“toilet” includes urinal.

Meaning of “length overall”

46.(1) The **“length overall”** of a ship is the distance in the fore and aft line from the foremost part of the hull to the aftermost part of the hull of the ship taken at the upper weather tight deck or, for an open ship, at the height of the gunwale.

(2) However, the length overall of the ship does not include the length of appendages to the hull.

Example—

A bowsprit or boarding platform is not taken into account when measuring the overall length of a ship.

Division 2—Discharge of sewage prohibited

Discharge of sewage into coastal waters prohibited

47.(1) If sewage is discharged from a ship into a high sensitivity zone, the ship’s owner and master each commit an offence.

Maximum penalty—

- (a) for a large or medium ship—850 penalty units; and
- (b) for a small ship—40 penalty units.

(2) If sewage is discharged from a ship into a moderate sensitivity zone, the ship’s owner and master each commit an offence.

Maximum penalty—

- (a) for a large or medium ship—600 penalty units; and
- (b) for a small ship—10 penalty units.

(3) If sewage is discharged from a large ship into a low sensitivity zone, the ship's owner and master each commit an offence.

Maximum penalty—350 penalty units.

(4) This section applies despite sections 23 and 24 of the Criminal Code.¹⁹

Division 3—Defence

Defence to discharge offence

48. It is a defence to a prosecution for a discharge offence if—

- (a) the discharge happened because of damage to the ship or its equipment; and
- (b) all reasonable precautions were taken before and after the damage happened to prevent or minimise the escape of the sewage.

Division 4—Exemptions

Certain discharges permissible

49. The regulations may exempt discharges from the operation of discharge offences.

Example—

The regulations may prescribe that sewage may be discharged at a prescribed rate and under prescribed conditions. A discharge made at the prescribed rate and under the prescribed conditions does not contravene this Act.

¹⁹ See footnote 7 for information about sections 23 and 24 of the Code.

Division 5—General**Ships to have holding tanks**

50.(1) A new ship, other than a small ship, must be fitted with a toilet and a holding tank connected to the toilet.²⁰

Maximum penalty—850 penalty units.

(2) An existing ship, other than a small ship, must be fitted with a toilet and a holding tank connected to the toilet.²¹

Maximum penalty—850 penalty units.

(3) An existing ship may be exempted from subsection (2) if the ship's owner produces to the chief executive a certificate from a ship designer, ship builder or marine surveyor certifying the ship as unsuitable to be fitted with a holding tank.

(4) The regulations may prescribe the grounds for certifying a ship as unsuitable to be fitted with a holding tank.

Other laws may also apply

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

²⁰ Section 50(1) commences on 1 January 1998—see section 2(2).

²¹ Section 50(2) commences on 1 January 2000—see section 2(3).

PART 8—PREVENTION OF POLLUTION BY GARBAGE

Division 1—Purpose

Part gives effect to Annex V to MARPOL

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

Division 2—Interpretation

Definitions for Part

53. In this Part—

“**discharge offence**” means an offence against section 55(1).

“**garbage**” includes plastics.

Words and expressions used in Annex V to MARPOL and this Part

54.(1) Words and expressions used in Annex V to MARPOL and this Part have the same meanings in this Part they have in the Annex.

(2) Subsection (1) applies whether or not a particular word or expression is defined in Annex V.

(3) Except as far as the context or subject matter otherwise indicates or requires, if a word or expression is defined in Annex V to MARPOL and this Part—

- (a) this Part’s definition does not limit or exclude, but may extend, the meaning of the word or expression given under Annex V; and
- (b) the definitions are to be read in the context of each other and the other provisions of this Act, but, if the definitions so read are inconsistent, the Annex V definition is displaced.

Division 3—Disposal of garbage prohibited**Disposal of garbage into coastal waters prohibited**

55.(1) If garbage is disposed of from a ship into coastal waters, the ship's owner and master each commit an offence.²²

Maximum penalty—3 500 penalty units.

(2) Subsection (1) applies despite sections 23 and 24 of the Criminal Code.²³

Division 4—Defences**Defences to discharge offence**

56. Each of the following is a defence²⁴ to a prosecution for a discharge offence—

- (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.

Division 5—Exemptions**Certain disposals permissible**

57.(1) The regulations may exempt disposals from the operation of the

²² See Annex V, regulation 3(1).

²³ See footnote 7 for information about sections 23 and 24 of the Code.

²⁴ See Annex V, regulation 6.

discharge offence.

(2) However, a regulation may be made only if it gives effect to an exemption allowed under MARPOL or relates to fishing or tourism operations.

PART 9—TRANSFER OPERATIONS

Division 1—Purpose of Part

Responsibility for pollution from transfer operations and other matters

58. The purpose of this Part is—

- (a) to state when a ship's owner and master are responsible for a discharge happening during or because of a transfer operation; and
- (b) to make provision for other matters about transfer operations.

Division 2—Interpretation

Definitions for Part

59. In this Part—

“**discharge offence**” means an offence against section 61(1).

“**noxious liquid substance**” has the meaning it has in Part 5,²⁵ and includes a mixture containing a noxious liquid substance.

“**oil**” has the meaning it has in Part 4.²⁶

²⁵ Part 5 is about prevention of pollution by noxious liquid substances in bulk—see section 33.

²⁶ Part 4 is about prevention of pollution by oil—see section 24.

“**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, or starting, carrying on or finishing, a transfer of a pollutant between a ship and another ship or place.

Words and expressions used in Annex I or II to MARPOL and this Part

60.(1) Words and expressions used in Annex I or II to MARPOL and this Part have the same meanings in this Part they have in the Annex.

(2) Subsection (1) applies whether or not a particular word or expression is defined in Annex I or II.

(3) Except as far as the context or subject matter otherwise indicates or requires, if a word or expression is defined in Annex I or II to MARPOL and this Part—

- (a) this Part’s definition does not limit or exclude, but may extend, the meaning of the word or expression given under Annex I or II; and
- (b) the definitions are to be read in the context of each other and the other provisions of this Act, but, if the definitions so read are inconsistent, the Annex I or II definition is displaced.

Division 3—Discharge during transfer operation prohibited

Discharge of pollutant into coastal waters prohibited

61.(1) If a pollutant is discharged into coastal waters during a transfer operation, the ship’s owner and master each commit an offence.

Maximum penalty—3 500 penalty units.

(2) Subsection (1) applies despite sections 23 and 24 of the Criminal Code.²⁷

²⁷ See footnote 7 for information about sections 23 and 24 of the Code.

Division 4—Defences

Defences to discharge offence

62. Each of the following is a defence to a prosecution for a discharge offence—

- (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 prevent or 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 of this Act for a discharge of the relevant pollutant.

Division 5—Night operation restriction

Restrictions on transfer operations at night

63.(1) A transfer operation must not be conducted between sunset and sunrise (a “**night transfer operation**”), unless an authorised officer—

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

(2) However, an authorised officer may give a general approval for night

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 decides.

(4) If a night transfer operation is done in contravention of this section, or if a condition attached to an approval given under this section is not complied with, the ship's owner and master each commit an offence.

Maximum penalty—850 penalty units.

Division 6—General

Several liability—ships

64.(1) This section applies to a transfer operation involving oil or noxious liquid substances in bulk.

(2) If—

- (a) a discharge happens from 2 or more ships; 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 this Part and sections 113, 115, 122 and 127,²⁸ to have been discharged from each of the ships.

Keeping of records about transfer etc.

65.(1) This section applies to—

- (a) a ship's owner; and
- (b) a ship's master; and
- (c) the occupier of a place to or from which a pollutant is transferred.

²⁸ Sections 113, 115, 122 and 127 are concerned with the giving of security, the recovery of costs and awards of compensation for discharges.

(2) A person to whom this section applies must keep the records the person is required to keep by regulation.

Maximum penalty—350 penalty units.

(3) If a happening required under the regulations to be recorded by a person happens, the person must record, without delay, the happening in the way prescribed under the regulations.

Maximum penalty—350 penalty units.

PART 10—RECEPTION FACILITIES

Reception facilities

66.(1) The chief executive may provide, join with someone else in providing, arrange for the provision of, or direct the providing of reception facilities—

(a) under Regulation 12 of Annex I, Regulation 7 of Annex II and Regulation 7 of Annex V to MARPOL; or

(b) under Part 7.²⁹

(2) The chief executive may give a notice under subsection (3) to—

(a) the owner or occupier of a port or terminal; or

(b) the owner or occupier of an establishment at which ships—

(i) are 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) are berthed, docked or otherwise at the establishment.

(3) 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

²⁹ Part 7 is about the prevention of pollution by sewage.

berthed, docked or otherwise at the port, terminal or establishment; and

- (b) maintain the facilities in good order and condition; and
- (c) make the facilities available to enable ships to dispose of the residues.

(4) A notice—

- (a) may state a time within which a direction is to be complied with; and
- (b) must be signed by the chief executive.

(5) An owner or occupier must comply with a notice.

Maximum penalty—

- (a) for the first offence—1 750 penalty units; and
- (b) if the contravention continues after conviction—1 750 penalty units and an additional penalty of 20 penalty units for each day after the last conviction that the contravention continues.

(6) An owner's or occupier's obligation to comply with a notice 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 (5) continuing after conviction may state the date of the last conviction and the day or period during which the contravention continued.

(8) Charges under subsection (7) for a particular continuing contravention may be prosecuted from time to time.

(9) In this section—

“residues” include oil, noxious liquid substances, sewage and garbage.

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

PART 11—REPORTING REQUIREMENTS

Duty to report certain incidents

67.(1) In this section—

“**discharge offence**” has the meaning it has in Parts 4 to 9.

“**harmful substance**” has the meaning it has in Part 6.

“**noxious liquid substance**” has the meaning it has in Part 5.

“**oil**” has the meaning it has in Part 4.

“**reportable incident**” means a discharge or probable discharge of oil, a noxious liquid substance or the jettisoning of a harmful substance carried in packaged form from a ship that happens in coastal waters, but does not include a discharge exempted by regulation.

(2) A ship’s master must notify, without delay, an authorised officer of a reportable incident³⁰ in the way prescribed by regulation.

Maximum penalty—850 penalty units.

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

Maximum penalty—850 penalty units.

(4) A person mentioned in subsection (2) or (3) who has notified an authorised officer of the reportable incident must give a report to an authorised officer about the incident if asked by an authorised officer.

Maximum penalty—850 penalty units.

(5) The report must be given to an authorised officer in the approved form and within the time prescribed by regulation.

(6) A notice given to an authorised officer under subsection (2) or (3), and a report given to an authorised officer under subsection (4), must not, without the consent of the person charged, be admitted in evidence in a prosecution for a discharge offence.

³⁰ See Protocol I of MARPOL.

PART 12—INVESTIGATION, PREVENTION AND MINIMISATION, AND ENFORCEMENT

Division 1—General

Functions of authorised officers

68. Authorised officers have 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 to minimise discharges;
- (e) to take action to remove a pollutant discharged into coastal waters or mitigate its effect on Queensland's marine and coastal environment.

Authorised officers subject to directions from chief executive

69. An authorised officer is subject to the directions of—

- (a) the chief executive in exercising powers of an authorised officer;
and
- (b) if the authorised officer is appointed by the chief executive officer of a port authority—the chief executive officer.

Powers of authorised officers

70.(1) An authorised officer has the powers given under this or another Act.

(2) A person appointed as an authorised officer by the chief executive may exercise powers for the administration and enforcement of a matter inside and outside the limits of any port.

(3) A person appointed as an authorised officer by the chief executive officer of a port authority may exercise powers only for the administration

and enforcement of a matter devolved under section 129³¹ within the port limits.

Limitation on powers of authorised officer

71.(1) The powers of an authorised officer may be limited—

- (a) under the regulations; or
- (b) under a condition of appointment; or
- (c) by notice of—
 - (i) the chief executive given to the authorised officer; and
 - (ii) if the authorised officer is appointed by the chief executive officer of the port authority—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.

Division 2—Appointment of authorised officers and other matters

Appointment of authorised officers

72.(1) The chief executive may appoint any of the following persons as authorised officers—

- (a) officers of the public service;
- (b) employees of a port authority;
- (c) other persons prescribed under the regulations.

(2) If, within its port limits, the administration and enforcement of a matter is devolved to a port authority under section 129, the chief executive officer of the port authority may appoint any of the following persons as authorised officers—

³¹ Section 129 is about how the administration and enforcement of this Act within a port authority may be devolved to the port authority board by the Governor in Council.

- (a) employees of the port authority;
- (b) other persons prescribed under the regulations.

(3) A person may be appointed to be an authorised officer only if, in the administering executive's opinion, the person has the necessary expertise or experience to be an authorised officer.

Authorised officer's appointment conditions

73.(1) An authorised officer holds office on the conditions stated in the instrument of appointment.

(2) An authorised officer—

- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
- (b) may resign by signed notice of resignation given to the administering executive; and
- (c) if the conditions of appointment provide—ceases holding office as an authorised officer on ceasing to hold another office stated in the appointment conditions (the “**main office**”).

(3) However, an authorised officer may not resign from the office of authorised officer (the “**secondary office**”) under subsection (2)(b) if a term of the authorised officer's employment to the main office requires the authorised officer to hold the secondary office.

Authorised officer's identity card

74.(1) The administering executive must give each authorised officer an identity card.

(2) The identity card must—

- (a) contain a recent photograph of the authorised officer; and
- (b) be signed by the authorised officer; and
- (c) include an expiry date.

(3) If the authorised officer is appointed by the chief executive, the identity card must state the officer is an authorised officer for the State.

(4) If the authorised officer is appointed by the chief executive officer of a port authority, the identity card must state the officer is an authorised officer for the (name of port) port authority.

(5) A person who ceases to be an authorised officer must return the identity card to the administering executive within 21 days after the person ceases to be an authorised officer, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(6) This section does not prevent the giving of a single identity card to a person under this section and for other provisions, Acts or purposes.

Production or display of authorised officer's identity card

75.(1) An authorised officer may exercise a power in relation to someone else if the officer—

- (a) first produces the officer's identity card for the person's inspection; or
- (b) has the identity card displayed so it is clearly visible to the person.

(2) If, for any reason, it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for inspection by the person at the first reasonable opportunity.

Protection from liability

76.(1) An authorised officer or a person acting under the direction of an authorised officer is not civilly liable for an act or omission done honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an authorised officer or person, the liability attaches instead to—

- (a) if the person is an authorised officer appointed by the chief executive officer of a port authority—the port authority; or
- (b) if the person is acting under the direction of an authorised officer appointed by the chief executive officer of a port authority—the

port authority; or

- (c) if paragraphs (a) and (b) do not apply—the State.

Division 3—Powers of authorised officers

Entry to place by authorised officers

77.(1) An authorised officer may enter a place under this section if—

- (a) its occupier consents to the entry; or
- (b) the entry is authorised by a warrant.

(2) An authorised officer, without the occupier’s consent or a warrant, may—

- (a) enter a public place when the place is open to the public; or
- (b) enter the land (including the curtilage) around premises to ask the occupier of the premises for consent to enter the premises.

(3) 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 Part.

(4) Unless entry is authorised by warrant, an authorised officer may only exercise the powers mentioned in section 81³² for a place if its occupier consents to the use of the powers when consent for entry is given.

Warrants for entry

78.(1) An authorised officer may apply to a Magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The Magistrate may refuse to consider the application until the authorised officer gives the Magistrate all the information the Magistrate requires about the application in the way the Magistrate requires.

³² Section 81 is about an authorised officer’s general powers for ships and places.

Example—

The Magistrate may require additional information supporting the application be given by statutory declaration.

(4) The Magistrate may issue the warrant only if the Magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
- (b) the evidence is, or may be within the next 7 days, at the place.

(5) A warrant must state—

- (a) that the authorised officer may, with necessary and reasonable help and force, enter the place and exercise the authorised officer’s powers under this Act; and
- (b) the evidence for which the warrant is issued; and
- (c) the hours when entry may be made; and
- (d) the day, within 14 days after the warrant’s issue, the warrant ends.

(6) The Magistrate must record the reasons for issuing the warrant.

Warrants—applications made otherwise than in person

79.(1) An authorised officer may apply for a warrant by phone, fax, radio or another form of communication if the officer considers it necessary because of urgent circumstances or other special circumstances, including, for example, the officer’s remote location.

(2) Before applying for the warrant, the authorised officer must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised officer may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the Magistrate must immediately fax a copy to the authorised officer if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy of the warrant to the authorised officer—

- (a) the Magistrate must—

- (i) record on the warrant the reasons for issuing the warrant; and
 - (ii) tell the authorised officer the date and time the warrant was signed; and
 - (iii) tell the authorised officer the warrant's terms; and
- (b) the authorised officer must write on a form of warrant (the **“warrant form”**)—
- (i) the Magistrate's name; and
 - (ii) the date and time the Magistrate signed the warrant; and
 - (iii) the warrant's terms.

(6) The facsimile warrant, or the warrant form properly completed by the authorised officer, authorises the entry and the exercise of the other powers mentioned in the warrant issued by the Magistrate.

(7) The authorised officer must, at the first reasonable opportunity, send to the Magistrate—

- (a) the sworn application; and
- (b) if a warrant form was completed by the authorised officer—the completed warrant form.

(8) On receiving the documents, the Magistrate must attach them to the warrant.

(9) Unless the contrary is proven, a court must presume a power exercised by an authorised officer was not authorised by a warrant issued under this section if—

- (a) a question arises, in a proceeding before the court, whether the exercise of power was authorised by a warrant; and
- (b) the warrant is not produced in evidence.

Boarding of ships

80.(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 thing 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.

Maximum penalty—350 penalty units.

(7) A person must comply with a requirement under subsection (5)(b), unless the person has a reasonable excuse.

Maximum penalty—350 penalty units.

(8) 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.

Authorised officer's general powers for ships and places

81.(1) An authorised officer who boards a ship or enters a place under this Part may—

- (a) search any part of the ship or place; or
- (b) inspect, examine, test, measure, photograph or film anything in or on the ship or place or require a thing to be tested or measured; or
- (c) take samples of any pollutant, substance or thing in or on the ship or place; or
- (d) record, measure, test or analyse the release of pollutants into coastal waters from the ship; or
- (e) copy a document in or on the ship or place; or
- (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; or
- (g) install or maintain any equipment and materials in or on the ship or place the authorised officer reasonably requires for a monitoring program for the release of pollutants into coastal waters from the ship; or
- (h) require the ship's master, or any person in or on the ship, or occupier of the place to give the authorised officer reasonable help for the exercise of the powers mentioned in paragraphs (a) to (g); or
- (i) 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 mentioned in paragraphs (a) to (g).

(2) If, for any reason, it is not practicable to make a requirement under subsection (1)(i) 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) 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.

Power to seize evidence from places

82.(1) An authorised officer who enters a place under this Part with a warrant may seize the evidence for which the warrant was issued.

(2) An authorised officer who enters a place under this Part with the occupier's consent may seize a thing if—

- (a) the authorised officer believes on reasonable grounds the thing is evidence of an offence against this Act; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier in seeking the occupier's consent.

(3) An authorised officer may also seize another thing if the officer believes on reasonable grounds—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.

(4) Having seized a thing, an authorised officer may—

- (a) remove the thing from the place where the thing was seized (the “**place of seizure**”) to another place; or
- (b) leave the thing at the place of seizure but restrict access to the thing.

Example of subsection (4)(b)—

An authorised officer may—

- (a) seal a thing and mark it to show it has been seized; or
- (b) seal the entrance to a room where the seized thing is situated and mark it to show it contains a thing that has been seized.

(5) If an authorised officer restricts access to a seized thing, a person must not tamper with the thing without the approval of the administering

executive.

Maximum penalty—350 penalty units.

Power to seize after boarding ship

83.(1) An authorised officer who boards a ship under this Part may seize a thing in or on the ship if the officer believes, on reasonable grounds—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.

(2) Having seized a thing, an authorised officer may—

- (a) remove the thing from the place where the thing was seized (the **“place of seizure”**) to another place; or
- (b) leave the thing at the place of seizure but restrict access to the thing.

Example of subsection (2)(b)—

An authorised officer may—

- (a) seal a thing and mark it to show it has been seized; or
- (b) seal the entrance to a room where the seized thing is situated and mark it to show it contains a thing that has been seized.

(3) If an authorised officer restricts access to a seized thing, a person must not tamper with the thing without the approval of the administering executive.

Maximum penalty—350 penalty units.

Power to detain ship

84.(1) An authorised officer for the State may detain a ship if the officer has clear grounds for believing³³ a discharge offence has happened because

³³ See Article 220(2) of the United Nations Convention on the Law of the Sea 1982.

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 reasonable stated place.

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

Maximum penalty—3 500 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.

Maximum penalty—3 500 penalty units.

(6) In this section—

“**discharge offence**” means a discharge offence within the meaning of Part 4, 5, 6, 7, 8 or 9.

Procedure after detention of ship

85. As soon as practicable after a ship is detained by an authorised officer under section 84, the officer must give to the ship's master an approved notice stating that the ship—

- (a) is detained; and
- (b) may be released on giving security worked out under section 113.³⁴

Procedure after seizure of evidence

86.(1) This section does not apply to a ship detained under section 84.

(2) As soon as practicable after a thing 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.

³⁴ Section 113 is about how a detained ship may be released on giving security.

(3) The receipt must describe generally each thing 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 thing is unattended when seized; and
- (b) the thing's owner is unknown; and
- (c) the owner cannot be found after reasonable inquiries (given the thing's value) have been made.

(6) Until a seized thing is returned or otherwise finally dealt with, an authorised officer must allow a person who would be entitled to a seized thing 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 thing 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 any appeal from the prosecution.

(8) Despite subsection (7), the officer must return the seized thing to the person immediately the officer stops being satisfied its retention as evidence is necessary.

(9) However, the officer need not return the seized thing if the officer believes, on reasonable grounds, it is necessary to retain it to prevent its use in committing an offence.

Division 4—Other enforcement powers of authorised officers

Power to require name and address

87.(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.

Maximum penalty—200 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 proved to have committed the offence.

Power to require information from certain persons

88.(1) This section applies if an authorised officer suspects, on reasonable grounds—

- (a) an offence against this Act has happened; and
- (b) a person may be able to give information about the offence.

(2) The authorised officer may require the person to give information about the suspected offence.

(3) When making the requirement, the authorised officer must warn the person it is an offence to fail to give the information unless the person has a reasonable excuse.

Power to require production of documents

89.(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; or
- (b) under the Commonwealth Navigation Act or the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cwlth).

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

Maximum penalty—200 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 an entry in the document, the officer may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.

(5) The person responsible for keeping the document must comply with a requirement made under subsection (4), unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

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

Division 5—Consent to entry of premises**Consent to entry**

90.(1) This section applies if an authorised officer intends to seek the consent of an occupier of a place to an authorised officer entering the place under this Part.

(2) Before seeking the consent, the authorised officer must inform the occupier—

- (a) of the purpose of the entry; and
- (b) that anything found and seized may be used in evidence in court; and

(c) that the occupier is not required to consent.

(3) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must—

(a) state the occupier was informed—

(i) of the purpose of the entry; and

(ii) that anything found and seized may be used in evidence in court; and

(iii) that the occupier was not required to consent; and

(b) state the occupier gave the authorised officer consent under this Part to enter the place and exercise the powers mentioned in section 81;³⁵ and

(c) state the time and date the consent was given.

(5) If the occupier signs an acknowledgment of consent, the authorised officer must immediately give a copy to the occupier.

Evidence of consent

91.(1) This section applies to a proceeding if—

(a) a question arises whether an occupier of a place consented to the entry of the place by an authorised officer under this Part; and

(b) an acknowledgment under section 90 is not produced in evidence.

(2) In a proceeding to which this section applies, the court may presume the occupier did not consent, unless the contrary is proved.

³⁵ Section 81 is about an authorised officer's general powers for ships and places.

Division 6—Response action to discharge and authorised officer’s emergency powers

Purpose of Division

92. The purpose of this Division is to enable a port authority (within its port limits) or the State (generally), through powers given to authorised officers under this Act, to direct and coordinate the response to a discharge or probable discharge of pollutant into coastal waters.

State has prime responsibility for directing emergency response

93.(1) This section applies if there is a discharge or probable discharge of pollutant into coastal waters (the “**discharge**”).

(2) The State has prime responsibility for directing and coordinating the response to the discharge.

(3) However, if there is a discharge within the limits of a port and the port authority has responsibility for the administration and enforcement of this Act,³⁶ the port authority has prime responsibility for directing and coordinating the response.

(4) Subsection (3) does not apply if the State, by signed notice given by the chief executive to the chief executive officer of the port authority, assumes prime responsibility for directing and coordinating the response.

(5) The State or port authority may consult with other interested agencies and entities and local governments in preparing a response to the discharge.

Emergency declaration may overrule local law

94.(1) The Minister may, by emergency declaration, declare a local law that is inconsistent with, or hinders, the State or port authority’s response to a serious discharge of pollutant into coastal waters is of no effect to the extent, and for the period (not longer than 14 days), mentioned in the Minister’s declaration.

(2) However, the Minister may make the emergency declaration only if

³⁶ See section 129 (Devolution of powers).

the Minister is satisfied that urgent action is needed to deal with the discharge.

(3) The declaration must state it is an emergency declaration and outline the nature of the emergency.

(4) The Minister is not required to engage in consultation about the declaration.

(5) The Minister must notify the declaration in the Gazette and may publish it in other ways the Minister considers appropriate having regard to the emergency.

(6) The Minister must repeal the declaration as soon as possible after the Minister is satisfied the emergency no longer exists.

(7) Unless it is earlier repealed, the declaration expires 14 days after it is gazetted.

(8) An emergency declaration is subordinate legislation.

Authorised officer's powers in an emergency

95.(1) This section applies 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 Queensland's marine and coastal environment.

(2) An authorised officer may—

- (a) direct any person to take stated reasonable action within a stated reasonable time; or
- (b) take the action, or authorise someone else to take the action.

(3) Without limiting subsection (2), reasonable action includes action—

- (a) to remove, destroy or disperse a discharged pollutant; and
- (b) to prevent the pollutant from reaching a stated place on water or land; and
- (c) to mitigate damage or injury caused to a stated place or thing on

water or land by the pollutant; and

(d) to require any person—

(i) to do something that assists with action mentioned in paragraph (a), (b) or (c); or

(ii) to stop doing something that may interfere with action mentioned in paragraph (a), (b) or (c).

(4) The direction may be given orally or by written notice.

(5) If the direction is given orally, the authorised officer must, as soon as practicable, confirm the direction by written notice given to the person.

(6) A person to whom a direction is given under subsection (2)(a) must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—350 penalty units.

(7) If the authorised officer decides to take the action, the officer may—

(a) board any ship or, without a warrant, enter any place and take the action; and

(b) in taking the action, exercise any of the powers (other than investigatory powers) under this Part.

(8) The authorised officer may exercise the powers mentioned in subsection (7) (“**emergency powers**”) with any necessary and reasonable help and force.

(9) If a person or thing is obstructing or preventing an authorised officer from boarding a ship or entering a place or taking action on or at any ship or place while the authorised officer is exercising or attempting to exercise emergency powers, a police officer may, if asked by the authorised officer, using any necessary and reasonable force—

(a) remove the person or thing from the place; and

(b) take all reasonable measures to ensure the person or thing does not again obstruct or prevent the action being taken.

(10) In exercising or attempting to exercise emergency powers, an authorised officer must take all reasonable steps to ensure the officer causes as little inconvenience, and does as little damage, as is practicable in the circumstances.

(11) This section does not limit any power an authorised officer has apart from this section.

(12) If an authorised officer authorises a person to take action under subsection (2)(b)—

- (a) the person may exercise the powers mentioned in subsection (7)(a); and
- (b) the officer must inform the person—
 - (i) of the action the person is authorised to take; and
 - (ii) of the person's powers under this section; and
 - (iii) in general terms, of section 109;³⁷ and
- (c) subsections (8), (9) and (10) (so far as they relate to the power mentioned in subsection (7)(a)) apply to the person as if the person were the authorised officer.

Authorised officer may direct emergency release of pollutant

96.(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 Queensland's marine and coastal environment; and

³⁷ Section 109 imposes on an authorised officer a requirement to give notice of any damage done in the exercise of a power.

(ii) loss or damage to property.

Maximum penalty—200 penalty units.

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

Division 7—Power of intervention

Definitions for Division

97. In this Division—

“**Australian Maritime Safety Authority**” has the meaning given by the *Australian Maritime Safety Authority Act 1990* (Cwlth).

“**cargo**” includes ballast and ship’s 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 collision of ships, stranding or other incident of navigation, or other happening on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo.

Power of intervention

98.(1) This section applies if the chief executive is satisfied, following a maritime casualty or acts related to a maritime casualty, that there is grave and imminent danger to the Queensland coastline, or to related Queensland interests, from the discharge or threat of discharge of pollutant into coastal waters that may reasonably be expected to result in major harmful consequences.

(2) Without limiting subsection (1), the chief executive may take measures the chief executive considers necessary to prevent, minimise or eliminate the danger, including, for example—

- (a) taking action, whether or not directions have been issued under paragraph (b) in relation to the ship—
 - (i) to move the ship or part of the ship to another place; or

- (ii) to remove cargo from the ship; or
- (iii) to salvage the ship, part of the ship or any of the ship's cargo; or
- (iv) to sink or destroy the ship or part of the ship; or
- (v) to take over control of the ship or part of the ship; and
- (b) issuing directions of the kind authorised by section 99 to—
 - (i) the ship's owner; or
 - (ii) the ship's master; or
 - (iii) any salvor in possession of the ship.

(3) The chief executive must not exercise the chief executive's powers under subsection (2)(a)(iv) without the Minister's written approval.

(4) 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.

(5) The Minister and the chief executive must, in and in relation to the exercise of a power under this section—

- (a) act in accordance with section 100;³⁸ and
- (b) have regard to—
 - (i) the extent and probability of imminent damage if the power is not exercised; and
 - (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.

(6) This section does not limit any other right or power the State has apart from this section.

³⁸ Section 100 sets out the things that must be done before the power is exercised.

Directions under s 99 may require taking of action

99.(1) A direction under section 98 issued in relation to a ship may require the doing, or prohibit the doing, of anything in relation to the ship, including, for example—

- (a) the movement of the ship or part of the ship; and
- (b) the removal of cargo from the ship; and
- (c) the taking of salvage measures in relation to the ship, part of the ship or any of the ship's cargo; and
- (d) the sinking or destruction of the ship or part of the ship; and
- (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.

(2) The chief executive must not issue a direction under subsection (1)(d) without the Minister's written approval.

(3) Without limiting subsection (1), 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.

Things to be done before power to intervene is exercised

100.(1) Before exercising the power of intervention under section 98, the chief executive must—

- (a) to the greatest extent practicable, ensure the exercise of the power will not involve a threat to human life; and
- (b) have regard to Australia's obligations under the Intervention Convention; and
- (c) consult with the Australian Maritime Safety Authority; and
- (d) consult with the relevant ship's owner.

(2) Subsection (1)(b), (c) and (d) does not apply if, in the chief executive's opinion, power to intervene must be exercised urgently.

Division 8—Offences

Failure to help authorised officer—emergency

101.(1) This section applies if—

- (a) an authorised officer is taking action under section 95;³⁹ and
- (b) the officer requires a person to give reasonable help to the officer under section 81(1)(h)⁴⁰ for the exercise of a power.

(2) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—350 penalty units.

(3) 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.

(4) When making a requirement mentioned in subsection (3), 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

³⁹ Section 95 is about an authorised officer's powers in an emergency.

⁴⁰ Section 81 is about an authorised officer's powers for ships and places.

(constituted by the giving of the answer or producing of the document) against section 105 or 106.⁴¹

(5) 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 105 or 106.

Failure to help authorised officer—other cases

102.(1) This section applies if—

- (a) an authorised officer requires a person under section 81(1)(h) to give reasonable help to the officer in relation to the exercise of a power; and
- (b) section 103 does not apply.⁴²

(2) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(3) 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.

Failure to obey direction

103.(1) This section applies if—

- (a) an authorised officer requires a person to do something under section 81(1)(i); and
- (b) section 101 does not apply.

⁴¹ Section 105 is about false and misleading documents and section 106 is about false and misleading information.

⁴² Section 101 deals with emergency situations.

(2) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

Failure to answer questions

104.(1) This section applies if—

- (a) the officer requires a person to answer a question under section 88(2);⁴³ and
- (b) section 101 does not apply.

(2) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(3) 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.

(4) 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.

False, misleading or incomplete documents

105.(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.

Maximum penalty—350 penalty units.

(2) However, 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,

⁴³ Under section 88(2), an authorised officer may require a person the authorised officer suspects of having information about an offence to give information about the offence.

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.

False or misleading information

106.(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.

Maximum penalty—350 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.

Obstruction of authorised persons

107.(1) In this section—

“authorised person” means—

- (a) an authorised officer; or
- (b) a person who is authorised by an authorised officer under section 95(2)(b) to take action.⁴⁴

(2) A person must not obstruct an authorised person in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—350 penalty units.

⁴⁴ Section 95 deals with an authorised officer's powers in an emergency.

Impersonation of authorised officer

108. A person must not pretend to be an authorised officer.

Maximum penalty—200 penalty units.

Division 9—General**Authorised officer to give notice of damage**

109.(1) This section applies 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 Act⁴⁵ damages anything in taking the action.

(2) The authorised officer must promptly give written notice of the particulars of the damage.

(3) The notice must be given—

- (a) if the thing is a ship or is on a ship—to the ship’s master; or
- (b) otherwise—to the person who appears to the authorised officer to be the thing’s owner.

(4) If the authorised officer believes the damage was caused by a latent defect in the thing or other circumstances beyond the officer’s control, the officer may state this in the notice.

(5) If, for any reason, it is not practicable to comply with subsection (3), 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.

(6) This section does not apply to damage the authorised officer believes, on reasonable grounds, is trivial.

⁴⁵ See section 95(2)(b) (Authorised officer’s powers in an emergency).

Compensation

110. (1) A person may claim compensation if the person incurs loss or expense because of the exercise or purported exercise of a power under this Part, including, for example, in complying with a requirement made of the person under this Part.

(2) The compensation must be claimed from—

- (a) if the power or requirement that gives rise to the claim was exercised or made by an authorised officer appointed by the chief executive officer of a port authority or a person authorised by the authorised officer to take action under this Act—the port authority; or
- (b) otherwise—the State.

(3) 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.

(4) 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.

(5) The regulations may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

PART 13—SECURITY

Definitions for Part

111. In this Part—

“**discharge expenses**” means—

- (a) the reasonable costs and expenses incurred by the State or a port

authority in—

- (i) investigating a discharge of pollutant; and
 - (ii) preventing or minimising the effects of a discharge of pollutant; and
 - (iii) treating animals and plants affected by a discharge of pollutant; and
 - (iv) rehabilitating or restoring Queensland’s marine and coastal environment; and
- (b) an amount reasonably paid by the State or port authority under section 110.

“discharge offence” means a discharge offence within the meaning of Part 4, 5, 6, 7, 8 or 9.

Application of Part

112. This Part applies if an authorised officer has detained a ship under this Act.⁴⁶

Detained ship must be released on giving security

113.(1) The chief executive must release the ship if a security or guarantee is given under this section.

(2) The amount of the security must be enough, in the chief executive’s opinion, to cover—

- (a) the State’s discharge expenses in relation to the ship and, if the chief executive makes an election under subsection (3), the port authority’s discharge expenses; and
- (b) the penalty likely to be payable if a successful prosecution for the discharge offence were to be taken; and
- (c) interest on the discharge expenses.

(3) The chief executive may elect to secure the port authority’s discharge

⁴⁶ See section 84 (Power to detain ship).

expenses if the authority asks.

(4) The security may be provided in any 1 or more of the following forms, or in another form, the chief executive considers appropriate—

- (a) a bank guarantee;
- (b) a bond;
- (c) an insurance policy.

(5) The chief executive must make a decision about the amount and form of security or guarantee within a reasonable time.

Other ways detained ship may be released

114. A detained ship must also be released if—

- (a) a proceeding is started for a discharge offence involving the ship and the proceeding is discontinued; or
- (b) a proceeding started for a discharge offence involving the ship is concluded, whether or not an appeal is pending, without anyone being convicted or discharge expenses being awarded against anyone; or
- (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; or
- (d) the chief executive has sought to recover discharge expenses as a debt and the amount of the expenses has been paid; or
- (e) the chief executive decides for any other reason the ship should be released.

Claims on security

115.(1) This section applies if the State or a port authority incurs discharge expenses in relation to a discharge of a pollutant from a ship into coastal waters.

(2) The discharge expenses, including, if the chief executive makes an

election under section 113(3),⁴⁷ the port authority's discharge expenses, are taken to be a debt payable to the State.

(3) The administering authority may recover the discharge expenses by making a demand against the security or part of it.

(4) Before making the demand against the security, the administering authority must give to the security giver a written notice under this section.

(5) The notice must—

- (a) outline the action taken; and
- (b) state the amount to be demanded against the security; and
- (c) invite the person to make written representations to the administering authority to show, within a stated time of at least 30 days, why the demand should not be made.

(6) If, after considering all written representations made within the stated time, the administering authority decides grounds still exist to make the demand for the amount or a lesser amount, the administering authority must immediately give written notice to the security giver of the decision.

(7) The notice must—

- (a) state the reasons for the decision; and
- (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 116.

(8) If notice is given under subsection (7), the administering authority 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.

(9) If the administering authority makes the demand, the security provider—

- (a) is not required to inquire into the correctness or lawfulness of the

⁴⁷ Under section 113(3), the chief executive may elect to secure a port authority's discharge expenses under a guarantee given for the release of a detained ship.

administering authority's demand; and

- (b) must pay the security or the part of it demanded to the administering authority.

(10) An amount recovered for a port authority by the chief executive must be reimbursed to the port authority.

(11) 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.

Appeals

116.(1) A person whose interests are affected by a decision under section 115 may appeal to the appropriate court in subsection (2).

(2) The appropriate court is—

- (a) if the amount the administering authority 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 section 66 of the *District Courts Act 1967*—a District Court;⁴⁸ or
- (b) in other cases—the Supreme Court.

Hearing procedures

117.(1) The procedure for an appeal is to be in accordance with the appropriate court's rules of court or, if the rules make no provision or insufficient provision, in accordance with directions of a Judge of the appropriate court.

- (2) A party to an appeal may present new evidence at the appeal hearing.
- (3) Costs of the appeal lie in the court's discretion.

⁴⁸ The monetary limit of the District Court is presently \$200 000.

PART 14—LEGAL PROCEEDINGS

Division 1—Evidence

Evidentiary provisions

118.(1) This section applies to a proceeding under this Act or another Act prescribed by regulation.

(2) Unless a party, by reasonable notice, requires proof of—

- (a) the appointment of the administering executive or an authorised officer; or
- (b) the authority of the administering executive or an authorised officer to do anything under this Act;

the appointment or authority must be presumed.

(3) A signature purporting to be the signature of the administering executive or an authorised officer 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 administering authority or administering executive 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 administering executive 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; or
 - (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 regulation for its use;
- (h) anything else prescribed by regulation.

(6) In a complaint starting a proceeding, 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 mentioned 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) Any instrument, equipment or installation prescribed by regulation that is used by an authorised officer or analyst in accordance with the conditions (if any) prescribed by regulation is taken to be accurate and precise in the absence of evidence to the contrary.

(9) In a proceeding in which the administering authority applies to recover the costs and expenses incurred by it in relation to the discharge of a pollutant the following certificates are evidence of the matters stated in them—

- (a) a certificate by the administering authority stating that stated costs and expenses were incurred and the way and purpose for which they were incurred;

- (b) a certificate by the chief executive that an election was made under section 113(3) or 122(2).⁴⁹

Analyst's certificate or report produced by defendant

119.(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 mentioned 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.

Responsibility for acts or omissions of representatives

120.(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 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 acts or omissions.

⁴⁹ Sections 113(3) and 122(2) deal with the chief executive's ability to elect to secure a port authority's discharge expenses if the authority asks.

Executive officers must ensure corporation complies with Act

121.(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 of the executive officers of the corporation also commit an offence, namely, the offence of failing to ensure that the corporation complies with this Act.

Maximum penalty—the penalty for the contravention of the provision by an individual.

(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—Legal proceedings**Recovery of discharge expenses**

122.(1) The State or a port authority may recover discharge expenses as a debt.⁵⁰

(2) The chief executive may elect to recover a port authority's discharge expenses if the port authority asks.

(3) If the chief executive makes an election under subsection (2), the reasonable costs of the port authority are taken to be a debt payable to the State and may be recovered accordingly.

⁵⁰ See also the *Protection of the Sea (Civil Liability) Act 1981* (Cwlth) and the *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993* (Cwlth).

(4) An amount recovered for a port authority by the chief executive must be reimbursed to the port authority.

(5) In this section—

“**discharge expenses**” has the meaning given in Part 13.⁵¹

Indictable and summary offences

123.(1) An offence against this Act for which the maximum penalty is at least 850 penalty units is an indictable offence.

(2) Any other offence against this Act is a summary offence.

Proceedings for indictable offences

124.(1) A proceeding for an indictable offence against this Act may be taken, at the prosecution’s election—

- (a) by way of summary proceedings under the *Justices Act 1886*; or
- (b) on indictment.

(2) A Magistrate must not hear an indictable offence summarily if—

- (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
- (b) the Magistrate considers that the charge should be prosecuted on indictment.

(3) If subsection (2) applies—

- (a) the Magistrate must proceed by way of an examination of witnesses for an indictable offence; and
- (b) a plea of the person charged at the start of the proceeding must be disregarded; and
- (c) evidence brought in the proceeding before the Magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and

⁵¹ Part 13—Security. See section 111 for the definition.

- (d) before committing the person for trial or sentence, the Magistrate must make a statement to the person as required by section 104(2)(b) of the *Justices Act 1886*.

(4) The maximum penalty that may be summarily imposed for an indictable offence is 1 000 penalty units.

Limitation on who may summarily hear indictable offence proceedings

125.(1) A proceeding must be before a Magistrate if it is a proceeding—

- (a) for the summary conviction of a person on a charge for an indictable offence; or
- (b) for an examination of witnesses for a charge for an indictable offence.

(2) However, if a proceeding for an indictable offence is brought before a justice who is not a Magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

Limitation on time for starting summary proceedings

126. A proceeding for an offence against this Act by way of summary proceeding under the *Justices Act 1886* 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.

Court may make orders about compensation and other matters

127.(1) This section applies to a prosecution on indictment for a offence against this Act.

(2) 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 State or a port authority the amount the State or port

authority could have recovered under section 122(1);⁵²

- (b) take stated action to rehabilitate or restore Queensland's marine and coastal environment damaged because of the contravention.

(3) An order under subsection (2) is in addition to any penalty or other order the court may make or impose under this Act.

(4) In particular, this section does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

Division 3—Service

Special provision for service of documents

128.(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) any owner of the ship; or
- (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

⁵² Section 122 deals with recovery of discharge expenses.

document other than as provided in this section;⁵³ or

- (b) the court's power to authorise service of a document other than as provided in this section.

PART 15—ADMINISTRATION

Division 1—Devolutions

Devolution of powers

129.(1) The Governor in Council may, by regulation, devolve to the board of a port authority, the administration and enforcement of this Act within its port limits (other than for matters about the prosecution of offences against this Act).

(2) On the commencement of the regulation—

- (a) the port authority becomes the administering authority for the devolved matter; and
- (b) the port authority's chief executive officer becomes the administering executive for the devolved matter; and
- (c) the administration and enforcement of the devolved matter is a function of the port authority board to be performed by the board within the port's limits.

(3) The board may make resolutions, not inconsistent with this Act, about—

- (a) the fees that are payable to it for the devolved matter; or
- (b) any matter necessary or convenient for carrying out or giving effect to the devolved matter.

(4) If the chief executive is satisfied the board has failed to do anything in the administration or enforcement of the devolved matter—

⁵³ See, for example, Part 10 of the *Acts Interpretation Act 1954*.

- (a) the chief executive may do the thing; and
- (b) the reasonable costs and expenses incurred by the chief executive are a debt payable by the port authority to the State.

Division 2—Delegations

Delegation by chief executive

130. The chief executive may delegate the chief executive's powers under this Act to an authorised officer or officer of the public service.

Delegation by port authority's chief executive officer

131.(1) The port authority's board may delegate its powers under this Act to the port authority's chief executive officer.

(2) The chief executive officer may delegate the chief executive officer's powers and subdelegate delegated powers under this Act to—

- (a) a committee of the port authority; or
- (b) an authorised officer; or
- (c) an employee of the port authority; or
- (d) a board or committee consisting of employees of the port authority.

Division 3—Miscellaneous

Advisory committees

132.(1) The Minister may establish as many advisory committees as the Minister considers appropriate for the administration of this Act.

(2) An advisory committee has the functions the Minister decides.

(3) A member of an advisory committee may be paid the fees and allowances decided by the Governor in Council.

PART 16—MISCELLANEOUS

Regulations

133.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made about any of the following matters—

- (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;
- (g) keeping records, including, for example, an oil or cargo 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;
- (i) records that must be sent to an administering authority and their custody or disposal after receipt;
- (j) imposition of fees;
- (k) taking and analysis of samples by an analyst;
- (l) ensuring the integrity and security of samples;
- (m) prescribing the cost of labour used for a purpose connected with a discharge of pollutant.

(3) Without limiting subsection (1) or (2), a regulation may also be made—

- (a) giving effect to Regulation 8 of Annex II to MARPOL; and
- (b) declaring a stated liquid substance is—
 - (i) designated in Appendix II to Annex II; and

- (ii) categorised as a Category A, B, C or D substance; and
- (c) removing a stated noxious liquid substance from Appendix II; and
- (d) declaring a stated liquid substance has been provisionally assessed under regulation 3(4) in Annex II as a Category A, B, C or D substance; and
- (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 column III or IV of Appendix II.

(4) The regulations may provide that contravention of a regulation is an offence and prescribe a maximum penalty of not more than 350 penalty units.

Exemption of defence ships from Act

134. 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.⁵⁴

Review of Act

135.(1) The Minister must review this Act to decide whether its provisions remain appropriate.

(2) The review must be carried out as soon as practicable after the end of the period of 10 years starting on the commencement.

(3) As soon as practicable, but within 1 year after the end of the 10 year period, the Minister must table a report of the review's outcome in the Legislative Assembly.

⁵⁴ See MARPOL, article 3.

PART 17—REPEALS

Acts repealed

136. The following Acts are repealed—

- Pollution of Waters by Oil Act 1973 No. 33
- Pollution of Waters by Oil Amendment Act 1992 No. 56.

SCHEDULE**DICTIONARY**

section 4

“administering authority” means—

- (a) for a devolved matter—the port authority; or
- (b) for something else—the chief executive.

“administering executive” means—

- (a) for a devolved matter—the chief executive officer of the relevant port authority; or
- (b) for something else—the chief executive.

“agent” of a ship’s owner see section 7.

“analyst” means—

- (a) an appropriately qualified person appointed by the chief executive as an analyst; or
- (b) someone else holding accreditation of a kind prescribed by regulation.

“approved” for a form or notice means approved by the chief executive.

“Australian Maritime Safety Authority” for Part 12, Division 7, see section 97.

“authorised officer” means a person who is appointed as an authorised officer.⁵⁵

“cargo” for Part 12, Division 7, see section 97.

⁵⁵ Appointment of persons as authorised officers is made under section 72.

SCHEDULE (continued)

“**chief executive officer**” means the chief executive officer⁵⁶ of a port authority.

“**coastal waters**” means the coastal waters of the State,⁵⁷ and includes other waters within the limits of the State that are subject to the ebb and flow of the tide.

“**commencement**” for Part 7, see section 45.

“**Commonwealth Navigation Act**” means the *Navigation Act 1912* (Cwlth).

“**condition**” includes restriction.

“**devolved matter**” means a matter the administration and enforcement of which have been devolved to a port authority.⁵⁸

“**discharge**” see MARPOL.

“**discharge expenses**” for Part 13, see 111.

“**discharge offence**” see—

- for Part 4—section 24
- for Part 5—section 33
- for Part 6—section 40
- for Part 7—section 45
- for Part 8—section 53
- for Part 9—section 59
- for Part 11—section 67(1)
- for section 84—section 84(6)

⁵⁶ A distinction is drawn in the Act between a chief executive officer and the chief executive. For the meaning of “chief executive” see section 36 of the *Acts Interpretation Act 1954*.

⁵⁷ “coastal waters of the State” is defined in the *Acts Interpretation Act 1954*, section 36.

⁵⁸ See section 129 (Devolution of powers).

SCHEDULE (continued)

- for Part 13—section 111.

“**environment**” includes ecosystems.

“**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.

“**existing ship**” for Part 7, see section 45.

“**garbage**” see MARPOL⁵⁹ and, for Part 8, section 53.

“**harmful substance**” see MARPOL⁶⁰ and—

- for Part 6—section 40
- for Part 11—sections 67 and 40.

“**high sensitivity zone**” for Part 7, see section 45.

“**holding tank**” for Part 7, see section 45.

“**IMO**” means the International Maritime Organization.

“**incident**” see MARPOL.⁶¹

“**Intervention Convention**” for Part 12, Division 7, see section 97.

“**large ship**” for Part 7, see section 45.

“**length overall**” of a ship, for Part 7, see section 46.

⁵⁹ Under MARPOL, “garbage” means all kinds of victual, domestic and operational waste (other than fresh fish and parts of fresh fish) generated during the normal operation of the ship and liable to be disposed of continuously or periodically, but does not include other substances dealt with specifically in the convention, for example, oil.

⁶⁰ Under MARPOL, “harmful substance” means any substance that, 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.

⁶¹ Under MARPOL, “incident” means an event involving the actual or probable discharge into the sea of a harmful substance, or effluent containing a harmful substance.

SCHEDULE (continued)

“**low sensitivity zone**” for Part 7, see section 45.

“**Marine Safety Act**” means the *Marine Safety Act 1994*.

“**maritime casualty**” for Part 12, Division 7, see section 97.

“**MARPOL**” has the meaning given by section 6.

“**master**” has the meaning given by the Marine Safety Act.

“**medium ship**” for Part 7, see section 45.

“**mixture**” for Part 5, see section 33.

“**moderate sensitivity zone**” for Part 7, see section 45.

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

“**new ship**” for Part 7, see section 45.

“**noxious liquid substance**” see MARPOL and—

- for Part 5—section 33
- for Part 9—sections 59 and 33
- for Part 11—sections 67(1) and 33.

“**obstruct**” includes—

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

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

“**oil**” see MARPOL⁶² and—

- for Part 4—section 24
- for Part 5—sections 33 and 24

⁶² Under MARPOL, “oil” means petroleum in any form and includes crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals that are subject to the provisions of Annex II of MARPOL) and also includes the substances listed in Appendix I to Annex I.

SCHEDULE (continued)

- for Part 9—sections 59 and 24
- for Part 11—sections 67 and 24.

“oil tanker” see MARPOL.⁶³

“owner” of a ship has the meaning given by the Marine Safety Act.⁶⁴

“owner” of a seized thing includes the person from whom the thing is seized unless the authorised officer concerned is aware of its actual owner.

“person in control” of 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 a harmful substance, and includes sewage.

“port authority” has the meaning given by the *Transport Infrastructure Act 1994*.

“port limits” of a port means the limits of the port under Chapter 5A (Port Infrastructure) of the *Transport Infrastructure Act 1994*.

“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 the public is entitled to use, is open to the public, or used by the public, whether or not on payment of money.

⁶³ Under MARPOL, “oil tanker” means a ship constructed or adapted primarily to carry oil in bulk in its cargo spaces, and includes combination carriers and any “chemical tanker” as defined in Annex II of MARPOL when it is carrying a cargo or part cargo of oil in bulk.

⁶⁴ Under the Marine Safety Act (see section 9), “owner” of a ship is the person who owns the ship (whether or not the person is registered as the ship’s owner), and includes a person who—

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

SCHEDULE (continued)

“related Queensland interests” means Queensland interests directly affected or threatened by a maritime casualty, and include—

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

“reportable incident” for Part 11, see section 67.

“representative” of 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.

“sewage” has the meaning given in Annex IV to the Convention,⁶⁵ and includes human wastes.

“ship” has the meaning given by MARPOL,⁶⁶ and includes an aircraft when it is on the surface of the water.

“small ship” for Part 7, see section 45.

“state of mind” of a person includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and

⁶⁵ Under MARPOL, “sewage” means—

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

⁶⁶ Under MARPOL—

“ship” means any vessel of any type whatsoever operating in the marine environment, including pleasure craft, fishing vessels, motor vehicles, submersibles, floating craft and fixed or floating platforms.

SCHEDULE (continued)

(b) the person's reasons for the intention, opinion, belief or purpose.

“toilet” for Part 7, see section 45.

“transfer apparatus” for Part 9, see section 59.

“transfer operation” for Part 9, see section 59.

“Transport Coordination Plan” means the Transport Coordination Plan developed under the *Transport Planning and Coordination Act 1994*.