



Queensland

# Transport Operations (Marine Pollution) Regulation 2008

## Explanatory Notes for SL 2008 No. 254

made under the

*Transport Operations (Marine Pollution) Act 1995*

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## Short Title

The short title of the regulation is the *Transport Operations (Marine Pollution) Regulation 2008*.

## General Outline

### Authorising Law

The *Transport Operations (Marine Pollution) Regulation 2008* (the regulation) will be made under the provisions of the *Transport Operations (Marine Pollution) Act 1995* (the Act). Part 16 of the Act provides for the making of regulations about matters relating to marine pollution and to give effect to the *International Convention for the Prevention of Pollution from Ships, 1973* (commonly known as MARPOL). Section 133 provides for the Governor-in-Council to make regulations under the Act and allows the maximum penalty prescribed under a regulation to be 350 penalty units.

## **Background**

The regulation continues the legislative regime for the prevention and minimisation of ship-sourced pollutants into Queensland coastal waters under the Act.

A review of the appropriateness and applicability of the regulation was undertaken and it found that most of the original provisions were still appropriate and relevant. Some new and amended provisions have been identified to further minimise deliberate and negligent discharges of ship-sourced pollutants into coastal waters. A number of minor amendments and administrative changes have also been made which bring the regulation into line with current drafting and legislative practices.

The primary outcomes of these amendments are to make the regulation more comprehensive and enhance the protection of the marine environment from ship-sourced pollutants.

## **Policy Objectives of the Regulation**

The regulation represents a comprehensive review of the existing regulation. The changes being progressed seek to deliver the following specific objectives:

- give effect to MARPOL, to which Australia is a signatory, which is consistent with the implementation of MARPOL in other Australian jurisdictions;
- protect the marine and coastal environment by imposing obligations on ship owners and masters to exercise responsibility for the marine environment by ensuring the containment of all specified pollutants onboard and their proper disposal;
- clarify the intent of the regulation to improve monitoring and compliance and provide flexibility to ship owners and masters by providing options for achieving compliance with the regulation; and
- provide for the imposition of severe penalties on persons who pollute Queensland's marine and coastal environment in contravention of the Act and Regulation.

## **How the policy objectives will be achieved**

There have been significant changes to MARPOL since the commencement of the *Transport Operations (Marine Pollution) Regulation 1995*. The *Transport Operations (Marine Pollution) Regulation 2008* updates references to MARPOL and provides the full revised text of MARPOL as a schedule and aligns the regulation with Australia's international obligations.

The regulation includes some new and amended provisions that help minimise deliberate and negligent discharges of ship-sourced sewage into coastal waters. These new provisions will improve compliance with the regulation by requiring ships to comply with the discharge conditions in the regulation and ensure that onboard sewage management equipment complies with the intent of the legislation.

Changes have also been made to enable Maritime Safety Queensland or a port authority to appoint employees, such as contractors, who have the necessary skills and knowledge to undertake some functions of an authorised officer. This amendment will also improve monitoring and pollution response services within ports.

The regulation also incorporates some desirable minor amendments and administrative changes in accordance with current drafting and legislative practices. It also clarifies ambiguous sections of the regulation to improve compliance and better achieve the objectives of the legislation.

## **Consistency of the regulation with the policy objectives of the authorising law**

The regulation is consistent with the overall objectives outlined in section 3 of the Act and contributes to the provision of a system that protects Queensland's marine and coastal environment by minimising deliberate and negligent discharges of ship-sourced pollutants into coastal waters.

The objectives of the Act are generally met by placing obligations on ship owners and masters to meet standards for the prohibition and control of discharges of pollutants, provision of pollution control equipment and operating procedures, incident reporting, emergency response procedures and plans and the keeping of records of onboard operations.

## **Consistency with other legislation**

The regulation is part of a broader framework of State and Commonwealth legislation to protect Australia's marine environment from ship sourced pollution and meet Australia's agreed international obligations. In 1981, the Marine and Ports Council of Australia (later to become part of the Australian Transport Council) agreed that Australia should adopt Annex I (oil) and Annex II (noxious liquid substances) of MARPOL. This agreement was extended and by 2006 Australia had adopted all of the remaining annexes (packaged harmful substances, garbage, sewage and air pollution) of MARPOL.

To enable prompt ratification of MARPOL, all Australian jurisdictions have agreed to a model where Commonwealth legislation would initially apply to both Commonwealth and State waters and that the Commonwealth legislation would include a provision whereby the Commonwealth legislation would "roll-back" as the States progressively implement MARPOL in their own jurisdictions.

Consistency between Commonwealth maritime legislation and the legislative provisions of other Australian jurisdictions is being achieved through a national working group in which Maritime Safety Queensland participates. All Australian jurisdictions have agreed to adopt MARPOL and significant work is being undertaken to ensure timely and consistent implementation of MARPOL across all jurisdictions. The regulation is in accordance with the national direction for implementing MARPOL.

## **Fundamental Legislative Principles (FLPs)**

During drafting the Office of the Queensland Parliamentary Counsel identified provisions that may breach fundamental legislative principles. The following information identifies these provisions and provides an explanation:

Sections 15, 17, 35, 51, 52, 53, 55 and 56 may breach section 4(5)(c) (contains only matter appropriate to subordinate legislation) of the *Legislative Standards Act 1992*. The regulation contains numerous provisions prescribing a maximum penalty that is significantly higher than the 20 penalty units considered acceptable for subordinate legislation. The penalty regime reflects the regime under the expired regulation and in accordance with section 133 of the Act. This section allows for penalties of up to 350 penalty units for the contravention of a regulation.

The justification for these penalties is that Queensland's marine environment is of significant economic, environmental and cultural importance and the effects of ship sourced pollution can be severe. The majority of incidents that are prosecuted are a result of negligence or deliberate actions on the part of a polluter. Any reduction in the maximum penalty available may result in significant criticism from both the maritime industry and the wider community. As with all pollution offences, any penalty imposed by a court is not necessarily the maximum but takes into account the severity and circumstances of the discharge.

Maritime Safety Queensland considers it appropriate to establish high penalties to discourage ships from attempting to avoid compliance with the legislation. This is consistent with the international principle of the "polluter pays", the community's expectation for zero tolerance of marine pollution and the high penalties for marine pollution offences imposed by all other Australian jurisdictions.

Sections 13, 23, 25, 28, 29, 36, 37, 78 may breach section 4(3)(a) (makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review) of the *Legislative Standards Act 1992*. These sections allow ship owner's and masters to apply to the general manager to approve an activity or document or exempt a ship from a regulatory provision. Part 12 (General) of the regulation has been introduced to provide the administrative process for seeking the general manager's approval or exemption. Under part 12, the general manager has the discretion to approve or refuse an application. Subsequently, section 94 (Application to chief executive to review decision) and section 95 (Appropriate appeal court) of the regulation have been temporarily established to provide an initial administrative review of a decision and subsequent right of appeal to a court or tribunal which were not available under the expired regulation.

However, these provisions should be established under an Act. Maritime Safety Queensland is aware that these provisions may not be consistent with current legislative standards. Maritime Safety Queensland is committed to amending the Act at the first opportunity to establish appropriate appeal provisions consistent with the relevant provisions under the *Transport Operations (Marine Safety) Act 1994*. This will remove any potential breach of fundamental legislative principles.

## **Reasons for the regulation**

The regulation has regard to Australia's obligation to implement MARPOL and continues the State's commitment to protecting Queensland's coastal and marine environment from ship sourced pollutants.

The regulation is critical for providing guidance and flexibility to the maritime industry and boating community to achieve the objectives of the Act. The regulation also clarifies some areas of ambiguity and strengthens other areas of the regulation to deliver improved marine environmental protection outcomes.

The protection of the marine environment from ship sourced pollutants is in the interests of all stakeholders. Without regulation the protection of the marine environment would be at risk and could have adverse economic and social implications for the State which may impact on the fishing and tourism industries. The regulation will ensure the difficulties in securing compliance with the ship sourced sewage requirements do not continue to exist and contractors of Maritime Safety Queensland and port authorities can be appointed as authorised officers to improve monitoring and pollution response services throughout Queensland.

## **Consultation**

### ***Government***

The Departments of the Premier and Cabinet, Justice and Attorney-General and Queensland Treasury have been consulted. Additionally, Maritime Safety Queensland's enforcement partners the Department of Primary Industries and Fisheries (specifically, the Queensland Boating and Fishing Patrol) and the Queensland Police Service (Water Police) have been consulted on the regulation.

As the regulation is complementary to Commonwealth legislation, the Great Barrier Reef Marine Park Authority was consulted on the ship-sourced sewage provisions and the Australian Maritime Safety Authority was consulted on the implementation of MARPOL.

All government agencies consulted have agreed with the regulation.

### ***Industry***

Public consultation was conducted in accordance with Part 5 of the *Statutory Instruments Act 1992* and government guidelines. A regulatory impact statement was released for public consultation in January 2007. At

the request of Stakeholders, the period of public consultation was extended by one month to provide peak industry bodies and other stakeholder's additional time to make written submissions on the remake of the regulation and amendments.

Community consultation demonstrated overall support for the proposed regulation.

### **Results of consultation**

The outcome of public consultation was support for the remake of the regulation and amendments. A number of issues were raised during the consultation process which Maritime Safety Queensland considered during final drafting and are reflected in the regulation as follows:

- There was some concern over the costs associated with the introduction of testing of sewerage treatment systems for recreational ships, once in the first five years after installation and then every two years for the life of the system. Initially, Maritime Safety Queensland thought that it would cost recreational vessels up to \$500 to test their treatment systems. The testing industry subsequently advised that it will only cost ship owners approximately \$60 to \$165 for each test. Maritime Safety Queensland considers this cost to be reasonable given that ships with treatment systems onboard are allowed greater flexibility in terms of where sewage can be discharged and that the testing of treatment systems will ensure that they are performing effectively.
- It was identified that some Queensland ships (or ships operating in Queensland waters) have MARPOL approved treatment systems (from countries outside Australia) installed onboard. The MARPOL approved treatment systems do not comply with Queensland legislation as their 'system documentation' does not include a statement of system performance from an Australian independent testing entity. Maritime Safety Queensland acknowledged that it was unfair to penalise ship owners that have these systems installed on their ships and are genuinely trying to comply with Queensland requirements. The regulation recognises MARPOL approved treatment systems as equivalent to a Grade A sewage treatment systems.

Subsequent to public consultation Maritime Safety Queensland identified further changes which were required to ensure that the regulation remained consistent with the current text of MARPOL. These changes were:

- Minor amendments to references to MARPOL, definitions and the categorisation of noxious liquid substances;
- Amendments to the method of categorising noxious liquid substances and restrictions placed on the allowable discharges of noxious liquid substances; and
- Removing sections about ‘oil-like’ substances as MARPOL no longer provides any special discharge requirements for these types of pollutants.

No further public consultation is required as these changes do not pose an appreciable cost on stakeholders, government or the community and are part of an international convention, that is exempt from the preparation of a regulatory impact statement under section 46(1)(h) of the *Statutory Instruments Act 1992*.

## Notes on provisions

### Part 1 Preliminary

#### Short Title

Section 1 sets out the short title of the regulation as the *Transport Operations (Marine Pollution) Regulation 2008*.

#### Commencement

Section 2 provides that the regulation commences on 1 September 2008.

#### Definitions

Section 3 provides that the dictionary in schedule 9 defines particular words used in the regulation.



## **MARPOL**

Section 4 provides that the English text of MARPOL is set out in schedule 1 of the regulation, as required by section 6 of the Act. MARPOL is an internationally accepted convention for the protection of the marine environment, convened by the International Maritime Organisation and ratified by Australia. The convention aims to prevent and minimise pollution from ships including accidental pollution and pollution as a result of routine shipping operations. MARPOL is implemented in Queensland's coastal waters through the Act and regulation.

## **Part 2                      Oil**

Part 2 of the regulation gives effect to the relevant provisions in Annex I of MARPOL.

### **Division 1                      Purpose and interpretation**

#### **Purpose of pt 2**

Section 5 provides that the purpose of this part is to provide for matters for Part 4 (Prevention of pollution by oil) of the Act, including exempted discharges of oil, shipboard oil pollution emergency plans and oil record books. This section also provides that the offence provisions outlined in the Act do not apply to exempted discharges carried out in accordance with this part.

#### **Meaning of words and expressions in pt 2**

Section 6 provides clarification of the meaning of words and expressions used in this part and are consistent with part 4 of the Act. This section has been added in accordance with section 37 of the *Statutory Instruments Act 1992*.

## **Definitions for pt 2**

Section 7 relocates the definition of “tonnage measurement convention” in the expired regulation and inserts a definition for “gross tonnage” which is used in this part.

## **Division 2 Exemptions**

### **Subdivision 1 Oil tankers**

An oil tanker is a ship designed for the carriage of oil in bulk that is stored and carried in many tanks. Oil tankers load, transfer, unload and where exempted, discharge their cargo using piping systems and pumps onboard the ship.

The exempt discharge of unprocessed oily mixtures from oil tankers in the previous regulation has been removed in accordance with changes to MARPOL.

### **Definition for sdiv 1**

Section 8 relocates the definition for “Commonwealth prescribed” in the expired regulation which is used in this subdivision. All oil discharge monitoring and control systems, slop tank arrangements and oily water separating equipment are approved by Classification Societies when undertaking surveys on behalf of the Commonwealth under the *Navigation Act 1912*.

### **Conditions for discharge of oil other than oil from machinery spaces bilges**

Section 9 provides the conditions under which an oil tanker can discharge oil carried as cargo. The discharge of oil must not occur less than 50 nautical miles from land which means that there is little opportunity within Queensland coastal waters for oil tankers to carry out this discharge. Additionally, the ship must be underway, the discharge must be controlled by a Commonwealth prescribed oil discharge and monitoring system and the rate of discharge must not be more than 30 litres per nautical mile.

MARPOL permits the operational discharge of extremely small quantities of oil to facilitate operations onboard ships. The oil discharged will dissolve or disperse during the operation and is considered to have a minimal impact on the marine environment or marine resources.

Section 26 of the Act provides a maximum penalty of 3500 penalty units for failure to comply with the conditions for the exempted discharge of oil.

### **Conditions for discharge of oil from particular machinery space bilges**

Section 10 provides the conditions under which an oil tanker can discharge oil from machinery space bilges or engine room compartments. This discharge must not include any oils carried as cargo or cargo residues. The discharge of oil can be made while the ship is underway anywhere in Queensland coastal waters and must be controlled by Commonwealth prescribed oil filtering equipment. The oil content of the discharge must not be more than 15 parts in 1 million parts.

This operational discharge is permitted under MARPOL and contains extremely small quantities of oil which is dissolved or dispersed during discharge. The impact on the marine environment or marine resources is considered minimal.

Section 26 of the Act provides a maximum penalty of 3500 penalty units for failure to comply with the conditions for exempted discharge of oil.

## **Subdivision 2 Particular Ships of 400gt or more**

The exempted discharge of unprocessed oily mixtures from ships, other than oil tankers in the expired regulation has been removed in accordance with changes to MARPOL.

### **Application of sdiv 2**

Section 11 provides that this subdivision applies to ships of 400 gross tonnage or more, other than oil tankers which are dealt with in subdivision 1 of this part of the regulation.

## **Conditions for discharge of oil**

Section 12 provides the conditions under which a ship of 400 gross tonnage or more can discharge oil. The discharge of oil must be made while the ship is underway and can occur anywhere in Queensland coastal waters subject to conditions. The discharge must be controlled by Commonwealth prescribed oil filtering equipment and the oil content of the discharge must not be more than 15 parts in 1 million parts.

This operational discharge is permitted under MARPOL and contains extremely small quantities of oil which is dissolved or dispersed during discharge. The impact on the marine environment or marine resources is considered minimal.

Section 26 of the Act provides a maximum penalty of 3500 penalty units for failure to comply with the conditions for exempted discharge of oil.

## **Division 3                      Shipboard oil pollution emergency plan**

### **Shipboard oil pollution emergency plan**

Section 13 provides the requirements for the shipboard oil pollution emergency plan. Under section 30 of the Act all ships more than 24 metres in length overall and carrying oil as cargo or a vehicle carrying more than 400 litres of oil and all ships more than 35 metres in length overall, must develop a shipboard oil pollution emergency plan and maintain it onboard.

A shipboard oil pollution emergency plan is a contingency plan outlining the procedures to be followed on a specific ship in the event of a discharge or a probable discharge. This section requires the shipboard oil pollution emergency plan to include the procedures for notifying authorities of an incident involving the ship and detailed procedures of response action to be taken to minimise the impact of pollution discharged. The shipboard oil pollution emergency plan must be submitted to the general manager of Maritime Safety Queensland with a fee for approval.

A review of this section resulted in amendments requiring the shipboard oil pollution emergency plan to be in English in accordance with MARPOL.

Section 30 of the Act provides a maximum penalty of 850 penalty units for failure to have a shipboard oil pollution emergency plan onboard.

## **Division 4                      Oil record book**

### **Application of div 4**

Section 14 provides that this division applies to oil tankers of 150 gross tonnage or more, all ships of 400 gross tonnage or more and all ships of 150 gross tonnage or more that carry 400 litres or more of oil in a portable tank.

### **Oil record book must be carried on ship or retained**

Section 15 provides that the ships identified in section 15 of the regulation are required to carry a current oil record book onboard and retain previous oil record books for inspection by an authorised officer at all times.

This section has been amended to remove the requirement that previous oil record books are to be kept at a registered office or with Maritime Safety Queensland for 2 years. In accordance with MARPOL oil record books must now be preserved for 3 years onboard the ship.

This section also provides a maximum penalty of 350 penalty units for the failure to have oil record books onboard and available for inspection.

### **Form of oil record book**

Section 16 provides that the oil record book must be in the format outlined in appendix 3 of Annex I of MARPOL and must make provisions for each entry to be signed by the responsible officer on the ship. The full English text of MARPOL is provided in schedule 1 of the regulation.

### **Entries in oil record book**

Section 17 provides that for an event or operation outlined in schedule 2 of the regulation, the ship's master is required to make an entry in the oil record book in English to be signed by the officer or person in charge of the operation or in control of the event. This records all operations involving transfers, exempted discharges, failure of the ship's oil discharge monitoring and control systems and any events which resulted in a discharge or probable discharge.

This section also provides a maximum penalty of 350 penalty units for failure to make and sign entries about recordable operations and events in an oil record book.

## **Part 3                      Noxious Liquid Substances in bulk**

This part gives effect to the relevant regulations in Annex II of MARPOL. Noxious liquid substances are defined by MARPOL as substances that are harmful to human health or marine resources if discharged into the marine environment. MARPOL separates noxious liquid substances into four categories for the purposes of prohibiting or restricting the discharge of these substances. Consistent with the new edition of MARPOL the categorisation of these substances has changed from A, B, C and D substances to X, Y, Z and other substances. Additionally, an extract from the *International Bulk Chemicals Code* is provided in schedules 3 of the regulation to support the provisions in this part.

### **Division 1                      Purpose and interpretation**

#### **Purpose of pt 3**

Section 18 provides that the purpose of the part is to provide for matters for part 5 (Prevention of pollution by noxious liquid substances) of the Act, including exempted discharges of noxious liquid substances and cargo record books. This section also provides that the offence provisions outlined in the Act do not apply to exempted discharges carried out in accordance with this part.

#### **Meaning of words and expressions in pt3**

Section 19 provides clarification of the meaning of words and expressions used in this part and consistent with part 5 of the Act. This section has been added in accordance with section 37 of the *Statutory Instruments Act 1992*.

### **Definition for pt 3**

Section 20 inserts a definition of “authorised officer” which is used in this part.

## **Division 2 Exemptions**

### **Subdivision 1 Category X substances**

MARPOL defines category X substances as liquid substances that present a major hazard to human health and the marine environment and justify the prohibition of the discharge into the marine environment. Examples of category X substances are turpentine and alkanes.

### **Definition for sdiv 1**

Section 21 inserts a definition of “tank” which is used in this subdivision.

### **Discharge of water involving category X substances is exempt**

Section 22 provides the conditions under which a ship can discharge water involving a category X substance. A discharge is permissible if the tank that held the category X substance has been washed and the resulting residues have been discharged to a waste reception facility until the concentration of the category X substance is less than the level declared in section 26 of the regulation. Once the tank is empty the remaining residues must be diluted by water and the discharge must be made in accordance with the other conditions in section 31 of the regulation. Specifically, the ship must be underway, at least 12 nautical miles from the nearest land and the discharge made below the waterline of the ship.

MARPOL permits the operational discharge of extremely small quantities of noxious liquid substances to facilitate tank cleaning and deballasting operations in all ships. This would involve a small quantity of a category X substance which will be further diluted or dissolved during discharge and will have a minimal impact on the marine environment and marine resources.

Section 35 of the Act provides a maximum penalty of 3500 penalty units for failure to comply with the conditions for exempted discharges of noxious liquid substances.

### **Tank washing required for category X substances**

Section 23 provides that a ship must wash a tank that has carried a category X substance before the ship leaves the port of unloading to allow for the safe loading of a new cargo.

If the ship's master applies in the approved form to the general manager, the general manager may exempt a ship from this requirement if the tank is being loaded with the same substance or another compatible substance, the ship will not wash or ballast at sea and an alternative washing procedure will be carried out at another port or the ship will use an alternative washing or ventilation procedure based on the standard in Appendix 7, Annex II of MARPOL. The full English text of MARPOL is provided in schedule 1 of the regulation.

If the ground for the application is that an alternative washing procedure will be carried out at another port the application must include information in writing confirming that the other port has appropriate waste reception facilities to complete the tank washing in accordance with standards outlined in MARPOL.

### **Approved tank washing procedure**

Section 24 provides the approved tank washing procedure for tanks that have held a category X substance in support of section 23(1) of the regulation. Tank washing must be carried out under the supervision of an authorised officer and the resulting residues must be transferred to a waste reception facility until analyses of samples, indicates that the residual concentration of the category X substance is less than the level declared in section 26 of the regulation. Washing can then cease, the tank must be emptied and then discharged to a waste reception facility. Once the procedure is completed the authorised officer must sign an entry in the cargo record book to complete the tank washing procedure.



## **Alternative tank washing procedure**

Section 25 enables a ship's master to make an application in the approved form to the general manager of Maritime Safety Queensland to approve an alternative tank washing procedure if it is impracticable to measure the residual concentration of the category X substance without causing delay to the movement of the ship. The requested alternative procedure must include a pre-wash equivalent to the procedure in section 24 of the regulation and be based on the standard in Appendix 6, Annex II of MARPOL. The full English text of MARPOL is provided in schedule 1 of the regulation.

If approved, an authorised officer must sign an entry in the cargo record book that the pre-wash has been completed, the tank and all pumping and piping systems have been emptied and the tank washings have been discharged to a waste reception facility.

## **Declaration about residual concentration**

Section 26 outlines the declaration required under section 133(3)(f) of the Act about the residual concentration for a category X substance. A ship that has carried a category X substance as cargo must have a residual concentration of less than 0.1% by weight for the tank washing procedure to be considered complete.

## **Subdivision 2      Category Y substances and category Z substances**

Category Y substances are liquid substances that present a hazard to human health and the marine environment and justify the limitation on the quality and quantity of the discharge into the marine environment. Examples of category Y substances are alcohols and sunflower seed oil. Category Z substances are liquid substances that present a minor hazard to human health and the marine environment and justify less stringent restrictions on the quality and quantity of the discharge into the marine environment. Examples of category Z substances are citric acid and lactic acid.

### **Discharge of water involving category Y substances or category Z substances is exempt**

Section 27 provides the conditions under which a ship can discharge a category Y or category Z substance. A discharge is permissible if the ship has unloaded in accordance with the ship's procedures and arrangements manual or has been washed in accordance with section 28 of the regulation. The discharge must not be more than 10 parts in 1,000,000 parts and must be made in accordance with the other conditions in section 31 of the regulation. Specifically, the ship must be underway and at least 12 nautical miles from the nearest land and the discharge is made below the waterline of the ship.

MARPOL permits the operational discharge of extremely small quantities of noxious liquid substances to facilitate tank cleaning and deballasting operations in all ships. This would involve a small quantity of a category Y or category Z substance which will be further diluted or dissolved during discharge and will have a minimal impact on the marine environment and marine resources.

This section also provides for the master of a Queensland registered ship carrying a category Z substance on a voyage within Queensland to make an application in the approved form to the general manager of Maritime Safety Queensland to exempt the ship from the requirement in section 32(c) of the regulation. This allows the exempted ship to carry out the discharge less than 12 nautical miles from the nearest land.

Section 35 of the Act provides a maximum penalty of 3500 penalty units for failure to comply with the conditions for exempted discharges of noxious liquid substances.

### **Tank washing required for category Y substances or category Z substances**

Section 28 provides that a ship that has not carried out unloading of a tank that has held a category Y or Z substance in accordance with the ship's procedures and arrangements manual the tank must be washed before the ship leaves the port of unloading to allow for the safe loading of a new cargo.

If the ship's master applies in the approved form to the general manager, the general manager may exempt a ship from this requirement if the tank is being loaded with the same substance or another compatible substance, the

ship will not wash or ballast at sea and an alternative washing procedure will be carried out at another port or the ship will use an alternative washing or ventilation procedure based on the standard in Appendix 7, Annex II of MARPOL. The full English text of MARPOL is provided in schedule 1 of the regulation.

### **Approved prewash procedure**

Section 29 provides the approved prewashing procedure for tanks that have held a category Y or Z substance in support of section 28(1) of the regulation. Tank prewashing must be carried out in accordance with the standards developed by MARPOL. Standard prewash procedures considered appropriate for the purposes of the regulation can be found in Annex II, Appendix 6 of MARPOL. The full English text of MARPOL is provided in schedule 1 of the regulation. All residues as a result of the prewash procedure must be discharged to a waste reception facility.

### **Prewash procedure at another port**

Section 30 provides that if the ship's master make application for exemption under section 28(2)(b) of the regulation to carry out an alternative prewashing procedure at another port, the application must include information in writing, confirming that the other port has appropriate waste reception facilities available to complete the tank washing in accordance with standards outlined in MARPOL.

## **Subdivision 3      Other conditions applying to all discharges**

### **Other conditions applying to all discharges**

Section 31 provides that all permissible discharges of noxious liquid substances under sections 22 and 27 of the regulation must be made when the ship is underway; at a speed of at least 7 nautical miles for a self propelled ship or 4 nautical miles if the ship is not self propelled; the ship is at least 12 nautical miles from the nearest land and the discharge is made below the waterline of the ship and in at least 25 metres of water.

## **Division 3                      Cargo record book**

### **Application of div 3**

Section 32 inserts a new provision and provides that this division applies to a trading ship on an intrastate voyage carrying liquid substances in bulk. A trading ship is defined as a commercial ship, other than a ship registered by the Commonwealth Government or any fishing vessel, which is used principally for the carriage of passengers or cargo, for hire or reward.

### **Cargo record book must be carried on ship or retained**

Section 33 provides that the ships specified in section 32 of the regulation must carry a current cargo record book onboard and retain previous cargo records books for inspection by an authorised officer at all times.

This section has been amended to remove the requirement that cargo record books are to be kept at a registered office or with Maritime Safety Queensland for 2 years. In accordance with MARPOL cargo record books must now be preserved for 3 years onboard the ship.

This section also provides a maximum penalty of 350 penalty units for failure to have cargo record books onboard and available for inspection.

### **Form of cargo record book**

Section 34 provides that the cargo record book must be in the format outlined in appendix 2, Annex II of MARPOL and must make provisions for each entry to be signed by the responsible officer on the ship. The full English text of MARPOL is provided at schedule 1 of the regulation.

### **Entries in cargo record book**

Section 35 provides that for certain operations and events outlined in schedule 2 of the regulation, the ship's master is required to make an entry without delay in the cargo record book in English and the entry must be signed by the officer or person in charge of the operation or in control of the event. The ship's master must also sign each completed page of the cargo record book.

The cargo record book records all operations for the particular ship which involve the transfer and exempted discharges of noxious liquid substances, pre-washes, tank washing, ballasting and any events which resulted in a discharge or probable discharge of noxious liquid substances in contravention of the legislation.

This section also provides a maximum penalty of 350 penalty units for failure to make and sign entries about recordable operations and events in a cargo record book.

## **Division 4                      Other matters**

### **Carriage requirements of particular ships**

Section 36 provides that if ship's owner applies in the approved form to the general manager, the general manager may modify or delay for a stated period of time an amendment to Annex II of MARPOL or the *International Bulk Chemical Code* which requires changes to the structure, equipment or fittings of a ship constructed before the amendment came into force. The general manager will only consider applications where the ship cannot reasonably or practically comply with the amendment because of the ship's design, the cargo carried or the area in which the ship operates.

This section also provides that if a ship is certified to carry individually identified vegetable oils defined in chapter 17 of the *International Bulk Chemical Code*, and the ship's master applies in the approved form, the general manager may exempt the ship from the carriage requirements in accordance with regulation 11, Annex II of MARPOL. The text of chapter 17 of the *International Bulk Chemical Code* is provided in schedule 3 of the regulation.

### **Equipment at least equivalent to Annex II equipment may be used in ship**

Section 37 provides that if a ship's owner applies in the approved form, the general manager of Maritime Safety Queensland may allow a fitting, material, appliance or apparatus to be fitted to a ship to comply with the Act and regulation as long as the variation is as effective as the equipment originally specified in Annex II of MARPOL.

## **Part 4                      Packaged harmful substances**

### **Purpose of pt 4**

Section 38 provides that the purpose of this part is to provide for matters for part 6 (Prevention of pollution by packaged harmful substances) of the Act, including procedures for washing leakages of packaged harmful substances overboard.

### **Meaning of words and expressions in pt 4**

Section 39 provides clarification of the meaning of words and expressions used in this part and consistent with part 6 of the Act. This section has been inserted in accordance with section 37 of the *Statutory Instruments Act 1992*.

### **Procedures for washing leakages overboard**

Section 40 provides that the appropriate procedures for exempted discharges of packaged harmful substances are those relevant for the leakage and provided under chapter 7.3 of the *International Maritime Dangerous Goods Code*.

## **Part 5                      Sewage Management**

### **Division 1                      Purpose and interpretation**

#### **Purpose of pt 5**

Section 41 provides that the purpose of this part is to provide for matters for part 7 (Prevention of pollution by sewage) of the Act, including nil discharge waters for treated and untreated sewage, shipboard sewage management plans, sewage disposal record books, macerators and treatment systems.

## **Meaning of words and expressions in pt 5**

Section 42 provides clarification of the meaning of words and expressions used in this part and consistent with part 7 of the Act. This section has been inserted in accordance with section 37 of the *Statutory Instruments Act 1992*.

## **Definitions for pt 5**

Section 43 relocates definitions for “disposal facility” from the expired regulation and inserts new definitions for “fixed toilet” and “macerator” which are used in this part.

## **Division 2**

## **Discharge of sewage**

### **Subdivision 1**

### **Discharge of sewage from ships generally**

#### **Nil discharge waters for untreated sewage—Act, s 47**

Section 44 provides that the nil discharge waters for untreated sewage for all ships with a fixed toilet onboard, other than a declared ship (see section 46 of the regulation) are outlined in schedule 4 of the regulation. Untreated sewage is defined in the Act as any sewage which has not been treated in a treatment system. Nil discharge waters for untreated sewage are intended to circumvent potential environmental problems, health risks, and undesirable amenity impacts while providing a high level of protection for food producers and environmentally sensitive areas.

This section establishes a phased commencement of more stringent conditions for the discharge of untreated sewage to allow ship owners and operators time to take necessary actions to comply.

Currently, and until 31 December 2009, untreated sewage cannot be discharged into prohibited discharge waters (which include boat harbours, canals and marinas), designated areas (environmentally sensitive areas) which are outlined in schedule 8 of the regulation and smooth waters as defined under the *Transport Operations (Marine Safety) Regulation 2004*. Untreated sewage also cannot be discharged in the vicinity of aquaculture fisheries resources or a reef. If the ship has 16 or more people onboard an

additional condition applies and untreated sewage cannot be discharged within a distance of the mean low water mark of an island or the mainland.

From the 1 January 2010 a ship that has 16 or more people onboard will not be permitted to discharge untreated sewage anywhere in Queensland coastal waters. A ship with 7 to 15 people onboard will not be permitted to discharge untreated sewage within a distance of the mean low water mark of an island or the mainland.

This section has been updated to remove conditions for the discharge of treated sewage which have expired with the phased commencement of sewage legislation. Section 47 of the Act provides a maximum penalty of 850 penalty units for the discharge of untreated sewage in nil discharge waters.

### **Nil discharge waters for treated sewage—Act, s 48**

Section 45 provides that the nil discharge waters for treated sewage for all ships with a fixed toilet onboard, other than a declared ship (see section 46 of the regulation) are outlined in schedule 5 of the regulation. Treated sewage is defined in the Act as sewage that has been treated in a treatment system and meets the standards prescribed for sewage quality characteristics which are outlined in schedule 7 of the regulation.

The use of treatment systems significantly reduces the levels of harmful bacteria in sewage and once discharged from a treatment system has a minimal environmental and human health risk. As a result, the regulation provides incentives to ship owners to install treatment systems by providing less stringent conditions for the discharge of treated sewage. Nil discharge waters for treated sewage are intended to circumvent potential environmental and health risks and provide a high level of protection for food producers and environmentally sensitive areas.

Treated sewage cannot be discharged into prohibited discharge waters (which include boat harbours, canals and marinas) and designated areas (environmentally sensitive areas) outlined in schedule 8 of the regulation. Ships also cannot discharge grade B treated sewage 700 metres or Grade C treated sewage 926 metres from people in the water, aquaculture fisheries resources or a reef.

This section has been updated to remove conditions for the discharge of treated sewage which have expired with the phased commencement of sewage legislation. Section 48 of the Act provides a maximum penalty of



850 penalty units for the discharge of treated sewage in nil discharge waters.

## **Subdivision 2      Discharge of sewage from declared ships**

### **Declaration about declared ship—Act, s 49**

Section 46 provides that a declared ship, for the purposes of the Act and this subdivision, is any ship with a fixed toilet onboard and registered as a 1B, 1C, 1D, 1E or 1F category ship under the *Transport Operations (Marine Safety) Regulation 2004*. More stringent discharge requirements are placed on declared ships as they are certified to carry more than 12 people and pose a significant sewage pollution risk because of their ability to generate significant quantities of sewage in comparison to other ships.

### **Nil discharge waters for treated sewage or untreated sewage—Act, s 49**

Section 47 provides that the nil discharge waters for treated and untreated sewage from declared ships are outlined in schedule 6 of the regulation.

This section provides for the phased commencement of more stringent discharge conditions to enable owners and operators of declared ships time to take necessary actions to comply with the new discharge conditions for treated and untreated sewage.

Currently, and until 31 December 2009, untreated or treated sewage from declared ships cannot be discharged into prohibited discharge waters (which include boat harbours, canals and marinas), designated areas (environmentally sensitive areas), smooth waters, Hervey Bay waters, northern Moreton Bay waters and in the vicinity of aquaculture fisheries resources, a reef, wharf or jetty. If the declared ship has 16 or more people onboard additional conditions apply and untreated sewage cannot be discharged within a prescribed distance of the mean low water mark of an island or the mainland. Grade B and C treated sewage cannot be discharged in the vicinity of people in the water, aquaculture fisheries resources or a reef. There are no additional conditions on the discharge of grade A treated sewage.

From the 1 January 2010, a declared ship that has 16 or more people onboard will not be permitted to discharge untreated sewage anywhere in Queensland coastal waters. A declared ship with 7 to 15 people onboard will not be permitted to discharge untreated sewage within a distance of the mean low water mark of an island or the mainland.

This section has been updated to remove conditions for the discharge of treated sewage which have expired with the phased commencement of the sewage legislation. Section 49 of the Act provides a maximum penalty of 850 penalty units for the discharge of untreated or treated sewage from a declared ship in nil discharge waters.

## **Division 3                      Shipboard sewage management plan**

### **Declaration about ships—Act, s 51**

Section 48 provides that a declared ship, for the purposes of the Act and this division, is any ship with a fixed toilet onboard and registered as a 1B, 1C, 1D, 1E or 1F category ship under the *Transport Operations (Marine Safety) Regulation 2004*.

### **Minimum requirements for shipboard sewage management plan**

Section 49 provides the requirements for the shipboard sewage management plan which must be in English and maintained by all declared ships.

The plan must include the details of the declared ship, the procedures for the management of shipboard sewage and prevention of unlawful discharges, identify Queensland waters where the declared ship may lawfully discharge treated or untreated sewage, the equipment the declared ship has onboard to hold or treat sewage, the operating and maintenance instructions for the equipment and a maintenance program for the equipment.

Section 51 of the Act provides a maximum penalty of 850 penalty units for failure to have a shipboard sewage management plan onboard the declared ship.

## **Division 4                      Sewage disposal record book**

### **Application of div 4**

Section 50 provides that only declared ships are required to carry and maintain a sewage disposal record book for the purposes of the Act and this division.

### **Sewage disposal record book must be carried onboard or retained**

Section 51 provides that declared ships must carry a current sewage record book and retain previous sewage record books for inspection by authorised officers at all times. A sewage disposal record book is a register containing entries about sewage discharged into a disposal facility.

This section has been amended to remove the requirement that sewage record books are to be kept at a registered office or with Maritime Safety Queensland for 2 years. Consistent with requirements for oil and cargo record books, sewage records books must now be preserved for 3 years onboard the ship. This section also provides a maximum penalty of 350 penalty units for failure to keep the sewage record book onboard and available for inspection.

### **Entries in sewage disposal record book**

Section 52 provides that each time sewage is discharged from a declared ship's sewage holding device to a land based waste reception facility; an entry must be made in the sewage disposal record book. Each entry in the sewage disposal record book must state the date, time, place and volume of the discharge in litres, be in English and signed by the ship's master or person in control of the discharge.

This section also provides a maximum penalty of 350 penalty units for failure to make entries in the sewage record book.

## **Division 5                      Particular ships to be fitted with macerator**

### **Ship must be fitted with macerator**

Section 53 provides that all ships with a fixed toilet onboard in Queensland coastal waters, including the nil discharge waters for section 47 to 49 of the Act must have a macerator fitted and ensure that sewage is unable to bypass the macerator. A fixed toilet is defined under section 44 of the regulation, “as a toilet fixed permanently onboard the ship and does not include a portable toilet device”.

An exemption for this requirement is provided for declared ships which only operate in nil discharge waters for section 49 of the Act and discharge sewage to a waste reception facility.

The expired regulation required all ships with a fixed toilet to macerate sewage before sewage was discharged in accordance with discharge requirements, but there was no offence provision for not having a macerator onboard or sewage by-passing the macerator. This section has been amended to provide these offences.

This section now provides a maximum penalty of 350 penalty units for failure to have a macerator onboard and sewage by-passing the macerator.

## **Division 6                      Treatment systems and documents about treatment systems**

### **Definitions for div 6**

Section 54 relocates definitions from other sections of the expired regulation and has been added to provide definitions for “analyses”, “independent testing entity”, “NATA”, “system documentation” and “system service manual” which are used in this part.

This section also provides that if a ship’s owner applies in the approved form to the general manager, the general manager may approve treatment system documentation onboard the ship as equivalent to the documentation that would have been provided by the treatment system’s manufacturer or supplier.

## **Maintenance and assessment of treatment system for ships**

Section 55 provides that all ships with sewage treatment systems onboard and operating in Queensland coastal waters must ensure that the treatment system is maintained and assessed regularly to ensure it continues to perform according to the system specifications.

To achieve this, treatment systems are required to be assessed by an independent testing entity analysing the sewage after it has been treated in the system to ensure that the levels of sewage quality characteristics remaining in the sewage after treatment are not more than the levels for the grade of treated sewage stated in schedule 7 of the regulation.

For a declared ship the treatment system must be assessed at least annually for the first two years and every two years for the remaining life of the treatment system. All other ships must also assess their treatment system at least once in the first five years and then every two years for the remaining life of the treatment system.

Additionally, this section provides that the treatment system must be maintained in accordance with the intervals prescribed in the treatment system service manual, which is provided by the manufacturer or supplier.

This section provides a maximum penalty of 350 penalty units for failure to maintain and assess sewage treatment systems as required under the regulation.

## **Documents to be kept onboard ship fitted with treatment system**

Section 56 provides that all ships with sewage treatment systems onboard and operating in Queensland coastal waters must ensure that the treatment system documentation and treatment system service manual are kept onboard. This section also provides that the ship's owner and master must keep written service records for the treatment system and onboard the ship and ensure the service records are available for inspection at all reasonable times.

This section provides a maximum penalty of 350 penalty units for failure to keep onboard sewage treatment system documentation, the treatment system service manual and written service records for the treatment system.

## **Levels of sewage quality characteristics for treated sewage**

Section 57 provides that the levels of sewage quality characteristics for treated sewage are stated in schedule 7 of the regulation. Sewage quality characteristics ensure the harmful substances are treated to a level specified by the regulation to provide enhanced protection to human health and marine resources.

## **Standard with which treatment system must conform**

Section 58 provides that a treatment system onboard a ship in Queensland coastal waters must conform to the standard outlined in the regulation. All treatment systems must include system documentation, a comprehensive and a durable system service manual, durable label attached to the treatment system stating the manufacturer's name, address, the type and model number of the treatment system. The treatment system must be installed in accordance with the manufacturer's instructions.

All treatment systems must be fitted with an indicator to advise the ship's master if the treatment system is malfunctioning under section 51B of the Act and must be fitted with a macerator to ensure the sewage is macerated before being treated in the treatment system.

## **Part 6                      Garbage**

### **Purpose of pt 6**

Section 59 provides that the purpose of this part is to provide for matters for part 8 (Prevention of pollution by garbage) of the Act, including exempted discharges of garbage.

### **Meaning of words and expressions in pt 6**

Section 60 provides clarification of the meaning of words and expressions used in this part and consistent with part 8 of the Act. This section has been inserted in accordance with section 37 of the *Statutory Instruments Act 1992*.

## **Definitions for pt 6**

Section 61 relocates the definition for “food wastes” from the expired regulation and inserts a definition for “relevant platform” which is used in this part.

## **Exempted disposals—Act, s 57**

Section 62 provides that exemptions for the disposal of garbage provided under section 57 of the Act are outlined in this part.

## **Disposal of waste other than garbage mentioned in s 64 or 65**

Section 63 provides the conditions under which garbage, other than plastics or garbage identified in sections 64 and 65 of the regulation, can be discharged. The discharge of garbage must not be made alongside or within 500 metres of a relevant platform and must be made more than 12 nautical miles from the nearest land or 3 nautical miles from the nearest land if the garbage is passed through a grinder which reduces the garbage to particles no bigger than 25 millimetres.

As a result of these conditions, there is little opportunity for ships to make permissible discharges of garbage in Queensland coastal waters. MARPOL permits the operational discharge of extremely small quantities of non-persistent garbage to facilitate operations onboard ships. These discharges are considered to have minimal impact on the marine environment or marine resources.

Section 55 of the Act provides a maximum penalty of 3500 penalty units for failure to comply with allowable discharges of garbage.

## **Disposal of floating dunnage, lining or packing materials**

Section 64 provides the conditions where floating dunnage can be discharged. Floating dunnage is material placed amongst cargo to prevent damage from wetting or chafing and is mostly made up from timber, matting and other lining or packing materials. No plastic dunnage can be discharged. The discharge of floating dunnage must not be made alongside or within 500 metres of a relevant platform and must be made more than 25 nautical miles from the nearest land.

As a result of these conditions, there is little opportunity for ships to make permissible discharges of garbage in Queensland coastal waters. MARPOL permits the operational discharge of extremely small quantities of non-persistent garbage to facilitate operations onboard ships. These discharges are considered to have minimal impact on the marine environment or marine resources.

Section 55 of the Act provides a maximum penalty of 3500 penalty units for failure to comply with allowable discharges of garbage.

### **Disposal of food wastes**

Section 65 provides the conditions where food wastes can be discharged. Food wastes are defined as spoiled or unspoiled victual substances generated in the normal operation of the ship and include fruits, vegetables, dairy products, meat products, food particles and scraps. The discharge of food wastes must not be made alongside or within 500 metres of a relevant platform and must be made more than 12 nautical miles from the nearest land or 3 nautical miles from the nearest land if the garbage is passed through a grinder which reduces the garbage to particles no bigger than 25 millimetres.

As a result of these conditions, there is little opportunity for ships to make permissible discharges of garbage in Queensland coastal waters. MARPOL permits the operational discharge of extremely small quantities of non-persistent garbage to facilitate operations onboard ships. These discharges are considered to have minimal impact on the marine environment or marine resources.

Section 55 of the Act provides a maximum penalty of 3500 penalty units for failure to comply with allowable discharges of garbage.

### **Disposal of food wastes for fish feeding**

Section 66 provides that small quantities of food wastes can be disposed of for fishing or tourist operations. MARPOL exempts these discharges and for the purposes of the regulation these discharges are not defined as garbage.

Fish feeding is important to Queensland's fishing and tourism industries which contribute significantly to the State's economy. To manage the impact on the marine environment and marine resources, the Great Barrier



Reef Marine Park Authority or the Environmental Protection Agency monitor and issue permits for these activities.

### **Disposal of garbage mixed with matter prohibited from discharge or jettisoning**

Section 67 provides that a ship discharging garbage mixed with any other pollutants identified under the regulation (oil, noxious liquid substances and sewage) must consider and comply with the prohibitions or conditions for all the pollutants in the discharge. For example, food wastes mixed with oil is prohibited from discharge into Queensland coastal waters, because oil cannot lawfully be discharged.

## **Part 7                      Transfer operations**

### **Purpose of pt 7**

Section 68 provides that the purpose of this part is to provide for matters in part 9 (Transfer operations) of the Act, including transfer operations involving oil or noxious liquid substances.

### **Meaning of words and expressions in pt 7**

Section 69 provides clarification of the meaning of words and expressions used in this part are consistent with part 9 of the Act. This section has been inserted in accordance with section 37 of the *Statutory Instruments Act 1992*.

### **Keeping of records**

Section 70 provides that a ship owner, master or the occupier of a place to or from which a pollutant is transferred must keep a record of the transfer to comply with section 65 of the Act. If the transfer involves oil, the records must be kept in the oil record book and completed in accordance with Part 2, Division 4 of the regulation. If the transfer involves noxious liquid substances, the records must be kept in the cargo record book and completed in accordance with Part 3, Division 3 of the regulation. The

information about what records must be kept is provided in schedule 2 of the regulation.

Section 65 of the Act provides a maximum penalty of 350 penalty units for failure to keep records required by the Act and Regulation.

## **Part 8 Reporting requirements**

### **Purpose of pt 8**

Section 71 provides that the purpose of this part is to provide for matters in Part 11 (Reporting Requirements) of the Act, including reporting requirements for any discharge or probable discharge of oil or noxious liquid substances, untreated and treated sewage discharges in prescribed nil discharge waters or the jettisoning of packaged harmful substances.

### **Meaning of words and expressions in pt 8**

Section 72 provides that for the meaning of words and expressions used in this part, the provisions of part 11 of the Act are the relevant provisions. This section has been inserted in accordance with section 37 of the *Statutory Instruments Act 1992*.

### **Way to notify of reportable incidents**

Section 73 provides the ways in which a ship's master must notify an authorised officer of a reportable incident. Any reportable incident can be communicated by email, fax, radio, telephone or telex to any Maritime Safety Queensland vessel traffic service centre, regional office or to the Australian Search and Rescue centre operated by the Australian Maritime Safety Authority in Canberra.

This section also provides that the notice known as a "Pollution Report" must start with the word "POLREP" and contain the name of the ship, its flag or registry, call sign, size and type of ship, date and time of the incident, the ship's position, the prevailing weather conditions, the course and speed of the ship, information on any damage to the ship and information on the type and extent of the discharge.

## **Report about reportable incident**

Section 74 provides that if an authorised officer asks for a report about a reportable incident, a discharge or a probable discharge of a pollutant, then the report must be provided within 48 hours and must include the particulars of the incident including the information outlined in section 73 of the regulation.

## **Part 9 Insurance**

### **Division 1 Preliminary**

#### **Purpose of pt 9**

Section 75 provides that the purpose of this part is to provide for matters in part 11A (Insurance) of the Act, including the ship insurance limits for pollution clean up, salvage and wreck removal.

### **Division 2 General**

#### **Limits applying for Act, s 67A(2)**

Section 76 provides the limits of insurance for pollution clean up, wreck removal and salvage which the owner of a ship more than 15 metres in length overall must have to comply with section 67A(2) of the Act.

All recreational ships more than 15 metres in length overall but less than 35 metres in length overall must have an insurance policy that is sufficient to pay \$250,000 for the clean up costs of the discharge of a pollutant from the ship and \$10,000,000 for the costs of salvage or removal of the ship from Queensland coastal waters if it is abandoned or wrecked.

All commercial or fishing ship more than 15 metres in length overall but less than 35 metres in length overall must have an insurance policy that is sufficient to pay \$500,000 for the clean up costs of the discharge of a pollutant from the ship and \$10,000,000 for the costs of salvage or removal of the ship from Queensland coastal waters if it is abandoned or wrecked.

All ships 35 metres in length overall or more must have an insurance policy that is sufficient to pay \$10,000,000 for the clean up costs of the discharge of a pollutant from the ship and the costs of salvage or removal of the ship from Queensland coastal waters if it is abandoned or wrecked.

Section 67A of the Act provides a maximum penalty of 850 penalty units for failure to have appropriate insurance for pollution clean up, salvage and wreck removal.

### **Copy of certificate of insurance etc. to be kept onboard**

Section 77 provides that all ships more than 15 metres in length overall must keep onboard the ship the certificate of insurance for the insurance policy required for that particular ship or another document that proves that the ship has current insurance in accordance with section 67A of the Act and section 78 of the regulation.

This section provides a maximum penalty of 20 penalty units for failure to keep a copy of the certificate of insurance onboard.

## **Division 3                      Exemption**

### **Application for exemption under Act, s 67A(4)**

Section 78 provides that if an insurance policy required under section 67A of the Act could not be reasonably obtained or kept in force, a ship owner may seek an exemption from the general manager of Maritime Safety Queensland for that particular ship.

A ship's owner may apply for an exemption from section 67A of the Act in the approved form and provide the following information:

- a signed declaration that discharge expenses in relation to a discharge or likely discharge of pollutants are payable to the State by the owner and the master;
- written report and a photograph of the ship from an accredited marine surveyor (as defined under the *Transport Operations (Marine Safety) Act 1994*) confirming that the ship is seaworthy;
- risk management plan for the particular ship which is designed to prevent or minimise the discharge of pollutants into coastal waters.

The risk management plan must set out the procedures to be followed to prevent or minimise the risk of a discharge, the maintenance procedures to ensure the ship is in good repair and proper working order, the action to be taken to prevent or minimise a discharge and the procedures to ensure that all masters and crew are familiar with the risk management plan;

- written evidence of the owner's inability to reasonably obtain or keep in force an insurance policy under section 67A of the Act.

If a discharge does occur from a ship that has been granted an exemption from 67A of the Act, then the ship's owner and master are still liable for the payment of discharge expenses under section 115 of the Act.

## **Part 10**                      **Investigation, prevention and minimisation, and enforcement**

### **Purpose of pt 10**

Section 79 provides that the purpose of this part is to provide for matters in part 12 (Investigation, prevention and minimisation and enforcement) of the Act, including appointment of authorised officers, procedures for sampling and compensation for loss or expenses.

### **Authorised officers**

Section 80 provides that the General Manager of Maritime Safety Queensland can appoint authorised officers from outside the public service and that these authorised officers may be appointed from the Australian Maritime Safety Authority, Commonwealth Department of Infrastructure, Transport Regional Development and Local Government, Great Barrier Reef Marine Park Authority, a marine authority, port authority or environmental authority of another State or a police officer.

An amendment has been made to this section allowing the appointment of an employee of an entity that has entered into an agreement with Maritime Safety Queensland or a port authority as an authorised officer. This will allow entities that have entered into an agreement to provide services in relation to pollution monitoring and response to be appointed as authorised

officers. These authorised officers will be given the appropriate powers under the legislation to allow them to carry out the duties of their employment.

### **Taking samples of any pollutant, substance or thing in or on the ship or place**

Section 81 provides that when an authorised officer takes a sample of any pollutant, substance or thing under section 81 of the Act, the sample/s must be securely delivered for analysis without delay. Preferably, the sample/s should be delivered in person by the authorised officer. However, as the analysis of sample/s is undertaken in Brisbane or Melbourne it may not be practical for the authorised officer to deliver the sample/s in person.

In these circumstances the sample/s must be delivered using a secure courier which will maintain the continuity of the sample from collection from the authorised officer to delivery to the appointed analyst. Maritime Safety Queensland will approve the use of a security courier to ensure the integrity of the sample/s is not compromised. For each change of possession of the sample/s, an entry must be made in the approved form accompanying the sample/s, until the analyst receives the sample/s.

### **Compensation**

Section 82 provides for a person claiming compensation, under section 110 of the Act, from the State for a loss or expense incurred because of the exercise of power under part 12 of the Act. Before approving compensation, a court must consider whether the exercise of power was to prevent a threat to human life, damage or possible damage to the environment or property; negligence; foreseeable impacts on the person claiming compensation and the level of knowledge possessed by the authorised officer at the time.

## **Part 11                      Securing compliance with the Act**

### **Where register of division 3 undertakings must be kept**

Section 83 provides that all undertakings made under section 117H of the Act are maintained in a register by Maritime Safety Queensland in a register and are available for public inspection during normal working hours at the Office of the General Manager in Brisbane.

## **Part 12                      General**

### **Division 1                  Approvals**

#### **Subdivision 1          Interpretation**

##### **Definitions for div 1**

Section 84 provides definitions for “applicant” and “approval” which are used in this part.

For the purpose of this part an “applicant” is either a ship’s owner or a ship’s master. An “approval” is either an approval or exemption that is provided by the general manager for sections 13, 23, 25, 28, 29, 36, 37 or 78 of the regulation. “Marine pollution legislation” means the *Transport Operations (Marine Pollution) Act 1995* or any similar marine pollution legislation administered by the Commonwealth or another State in Australia.

#### **Subdivision 2          How approval is obtained**

##### **Making application**

Section 85 provides that a ship’s owner or master may apply for an approval or exemption in the approved form and that the application must

be supported with enough information for the general manager to make a decision. If the application is for the approval of a shipboard oil pollution emergency plan under section 13 of the regulation, the application must also be accompanied by the prescribed fee in section 13 (3).

### **General manager to decide application within relevant time**

Section 86 provides that once the general manager has received an application for an approval or exemption under the regulation, the general manager has 30 days to consider the application and make a decision to approve or refuse the application.

However, if the application is for an approval or exemption under sections 24, 26, 29, 30 or 31 the general manager must make a decision without undue delay. These approvals and exemptions are of a routine operational nature and each section clearly outlines the requirements to be met for an approval or exemption to be granted.

Additionally, this section provides that if the general manager finds that sufficient information has not been provided to allow a decision to be made, the general manager must tell the applicant and the 30 days will start when all information has been received by the general manager.

### **Notice of approval if application granted**

Section 87 provides that if the general manager approves an application for an approval or exemption under the regulation, the general manager must provide the applicant written notice of the approval within 30 days. However, if the application is for an approval or exemption under sections 24, 26, 29, 30 or 31 the general manager must provide the notice without undue delay.

### **Duration of approval**

Section 88 provides that the term of the approval or exemption will be outlined in the written notice. However, for an approval of a Shipboard Oil Pollution Emergency Plan under section 13 and a approval of equipment equivalent to Annex II of MARPOL under section 37, the term of the approval is unlimited.



### **Grant of approval on conditions**

Section 89 provides that when providing an approval or exemption under the regulation the general manager may impose conditions that are considered reasonable and relevant.

### **Notice of refusal if application not granted**

Section 90 provides that if the general manager refuses an application for an approval or exemption under the regulation, the general manager must provide the applicant written notice of the refusal within 30 days or if it is for an approval or exemption under sections 24, 26, 29, 30 or 31 without undue delay. The written notice must outline the reasons for the refusal and that the applicant may apply for a review of the general manager's decision.

## **Subdivision 3      Amending, suspending or    cancelling approvals**

### **Amending, suspending or cancelling approval**

Section 91 provides the grounds where the general manager may amend, suspend or cancel an approval. The grounds for the general manager taking these actions can be because of a contravention of marine pollution legislation, history of suspensions or cancellations, failure to comply with the conditions of the approval or the approval was granted because of false or misleading information. Additionally, for the approval of Shipboard Oil Pollution Emergency Plans (the plan) under section 13, if the plan is found to no longer include the matters mentioned in section 13(1) the approval may be suspended or cancelled.

### **Procedure for amending, suspending or cancelling approval**

Section 92 provides that if there are grounds to amend, suspend or cancel an approval, the general manager must give the approval holder written notice stating the proposed action, the grounds for the action, the facts and circumstances for the decision and that the approval holder has the opportunity to show within 30 days why the action should not be taken. If the action is for a suspension, the period of the suspension must also be specified in the written notice.

If after 30 days the approval holder has not contested the action or the general manager has considered all representations made with regard to the action and there is still a ground to take the action, the general manager may amend, suspend or cancel the approval. The general manager must give the approval holder written notice stating the reasons for the decision and that the approval holder may apply for a review of the general manager's decision.

The decision will take effect on the day the notice is given or the day that it specified in the written notice.

### **Procedure for urgent suspension of approval**

Section 93 provides that if it is necessary for the protection of the marine environment, the general manager may immediately suspend an approval. The general manager must give the approval holder written notice stating the reasons for the decision and that the approval holder may apply for a review of the general manager's decision. The urgent suspension will expire after 60 days unless the general manager informs the approval holder of a decision in accordance with section 92.

## **Subdivision 4      Review of and appeals against particular decisions**

### **Application to chief executive to review decision**

Section 94 provides that an applicant or approval holder may apply to the chief executive to review the general manager's decision to refuse an application or amend, suspend or cancel an approval. In these circumstances, the applicant or approval holder must write to the chief executive within 30 days providing the grounds for the review.

The chief executive will review the general manager's decision within 30 days and either confirm the general manager's decision or grant the application. The chief executive will provide written notice to the applicant or approval holder outlining the decision. If the chief executive confirms the general manager's decision, the reasons for this will be stated in the written notice.

## **Appropriate appeal court**

Section 95 provides the right for an applicant or approval holder to apply to a court to appeal a decision reviewed under section 94 of the regulation. All appeals are to be made to the district court unless the applicant or approval holder is the owner of a recreational ship. If the applicant or approval holder is the owner of a recreational ship the appeal may be made to the magistrate's court.

## **Division 2                      Analyst's reports and forms**

### **Analyst's report**

Section 96 provides that the analyst who analysed the samples taken by an authorised officer must compile a report stating when and from whom the sample was received, the means by which the sample was delivered and a description of the container/s in which the sample was delivered.

### **Forms**

Section 97 has been temporarily inserted to provide a power for the chief executive to approve forms for use under the Act. This provision should be within the Act, however this section will provide the necessary power to approve forms until the Act can be amended to establish appropriate approvals for forms consistent with section 206B of the *Transport Operations (Marine Safety) Act 1994*. This section will be repealed with the commencement of amendments to the Act.

## **Part 13                              Transitional provisions**

### **Requirement about particular books**

Section 98 provides that any oil record books, cargo record books and sewage disposal records books kept under the expired *Transport Operations (Marine Pollution) Regulation 1995*, must be kept and available for inspection for 3 years from the 1 September 2008, before they can lawfully be disposed of.

### **Application of s 53 for 6 months after commencement**

Section 99 provides that section 53 of the regulation does not apply to the owner of a ship with a fixed toilet onboard until 1 April 2009.

### **Application of s 56 for 6 months after commencement**

Section 100 provides that section 56 of the regulation does not apply to the owner or master of a ship with a treatment system onboard until 1 April 2009.

## **Schedule 1      MARPOL**

Schedule 1 provides for section 4 of the regulation and sets out the full English text of the *International Convention for the Prevention of Pollution from Ships*, known as MARPOL. MARPOL is an internationally accepted convention for the protection of the marine environment, convened by the International Maritime Organization and ratified by Australia. The convention aims to prevent and minimise pollution from ships including accidental pollution and pollution as a result of routine shipping operations.

## **Schedule 2      Recordable operations and recordable events**

Schedule 2 provides for sections 17 and 35 of the regulation and outlines the operations or events involving oil and noxious liquid substances which must be recorded in oil record books and cargo record books, respectively.

Part 1 of schedule 2 provides that machinery space, cargo and ballasting operations, failure of the ship's oil filtering equipment and any discharges of oil including those for the purpose of securing the safety of a ship or saving life at sea must be entered into the oil record book without delay.

Part 2 of schedule 2 provides that loading, transfer and unloading of cargo, ballasting and cleaning of cargo tanks, disposal of residues to a reception facility, removal of residues by ventilation procedures and any discharges

of noxious liquid substances including those for the purpose of securing the safety of a ship or saving life at sea must be entered into the cargo record book without delay.

### **Schedule 3            International Bulk Chemical Code**

Schedule 3 provides an extract from Chapter 17 of the *International Bulk Chemical Code*, known as the IBC Code. The IBC Code is an internationally accepted standard for the safe transport by sea in bulk of liquid dangerous chemicals, by prescribing the design and construction standards of ships involved in such transport and the equipment they should carry to minimize the risks to the ship, its crew and to the environment, while having regard to the nature of the products carried. The IBC code is maintained by the International Maritime Organization and adopted in Australia as the minimum standard.

Annex II of MARPOL grades “noxious liquid substances carried in bulk” into four pollution categories graded X, Y, Z and Other, according to the hazard they present to the marine environment, human health or amenities. This schedule lists noxious liquid substances and their pollution category to which part 3 of the regulation applies.

### **Schedule 4            Nil discharge waters for untreated sewage**

Schedule 4 provides for section 44 of the regulation and prescribes the nil discharge waters for untreated sewage from ships, other than declared ships, with a fixed toilet onboard.

## **Schedule 5      Nil discharge waters for treated sewage**

Schedule 5 provides for section 45 of the regulation and prescribes the nil discharge waters for treated sewage from ships, other than declared ships, with a sewage treatment system onboard.

## **Schedule 6      Nil discharge waters for treated sewage or untreated sewage from declared ship**

Schedule 6 provides for section 47 of the regulation and prescribes the nil discharge waters for treated sewage and untreated sewage from declared ships with a fixed toilet or sewage treatment system onboard.

## **Schedule 7      Levels of sewage quality characteristics for treated sewage**

Schedule 7 provides for sections 55 and 57 of the regulation and states the levels of sewage quality characteristics for treated sewage to be classified as grade A, B or C. A review of this schedule has changed the references to “faecal coliforms” to “thermotolerant coliforms” and “geometric mean” to “relevant level” which is consistent with scientific terminology used in Australia. Further changes have been made to remove possible ambiguity and potential misinterpretation of the sewage quality characteristics required for treated sewage.

Part 1 of schedule 7 has been inserted to resolve misinterpretation and reflect scientific procedures. This part provides an explanation of the number of samples to be analysed to determine the “relevant level” for the treatment system and how to treat analyses which result in zero values. The

“relevant level” must be determined from the mean of no less than five samples of the sewage after it has been treated in the treatment system.

The performance of treatment systems is important in ensuring ongoing protection of human health and the marine environment. As a result, future assessments of the performance of a treatment system required under section 55 of the regulation, must show that the levels of sewage quality characteristics remaining in the sewage after it has been treated are not more than those stated in Part 2, 3 and 4 of this schedule.

Part 2 of schedule 7 provides the levels of sewage quality characteristics in untreated sewage to be classified as grade A treated sewage. This part requires a treatment system to reduce the levels for thermotolerant coliforms, suspended solids and biochemical oxygen demand which provides environmental and human health benefits. These levels are consistent with the treated sewage standards of MARPOL. A review of this part has removed the separation of on shore and onboard testing of suspended solids. The manufacturer of the treatment system will now determine the “relevant level” of the total suspended solids content of the samples, which must not be more than 50mg/L, consistent with Grade B treated sewage.

Part 3 of schedule 7 provides the levels of sewage quality characteristics in untreated sewage to be classified as grade B treated sewage. This part requires a treatment system to disinfect the sewage to reduce the thermotolerant coliforms in the sewage and also reduce the level of nutrients being released by setting a requirement for suspended solids.

Part 4 of schedule 7 provides the levels of sewage quality characteristics in untreated sewage to be classified as grade C treated sewage. This part requires a treatment system to disinfect the sewage to reduce the thermotolerant coliforms in the sewage.

## **Schedule 8            Areas within the Great Barrier Reef Coast Marine Park that are designated areas**

Schedule 8 provides for the definition of ‘designated area’ in schedule 10 of the regulation and sets out the areas within the Great Barrier Reef Coast

Marine Park where treated and untreated sewage cannot be discharged. This schedule should be read in conjunction with schedule 4, 5 and 6 of the Regulation.

## **Schedule 9      Dictionary**

Schedule 9 provides for section 3 of the regulation and sets out definitions for particular words used in the regulation.

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### ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Transport.

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