

Chapter 371.

Prevention of Pollution of the Sea Act 1979.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 371.

Prevention of Pollution of the Sea Act 1979.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Prevention of Pollution of the Sea Act 1979,

Being an Act to provide for the prevention and control of pollution of the sea by oil and other substances, to give effect in Papua New Guinea, as far as may be, to—

- (a) the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended in 1962, 1969 and 1971; and
- (b) the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 and the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil, 1973; and
- (c) the International Convention on Civil Liability for Oil Pollution Damage, 1969 and the Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969 (1976); and
- (d) the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 and the Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (1976),

and for related purposes,

PART I. – PRELIMINARY.

1. INTERPRETATION.

(1) In this Act, unless the contrary intention appears—

“agent”, in relation to a ship—

- (a) means any person who performs for or on behalf of the owner of the ship any function or duty under or for the purposes of the *Merchant Shipping Act 1975* or this Act; and
- (b) includes any person who within Papua New Guinea, on behalf of the owner of the ship—

- (i) undertakes or performs the function of ships husbandry; or
- (ii) makes any arrangements for or in connection with–
 - (A) the repair or berthing of the ship; or
 - (B) the carriage, loading or unloading of cargo, stores or bunkers on or from the ship;

“authorized officer means a person appointed as an authorized officer under Section 37;

¹“**Authority**” means the National Maritime Safety Authority established under the *National Maritime Safety Authority Act 2003*;

“**ballast voyage**” means any voyage of a tanker on which that tanker is not carrying oil in bulk as cargo but has on board oil residues from a cargo of oil in bulk carried on the voyage immediately preceding that voyage;

“**cargo**” in relation to a ship, includes any ballast, stores or fuel carried in the ship;

“**certificate of insurance**” means a certificate of insurance required under this Act to be carried on board a ship;

“**certificated oil tanker**” means–

- (a) a tanker that is registered in Papua New Guinea in respect of which a tanker construction certificate or a tanker exemption certificate is in force; or
- (b) a tanker that is registered in a country that is a party to the Pollution Convention in respect of which a certificate corresponding to a tanker construction certificate or a tanker exemption certificate duly issued under the law of that country is in force; or
- (c) a tanker that is registered in a country that is not a party to the Pollution Convention in respect of which a certificate issued under a law of that country of a kind approved by the Minister as an equivalent to a tanker construction certificate or tanker exemption certificate is in force;

“**discharge of oil**” means any discharge or escape of oil however caused;

“**the Fund Convention**” means–

- (a) the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971; and
- (b) the Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (1976);

“**heavy diesel oil**” means diesel oil, other than those distillates of which more than 50% by volume distils at a temperature not exceeding 340°C when tested by ASTM Standard Method D.86/59;

“**inspector**” means a person appointed as an inspector under Section 37;

¹ Section 1 Subsection (1) amended by No. 73 of 2003, s. 13.

“instantaneous rate of discharge of oil content” means the rate of discharge of oil in litres per hour at any instant divided by the speed of the ship in knots at the same instant;

“internal waters” comprise the waters in any part of the country including all waters on the landward side of the baseline, and for the purposes of this definition “waters” includes bays, gulfs, inlets of the sea, rivers, rivulets, streams, lakes and lagoons;

“the Intervention Convention” means—

- (a) the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969; and
- (b) the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil, 1973;

“the Liability Convention” means—

- (a) the International Convention on Civil Liability for Oil Pollution Damage, 1969; and
- (b) the Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969 (1976);

“marine pollutant” means a substance—

- (a) that is prescribed; or
- (b) that the Minister, by notice in the National Gazette, has declared to be liable, in his opinion 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;

“maritime casualty” means a collision of ships, stranding or other incident of navigation or other occurrence on board a ship or external to it, resulting in material damage or imminent threat of material damage to a ship or cargo;

“master” in relation to a ship means the person having legal command or charge of the ship but does not include a pilot;

“mile” means a nautical mile of 6,080 ft or 1,852m;

“nearest land” means the land defined in accordance with Subsection (2);

“oil” means crude oil, fuel oil, heavy diesel oil and lubricating oil;

“oil record book” means a record book referred to in Section 9;

“oily mixture” means a mixture having any oil content;

“owner”, in relation to a ship, includes the charterer and any person having possession of the ship;

“place on land” includes—

- (a) anything resting on the bed of the sea; and
- (b) anything afloat (other than a vessel) if it is anchored or attached to the bed or the shore of the sea;

“the Pollution Convention” means the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 including the amendments adopted in 1962, 1969 and 1971;

“port” includes–

- (a) a place; and
- (b) an off-shore terminal,

and references to entering or leaving a port include references to using or ceasing to use an off-shore terminal;

“reef” includes–

- (a) a reef within the territorial sea; and
- (b) a reef outside the territorial sea but forming part of the continental shelf adjacent to the Papua New Guinea coast;

“related interests” means the interests of a coastal State directly affected or threatened by the maritime casualty, such as–

- (a) maritime coastal, port or estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned; and
- (b) tourist attractions of the area concerned; and
- (c) the health of the coastal population and the well-being of the area concerned, including conservation of living marine resources and of wildlife;

“sea” includes an arm or estuary of the sea;

“ship” includes–

- (a) in relation to the ownership of a ship—a share in the ship and any interest in the ship or share; and
- (b) an air cushioned vehicle; and
- (c) any sea-going vessel of any type, including floating craft, whether self-propelled or towed by another vessel, but does not include a vessel or air-cushioned vehicle belonging to the Defence Force or to any of the defence forces of any other country;

“ship licensed to engage in the coasting trade” means a ship in respect of which a licence issued under Section 222 of the *Merchant Shipping Act 1975* is in force;

“ship registered in Papua New Guinea” means a ship registered under Part III. of the *Merchant Shipping Act 1975* and includes a ship belonging to Papua New Guinea that is not registered under that Act;

“tanker” means a ship in which the greater part of the cargo space is constructed or adapted for the carriage of liquid cargoes in bulk, and which is not, for the time being, carrying a cargo other than oil in that part of its cargo space;

“tanker construction certificate” means a tanker construction certificate issued under Section 10;

“**tanker exemption certificate**” means a tanker exemption certificate issued under Section 10;

“**territorial sea**” means the territorial sea as defined in the *National Seas Act 1977* and includes internal waters;

“**this Act**” includes the regulations.

(2) The term “**from the nearest land**” means from the baseline from which the territorial sea of the territory in question is established in accordance with the Geneva Convention on the Territorial Sea and Contiguous Zone, 1958, except that, for the purposes of this Act, “**from the nearest land**” off the north-eastern coast of Australia shall mean a line drawn from a point on the coast of Australia in latitude 11° south, longitude 142°08” east to a point in latitude 10°35” south, longitude 141°55” east—

- (a) thence to a point latitude 10°00” south, longitude 142°00” east
- (b) thence to a point latitude 9°10” south, longitude 143°52” east
- (c) thence to a point latitude 9°00” south, longitude 144°30” east
- (d) thence to a point latitude 13°00” south, longitude 144°00” east
- (e) thence to a point latitude 15°00” south, longitude 146°00” east
- (f) thence to a point latitude 18°00” south, longitude 147°00” east
- (g) thence to a point latitude 21°00” south, longitude 153°00” east
- (h) thence to a point on the coast of Australia in latitude 24°42” south, longitude 153°15” east.

(3) For the purposes of this Act, a ship is deemed to be proceeding on a voyage when the ship is making way through the water in the normal course of a voyage.

PART II. – POLLUTION OF THE SEA.***Division 1.******Pollution of the Sea by Oil.*****2. POLLUTION CONVENTION.**

Subject to this Act and to any other law, the Pollution Convention shall have the force of law.

3. APPLICATION.

This Division does not apply to–

- (a) a tanker that has a tonnage of less than 150 gross tons; and
- (b) a ship (other than a tanker) that has a tonnage of less than 500 gross tons; and
- (c) a ship that is for the time being–
 - (i) engaged in the whaling industry; and
 - (ii) actually employed on whaling operations; and
- (d) ships for the time being navigating the Great Lakes of North America and their connecting and tributary waters as far east as the lower exit of St. Lambert Lock at Montreal in the Province of Quebec, Canada; and
- (e) vessels belonging to, or for the time being used as auxiliaries for, the Defence Force or the defence forces of another country.

4. DISCHARGE OF OIL FROM SHIPS.

Where any oil or any oily mixture is discharged–

- (a) into the sea or any part of the sea outside the territorial sea from a ship registered in Papua New Guinea; or
- (b) into the territorial sea from any ship, the owner and the master of the ship is, subject to this Act, each guilty of an offence.

Penalty: ²(a) For a first offence, a fine not exceeding K100,000.00.

- (b) For a second or subsequent offence, a fine not exceeding K100,000.00 and confiscation of the vessel.

5. DEFENCES OF OWNER AND MASTER.

(1) Where a person is charged with an offence under Section 4, it shall be a defence to prove that–

- (a) the discharge was necessary for the purpose of–
 - (i) securing the safety of a ship; or
 - (ii) preventing damage to any ship or cargo; or

² Section 4 Amended by No. 73 of 2003, s. 14.

(iii) saving life at sea,

and that the discharge was reasonable having regard to the circumstances; or

(b) that the oil or oily mixture was discharged as a result of damage to a ship and that as soon as practicable after the damage occurred all reasonable steps were taken for preventing, or (if it could not be prevented) stopping or reducing, the escape of the oil or oily mixture; or

(c) that the oil or oily mixture was discharged by reason of leakage, that neither the leakage nor any delay in discovering it was due to any want of reasonable care and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it.

(2) Where—

(a) the discharge into the sea is from a ship registered in Papua New Guinea; and

(b) the discharge—

(i) consists solely of oily mixture from the bilges of the ship; and

(ii) takes place within a period of 12 months after the date on which the State became a party to the Pollution Convention,

the owner and the master of the ship are deemed not to have committed any offence under Section 4.

(3) Where the discharge of any oil or oily mixture from a ship is the result of the proper and reasonable exercise of any power conferred on any person by any Act to dispose of sunken, stranded or abandoned vessels, no offence is committed under Section 4.

6. CERTAIN DISCHARGES PERMITTED FROM SHIPS OTHER THAN TANKERS.

(1) In this section “**ship**” means a ship that is—

(a) registered in Papua New Guinea; and

(b) not a tanker.

(2) Where—

(a) oil or oily mixture is discharged from a ship into any part of the sea outside the territorial sea; and

(b) the ship is proceeding on a voyage; and

(c) the instantaneous rate of discharge of oil content does not exceed 60 litres per mile; and

(d) the oil content of the discharge is less than 100 parts per 1,000,000 parts of the mixture; and

(e) the discharge is made as far as practicable from the nearest land,

no offence is committed under Section 4.

7. CERTAIN DISCHARGES PERMITTED FROM TANKERS.

(1) Where—

- (a) oil or oily mixture is discharged from the machinery space bilges of a tanker that is registered in Papua New Guinea into any part of the sea outside the territorial sea; and
- (b) the tanker is proceeding on a voyage; and
- (c) the instantaneous rate of discharge of oil content does not exceed 60 litres per mile; and
- (d) the oil content of the discharge is less than 100 parts per 1,000,000 parts of the mixture; and
- (e) the discharge is made as far as practicable from the nearest land,

no offence is committed under Section 4.

(2) Where oil or oily mixture is discharged (other than from the machinery space bilges) from a tanker that is registered in Papua New Guinea and—

- (a) where—
 - (i) the tanker is proceeding on a voyage; and
 - (ii) the instantaneous rate of discharge of oil content does not exceed 60 litres per mile and
 - (iii) the total quantity of oil discharged on a ballast voyage does not exceed one part per 15,000 parts of the total cargo carrying capacity of the tanker; and
 - (iv) the tanker is more than 50 miles from the nearest land; or
- (b) the discharge consists only of ballast from a cargo tank which since the cargo was last carried in it has been so cleaned that any effluent from it, if it were discharged from a stationary tanker into clean calm water on a clear day, would produce no visible traces of oil on the surface of the water,

no offence is committed under Section 4.

8. EQUIPMENT REQUIREMENTS FOR SHIPS.

(1)³ ⁴The Authority may determine that a ship that is, or that is intended to be, registered in Papua New Guinea shall—

- (a) be fitted with such equipment; and
- (b) comply with such other requirements,

for the prevention or reduction of discharges of oil or oily mixture, as, in its opinion, are necessary or convenient.

(2)⁵ ⁶Equipment of a type specified in a determination made by the Authority under Subsection (1) shall not be installed or used in the ship to which the determination applies unless the equipment complies with the requirements that are specified in the determination.

³ Section 8 Subsection (1) amended by No. 73 of 2003, s. 15; Subsection (1) amended by No. 73 of 2003, s. 15.

⁴ Section 8 Subsection (1) amended by No. 73 of 2003, s. 15; Subsection (1) amended by No. 73 of 2003, s. 15.

(3)⁷ ⁸In making a determination under Subsection (1) the Authority shall have regard to the provisions of Article VII of the Pollution Convention.

(4)⁹ ¹⁰Where, in respect of any requirement specified under this section, the Authority is satisfied that—

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

the Authority may direct that compliance with that requirement be dispensed with subject to any conditions which it deems it appropriate to impose.

(5) Where there is a failure to comply with the provisions of this section the owner and the master of the ship, in respect of which the failure occurs, are each guilty of an offence.

Penalty: ¹¹A fine not exceeding K20,000.00

9. OIL RECORD BOOKS.

(1) A ship that is registered in Papua New Guinea shall carry a record book known as an oil record book.

(2) Where an oil record book—

- (a) is not carried on a ship that is registered in Papua New Guinea; or
- (b) is not maintained as prescribed; or
- (c) contains any entry which is materially false or misleading, the owner and the master of the ship are each guilty of an offence.

Penalty: ¹²A fine not exceeding K20,000.00.

10. TANKER CONSTRUCTION CERTIFICATES.

(1)¹³ ¹⁴The Authority shall, where it is of the opinion that a tanker that is registered in Papua New Guinea has been constructed in accordance with the requirements of the Pollution Convention, issue a tanker construction certificate.

⁵ Section 8 Subsection (2) amended by No. 73 of 2003, s. 15.

⁶ Section 8 Subsection (2) amended by No. 73 of 2003, s. 15.

⁷ Section 8 Subsection (3) amended by No. 73 of 2003, s. 15.

⁸ Section 8 Subsection (3) amended by No. 73 of 2003, s. 15.

⁹ Section 8 Subsection (4) amended by No. 73 of 2003, s. 15; Subsection (4) amended by No. 73 of 2003, s. 15.

¹⁰ Section 8 Subsection (4) amended by No. 73 of 2003, s. 15; Subsection (4) amended by No. 73 of 2003, s. 15.

¹¹ Section 8 Subsection (5) amended by No. 73 of 2003, s. 15.

¹² Section 9 Subsection (2) amended by No. 73 of 2003, s. 16.

¹³ Section 10 Subsection (1) amended by No. 73 of 2003, s. 17; Subsection (1) amended by No. 73 of 2003, s. 17.

¹⁴ Section 10 Subsection (1) amended by No. 73 of 2003, s. 17; Subsection (1) amended by No. 73 of 2003, s. 17.

(2)^{15 16}The Authority shall, where it is of the opinion that a tanker that is registered in Papua New Guinea is not required to have been constructed in accordance with the requirements of the Pollution Convention, issue a tanker exemption certificate.

11. TANKERS REQUIRED TO CARRY CERTIFICATES.

(1) A tanker of 150 gross tons or more shall not proceed or attempt to proceed from a port in Papua New Guinea unless—

- (a) it is a certificated oil tanker; or
- (b)¹⁷ the Authority has given written permission for the tanker to leave the port.

(2)^{18 19}If it appears to the Authority that a tanker is not a certificated oil tanker it may direct that tanker—

- (a) not to enter any port in Papua New Guinea; or
- (b) not to enter all or any of the ports in Papua New Guinea except subject to specified conditions.

(3)^{20 21}A direction may be given by the Authority under this section in respect of a tanker which is for the time being in a port in Papua New Guinea so as to apply to that tanker after it leaves that port.

(4)^{22 23}A direction under this section shall be addressed by the Authority to the master or owner of the tanker or both.

(5)^{24 25}The Authority may at any time require the master of a certificated oil tanker to produce to it for its inspection the certificate that is held and in force.

(6) The master of a tanker who refuses or fails without reasonable cause to comply with a requirement made under Subsection (5) is guilty of an offence.

Penalty: ²⁶A fine not exceeding K20,000.00

(7)^{27 28}Before any tanker which is not a certificated oil tanker proceeds to sea from a port in Papua New Guinea the master of the tanker shall, on demand, produce to the Authority evidence satisfactory to it that the departure of the tanker will not be in contravention of this section and the tanker may be detained until the evidence required by this section is produced.

¹⁵ Section 10 Subsection (2) amended by No. 73 of 2003, s. 17; Subsection (2) amended by No. 73 of 2003, s. 17.

¹⁶ Section 10 Subsection (2) amended by No. 73 of 2003, s. 17; Subsection (2) amended by No. 73 of 2003, s. 17.

¹⁷ Section 11 Subsection (1) amended by No. 73 of 2003, s. 18.

¹⁸ Section 11 Subsection (2) amended by No. 73 of 2003, s. 18; Subsection (2) amended by No. 73 of 2003, s. 18.

¹⁹ Section 11 Subsection (2) amended by No. 73 of 2003, s. 18; Subsection (2) amended by No. 73 of 2003, s. 18.

²⁰ Section 11 Subsection (3) amended by No. 73 of 2003, s. 18.

²¹ Section 11 Subsection (3) amended by No. 73 of 2003, s. 18.

²² Section 11 Subsection (4) amended by No. 73 of 2003, s. 18.

²³ Section 11 Subsection (4) amended by No. 73 of 2003, s. 18.

²⁴ Section 11 Subsection (5) amended by No. 73 of 2003, s. 18; Subsection (5) amended by No. 73 of 2003, s. 18.

²⁵ Section 11 Subsection (5) amended by No. 73 of 2003, s. 18; Subsection (5) amended by No. 73 of 2003, s. 18.

²⁶ Section 11 Subsection (6) amended by No. 73 of 2003, s. 18.

²⁷ Section 11 Subsection (7) amended by No. 73 of 2003, s. 18; Subsection (7) amended by No. 73 of 2003, s. 18.

²⁸ Section 11 Subsection (7) amended by No. 73 of 2003, s. 18; Subsection (7) amended by No. 73 of 2003, s. 18.

12. RESTRICTION ON TRANSFERS OF OIL AT NIGHT.

(1) In this section–

“**at night**” means between sunset and sunrise;

“**ship**” means a ship that is within the territorial sea.

(2) The master of a ship shall give reasonable notice to an authorized officer of his intention to transfer oil in bulk to or from his ship at night.

(3) Where transfers of oil to or from a ship are frequently and regularly carried out at a place in respect of which, but for this subsection, notice would otherwise have been required to be given under Subsection (2), the notice may be a general notice relating to transfers of oil at night during a period specified in the notice.

(4) An authorized officer may, on receipt of a notice referred to in Subsection (2) or (3), give to the master of a ship written permission for the transfers of oil to take place.

(5) The written permission referred to in Subsection (4) shall be subject to such conditions (if any) as the authorized officer thinks fit.

(6) Where oil is transferred in bulk to or from a ship at night and the authorized officer has not given the permission referred to in Subsection (4), the master of the ship is guilty of an offence

Penalty: ²⁹A fine not exceeding K20,000.00.

13. OIL RECEPTION FACILITIES.

(1)^{30 31}The Authority may require the owner or the occupier of–

(a) any oil terminal, oil depot, oil installation or any other similar establishment at which oil in bulk is loaded or unloaded; or

(b) any establishment at which ships are required or other work is performed in relation to ships, where that work involves the disposal of oil refuse,

to provide and maintain in good order facilities of a standard satisfactory to the Authority for the disposal of oil residues by ships at or using such establishments.

(2)^{32 33}The Authority may require the owner or occupier of any facility referred to in Subsection (1) to make that facility open to ships for the disposal of oil residues on payment of such charges and subject to compliance with such conditions as may be determined by the Authority.

(3) Subsection (2) shall not be read as conferring on any person any right for the disposal of any mixture containing oil which has not been subject to an effective process for separating oil from the mixture.

(4) A person who fails to comply with any requirement made of him under this section is guilty of an offence.

²⁹ Section 12 Subsection (6) amended by No. 73 of 2003, s. 19.

³⁰ Section 13 Subsection (1) amended by No. 73 of 2003, s. 20.

³¹ Section 13 Subsection (1) amended by No. 73 of 2003, s. 20.

³² Section 13 Subsection (2) amended by No. 73 of 2003, s. 20.

³³ Section 13 Subsection (2) amended by No. 73 of 2003, s. 20.

Penalty: ³⁴A fine not exceeding K50,000.00.

Default penalty: ³⁵A fine not exceeding K10,000.00.

Division 2.

Discharges of Marine Pollutants.

14. NOTICE OF DISCHARGES OF MARINE POLLUTANTS.

(1)^{36 37}Where oil in bulk or any other marine pollutant is discharged, or is found to be in the course of being discharged, from a ship that is within the territorial sea the master of the ship shall immediately make a report to the Authority.

(2) A report made under Subsection (1) shall contain all relevant known details of the discharge.

(3) Where the master of a ship refuses or fails without reasonable cause to comply with this section the owner and the master of the ship are each guilty of an offence.

Penalty: ³⁸A fine not exceeding K100,000.00.

15. INVESTIGATIONS INTO DISCHARGES OF MARINE POLLUTANTS.

Where the Minister is of the opinion that there has been any discharge of marine pollutants from any ship that is within the territorial sea and that discharge has polluted, or is likely to pollute the territorial sea or any reef or coast within the territorial sea, he may require an inspector to investigate and report to him on the nature and cause of the discharge and the pollution which has taken or is likely to take place.

16. OFFENCE TO HINDER INVESTIGATION.

A person who wilfully assaults, hinders, resists or obstructs an inspector carrying out any investigation under Section 15 is guilty of an offence.

Penalty: A fine not exceeding K2,000.00.

Division 3.

Shipping Casualties.

17. SHIPPING CASUALTIES.

(1) In this section “**specified**” in relation to a notice given under this section means specified in the notice.

(2) For the purposes of Section 53 (*protection from unjust deprivation of property*) of the *Constitution*, the purpose expressed in Subsection (5) is a public purpose.

(3) Where, in respect of a ship, including a ship not registered in Papua New Guinea, which is for the time being outside the territorial sea—

³⁴ Section 13 Subsection (4) amended by No. 73 of 2003, s. 20.

³⁵ Section 13 Subsection (4) amended by No. 73 of 2003, s. 20.

³⁶ Section 14 Subsection (1) amended by No. 73 of 2003, s. 21.

³⁷ Section 14 Subsection (1) amended by No. 73 of 2003, s. 21.

³⁸ Section 14 Subsection (3) amended by No. 73 of 2003, s. 21.

- (a) a maritime casualty has occurred to or in the ship; and
- (b) in the opinion of the Minister a marine pollutant from the ship will or may cause pollution on a large scale in Papua New Guinea or in waters in or adjacent to Papua New Guinea or to any reef or coast in the country; and
- (c) in the opinion of the Minister the use of powers conferred by this section is urgently needed for the purposes of preventing or reducing pollution,

the Minister may give notice with respect to the ship or its cargo to—

- (d) the owner of the ship, or to any person who is the agent or is in possession of the ship; or
- (e) the master of the ship; or
- (f) any salvor in possession of the ship or to any person who is the servant or agent of any salvor in possession of the ship and who is in charge of salvage operations.

(4) The notice given under Subsection (3) may require the person to whom the notice is given to cause to be taken, take or refrain from taking any action of any kind and, without prejudice to the generality of the preceding provisions of this section, the notice may require that—

- (a) the ship be, or not be, moved, or be removed from a specified area or locality; or
- (b) the ship not be moved to a specified place or area, or over a specified route; or
- (c) any oil or other cargo be, or not be, unloaded, discharged or dealt with in any specified manner; or
- (d) specified salvage measures be, or not be, taken.

(5) A notice given under this section may—

- (a) specify the time within which any requirement is to be complied with; and
- (b) by further notice—be revoked, replaced or varied.

(6) If, in the opinion of the Minister, the powers conferred by Subsection (3) are, or have proved to be inadequate for the purpose, the Minister may, for the purpose of preventing or reducing pollution or the risk of pollution, take with respect to the ship and its cargo action of any kind and without prejudice to the generality of this section the Minister may—

- (a) take any such action as he has power to require to be taken by notice under this section; or
- (b) undertake an operation for the sinking or destruction of the ship, or any part of it, of a kind which is not within the means of any person to whom he can give notice; or
- (c) undertake operations which involve the taking over of control of the ship.

18. OFFENCES IN RELATION TO SHIPPING CASUALTIES.

(1) If the person to whom a notice is given under Section 17 contravenes or fails to comply with any requirement of the notice, he is guilty of an offence.

Penalty: ³⁹A fine not exceeding K200,000.00.

³⁹ Section 18 Subsection (1) amended by No. 73 of 2003, s. 22.

Default penalty: ⁴⁰A fine not exceeding K40,000.00.

(2) A person who wilfully obstructs any person who is—

- (a) acting on behalf of the Minister in connection with the giving or service of a notice under Section 17; or
- (b) acting in compliance with a requirement under that section; or
- (c) acting under Section 17(6),

is guilty of an offence.

Penalty: ⁴¹A fine not exceeding K200,000.00

(3) It is a defence to a prosecution under Subsection (1) if the person charged proves that—

- (a) he has used all due diligence to ensure compliance with the notice; or
- (b) he had reasonable cause for believing that compliance with the notice would have involved a serious risk to human life.

19. SHIP UNDER ARREST.

Any action taken in respect of a ship which is under arrest, or in respect of the cargo of such a ship, being action taken in relation to a notice given under Section 17, or any action taken by the Minister under that section does not—

- (a) constitute contempt of court; or
- (b) in any circumstances render the State liable to any civil proceedings.

20. RECOVERY OF COSTS.

(1)⁴² ⁴³Where, in relation to a ship, any cost, expense or other liability is incurred by the Minister in the exercise of his powers under Section 17, that cost, expense or other liability is a debt due to the Authority and may be recovered in full from the owner of the ship.

(2) In any action for recovery under Subsection (1), it is not relevant that the person from whom recovery is sought is not guilty of an offence under this Act.

(3) In the case of a ship that is not a tanker—

- (a) when recovery is sought in respect of action taken as the result of a refusal or failure to comply with a notice under Section 17; and
- (b) where—
 - (i) the refusal or failure was because of the need to save life at sea; or
 - (ii) compliance with the notice was not possible,

no amount is recoverable under this section.

⁴⁰ Section 18 Subsection (1) amended by No. 73 of 2003, s. 22.

⁴¹ Section 18 Subsection (2) amended by No. 73 of 2003, s. 22.

⁴² Section 20 Subsection (1) amended by No. 73 of 2003, s. 23.

⁴³ Section 20 Subsection (1) amended by No. 73 of 2003, s. 23.

(4) Where recovery of any cost, expense or other liability is sought under Subsection (1) from the owner of a tanker, his liability may be limited as provided in Part III.

PART III. – CIVIL LIABILITY FOR POLLUTION DAMAGE.**21. INTERPRETATION OF PART III.**

In this Part “**ship**” means any sea-going vessel and any sea-borne craft of any type actually carrying oil in bulk as cargo.

22. LIABILITY CONVENTION.

Subject to this Act and to any other law, the Liability Convention shall have the force of law.

23. LIABILITY FUND.

The Fund referred to in Article V of the Liability Convention may be constituted by the–

- (a) deposit of monies; or
- (b) lodgement of any guarantee or other security acceptable to the National Court.

24. VALUE OF MONETARY UNIT.

(1) The Minister responsible for financial matters may, from time to time, by notice in the National Gazette, declare that the monetary unit referred to in Article V of the Liability Convention had on the date specified in the notice such national currency value as is specified in the notice.

(2) In any proceedings under this Part, a declaration by the Minister responsible for financial matters under this section is *prima facie* evidence of the matters declared.

25. REQUIREMENT FOR CERTIFICATES.

(1) Where–

- (a) a ship carries more than 2,000 tons of oil in bulk; and
- (b) there is not in force a certificate of insurance in respect of the ship,

the owner and the master of the ship are each guilty of an offence.

Penalty: ⁴⁴A fine not exceeding K10,000.00.

(2) Where–

- (a) a ship is required to have in force a certificate of insurance; and
- (b) the certificate of insurance is not carried on board the ship,

the master of the ship is guilty of an offence.

Penalty: ⁴⁵A fine not exceeding K5,000.00.

⁴⁴ Section 25 Subsection (1) amended by No. 73 of 2003, s. 24.

⁴⁵ Section 25 Subsection (2) amended by No. 73 of 2003, s. 24.

26. MASTER TO PRODUCE CERTIFICATE.

(1)⁴⁶ ⁴⁷The Authority may require the master of a ship that is required to have in force a certificate of insurance, to produce the certificate of insurance to it for its inspection.

(2) Where the master of a ship refuses, or fails without reasonable cause, to comply with a requirement made under Subsection (1) he is guilty of an offence.

Penalty: ⁴⁸A fine not exceeding K5,000.00.

27. TANKERS NOT TO ENTER OR LEAVE WITHOUT CERTIFICATE OF INSURANCE.

Where—

- (a) a ship is required to have in force a certificate of insurance; and
- (b) a certificate of insurance is not in force in respect of the ship; and
- (c) the ship enters or leaves a port in the country,

the owner and the master of the ship are each guilty of an offence.

Penalty: ⁴⁹A fine not exceeding K100,000.00.

28. CERTIFICATES OF INSURANCE.

(1)⁵⁰ ⁵¹Where, having regard to the provisions of Article VII of the Liability Convention, the Authority is satisfied that it may do so, it –

- (a)⁵² shall, on such conditions (if any) as it thinks fit, grant a certificate of insurance in respect of a ship that is—
 - (i) registered in Papua New Guinea; or
 - (ii) a Government ship as defined in the *Merchant Shipping Act 1975* that is not registered in Papua New Guinea; and
- (b)⁵³ may, on such conditions (if any) as it thinks fit, grant a certificate of insurance in respect of a ship that is registered in a State that is not a party to the Liability Convention.

(2) A certificate of insurance issued under Subsection (1)(b) shall be valid only within the territorial sea

⁴⁶ Section 26 Subsection (1) amended by No. 73 of 2003, s. 25; Subsection (1) amended by No. 73 of 2003, s. 25.

⁴⁷ Section 26 Subsection (1) amended by No. 73 of 2003, s. 25; Subsection (1) amended by No. 73 of 2003, s. 25.

⁴⁸ Section 26 Subsection (2) amended by No. 73 of 2003, s. 25.

⁴⁹ Section 27 Amended by No. 73 of 2003, s. 26.

⁵⁰ Section 28 Subsection (1) amended by No. 73 of 2003, s. 27.

⁵¹ Section 28 Subsection (1) amended by No. 73 of 2003, s. 27.

⁵² Section 28 Subsection (1) amended by No. 73 of 2003, s. 27.

⁵³ Section 28 Subsection (1) amended by No. 73 of 2003, s. 27.

29. SURRENDER OF CERTIFICATES.

(1)⁵⁴ ⁵⁵The Authority may, where it is of the opinion that it is in the public interest to do so, require a person to whom a certificate of insurance has been issued to deliver up the certificate of insurance.

(2) A person who fails to comply with a requirement made under Subsection (1) is guilty of an offence.

Penalty: ⁵⁶A fine not exceeding K2,000.00.

⁵⁴ Section 29 Subsection (1) amended by No. 73 of 2003, s. 28.

⁵⁵ Section 29 Subsection (1) amended by No. 73 of 2003, s. 28.

⁵⁶ Section 29 Subsection (2) amended by No. 73 of 2003, s. 28.

PART IV. – COMPENSATION FUND FOR POLLUTION DAMAGE.

30. INTERPRETATION OF PART IV.

In this Part, “**the Fund**” means the International Oil Pollution Convention Fund established by the Fund Convention.

31. FUND CONVENTION.

Subject to this Act and to any other law, the Fund Convention shall have the force of law.

32. NATIONAL COURT TO HAVE JURISDICTION.

The National Court–

- (a) shall have jurisdiction in any matter in which the provisions of the Fund Convention are invoked: and
- (b) may make such Rules of Court in relation to any action relating to the Fund Convention as it thinks fit

33. PERSONS REQUIRED TO CONTRIBUTE.

For the purposes of Article 10 of the Fund Convention, a reference to “person” shall include a reference to each company in a group of companies and each partner, whether a company or not, in a partnership and each associate in a business association.

34. PENALTY FOR NON-PAYMENT OF CONTRIBUTION.

(1) Where a person–

- (a) is required–
 - (i) to pay to the Fund any contribution or the interest on any contribution; or
 - (ii) to give security for payment of any contribution or the interest on any contribution; and
- (b) has not–
 - (i) paid that contribution or interest; or
 - (ii) given that security,

the Minister may by written notice direct the person to make payment or give security within the time specified in the notice.

(2) For the purposes of Subsection (1), the security shall consist of–

- (a) cash deposit; or
- (b) bond; or
- (c) bank guarantee; or
- (d) any other security approved by the Minister.

(3) A person who fails to comply with a notice under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

Default penalty: A fine not exceeding K200.00.

35. MINISTER MAY REQUIRE INFORMATION.

(1) For the purposes of Article 15 of the Fund Convention the Minister, or a person authorized by him, may by written notice require any person to furnish such information as is specified in the notice.

(2) A notice under Subsection (1) shall specify—

- (a) the manner in which; and
- (b) the time within which,

the information required is to be furnished.

(3) A person who fails to comply with a notice under Subsection (1) is guilty of an offence.

Penalty: ⁵⁷A fine not exceeding K5,000.00.

(4) A person who—

- (a) refuses or wilfully neglects to comply with a notice under Subsection (1); or
- (b) in furnishing any information under this section required to be given—
 - (i) makes any statement which he knows to be false in a material particular; or
 - (ii) recklessly makes any statement which is false in a material particular,

is guilty of an offence.

Penalty: ⁵⁸A fine not exceeding K5,000.00.

36. INFORMATION NOT TO BE DISCLOSED.

(1) Subject to Subsection (2), where—

- (a) any information has been furnished to, or obtained by, a person under this Part; and
- (b) that person disclosed all or part of that information to another person,

that person is guilty of an offence.

Penalty: ⁵⁹A fine not exceeding K5,000.00

(2) Disclosure of information is not an offence under Subsection (1) if it is made—

- (a) with the consent of a person from whom the information was obtained; or
- (b) in pursuance of any provision of this Part; or
- (c) for the purposes of—
 - (i) any legal proceedings arising out of this Part; or
 - (ii) any report of any legal proceedings.

⁵⁷ Section 35 Subsection (3) amended by No. 73 of 2003, s. 29.

⁵⁸ Section 35 Subsection (4) amended by No. 73 of 2003, s. 29.

⁵⁹ Section 36 Subsection (1) amended by No. 73 of 2003, s. 30.

PART V. – MISCELLANEOUS.

37. APPOINTMENT OF INSPECTORS AND AUTHORIZED OFFICERS.

(1)⁶⁰ ⁶¹The Authority may, as and when he thinks fit, appoint a person to be an inspector under this Act.

(2)⁶² ⁶³The Authority may by notice in the National Gazette appoint a person to be an authorized officer for the purposes of any section of this Act.

38. POWERS OF AN INSPECTOR.

(1) A person appointed as an inspector may–

- (a) go on board and inspect a ship; and
- (b) inspect any records in respect of a ship which are to be kept under this Act or under the law of the country to which the ship belongs; and
- (c) cause any entry in any records to be copied; and
- (d) require the person by whom any records are kept to certify that an entry copied from those records is a true copy; and
- (e) take samples of any substances or mixtures of substances from the ship or from the vicinity of the ship; and
- (f) require the master of the ship or a person on behalf of the master to certify the taking of any samples referred to in Paragraph (e), and
- (g) require the testing of any equipment or apparatus in the ship where such testing is relevant to his enquires.

(2) An inspector in exercising his powers under this section shall not unnecessarily detain a ship or delay it from going to sea.

39. OBSTRUCTING INSPECTOR OR AUTHORIZED OFFICER.

A person who obstructs or hinders an inspector or an authorized officer in the exercise of his powers or the performance of his duties and functions under this Act is guilty of an offence.

Penalty: ⁶⁴A fine not exceeding K2,000.00.

40. POWER TO DETAIN VESSEL.

(1) Where the Minister has reasonable cause to believe that a marine pollutant has been discharged from a vessel into the territorial sea he may cause the vessel to be detained in Papua New Guinea until the owner or agent of the vessel deposits with the State a sum of money, or furnishes such security which would in the opinion of the Minister, be adequate to meet the owners liability for the costs incurred in removing the marine pollutant from the territorial sea.

⁶⁰ Section 37 Subsection (1) amended by No. 73 of 2003, s. 31.

⁶¹ Section 37 Subsection (1) amended by No. 73 of 2003, s. 31.

⁶² Section 37 Subsection (2) amended by No. 73 of 2003, s. 31.

⁶³ Section 37 Subsection (2) amended by No. 73 of 2003, s. 31.

⁶⁴ Section 39 Amended by No. 73 of 2003, s. 32.

(2) If any vessel is detained under this section and the vessel proceeds to sea before it is released by the Minister, the master, owner and agent of the vessel are each guilty of an offence.

Penalty: ⁶⁵A fine not exceeding K50,000.00.

41. STATE OR AUTHORITY NOT LIABLE TO PROSECUTION.

⁶⁶This Act shall not be taken to subject the State or the Authority to liability to be prosecuted for an offence, but this section does not affect any liability of the master of a ship of which the State is or the Authority is the owner to be so prosecuted.

42. TIME LIMIT FOR PROSECUTIONS.

A prosecution for an offence against this Act may be brought at any time.

43. EVIDENCE.

In any proceedings for an offence against this Act—

- (a) any record kept in pursuance of the regulations is admissible as evidence of the facts stated in the record; and
- (b) a copy of an entry in such record, being a copy certified by the person by whom the record is required to be kept to be a true copy of the entry, is admissible as evidence of the facts stated in the entry; and
- (c) a document purporting to be a record kept in pursuance of the regulations, or purporting to be a certified copy referred to in Paragraph (b), shall, unless the contrary is proved, be presumed to be such a record or certified copy, as the case may be.

44. SERVICE OF NOTICES AND DOCUMENTS.

Any notice or document to be given to or served on the owner or master of a ship for the purpose of this Act may be given to or served on the agent of the ship personally or by post and any notice or document so given or served shall be deemed to have been given to or served on the owner or the master

45. DECLARATION OF PARTIES TO THE CONVENTIONS.

(1) The Minister may, by notice in the National Gazette, declare—

- (a) that a country specified in the notice is a party to the—
 - (i) Fund Convention; or
 - (ii) Intervention Convention; or
 - (iii) Liability Convention; or
 - (iv) Pollution Convention; or

⁶⁵ Section 40 Subsection (2) amended by No. 73 of 2003, s. 33.

⁶⁶ Section 41 Substituted by No. 73 of 2003, s. 34.

- (b) that a country previously specified under this section as being a party to a Convention is, or will, from the date specified in the notice, no longer be a party to that Convention.

(2) In any proceedings under this Act a declaration by the Minister under this section is *prima facie* evidence of the matters declared.

45A. PAYMENT OF FINES.

⁶⁷All monies received by way of fines for an offence under this Act shall be paid into the funds of the Authority.

46. REGULATIONS.

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for—

- (a) the carrying of oil record books on ships; and
- (b) the entries which shall be made in oil record books; and
- (c) the manner in which entries shall be made in oil record books; and
- (d) the period during which an oil record book shall be retained by the owner or the master of a ship; and
- (e) the keeping of oil record books for unmanned ships or vessels; and
- (f) the production for inspection of oil record books; and
- (g) applications for issue of certificates of insurance; and
- (h) the manner and the form in which certificates of insurance may be issued; and
- (i) the period of validity of certificates of insurance; and
- (j) the insurance or other financial security which will be accepted as complying with the requirements of the Liability Convention; and
- (k) the circumstances in which the Minister may require the delivery up of a certificate of insurance; and
- (l) applications for the issue of tanker construction certificates and tanker exemption certificates; and
- (m) the manner and form in which tanker construction certificates and tanker exemption certificates may be issued; and
- (n) oil tanker construction rules including provisions for survey and inspection of tankers; and
- (o) the exemptions which may be granted by the Minister in respect of a ship or a class of ships from the provisions of Sections 8 and 10 and from the provisions of the regulations; and

⁶⁷ Section 45A Inserted by No. 73 of 2003, s. 35.

- (p) prescribing marine pollutants; and
- (q) prescribing fees for—
 - (i) the inspection, testing and approval of any equipment; and
 - (ii) the issue and grant of a certificate; and
 - (iii) the survey and inspection of tankers, for the purposes of this Act; and
- (r)⁶⁸ prescribing penalties of fines for offences against the regulations.

Office of Legislative Counsel, PNG

⁶⁸ Section 46 Amended by No. 73 of 2003, s. 36.