



# MARINE ENVIRONMENT PROTECTION ACT, 1990

No. 41 of 1990

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A.D. 1990

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No. 41 of 1990

**An Act to provide for the protection of the marine environment; to make consequential amendments to the Fisheries Act, 1982; and for other purposes.**

[Assented to 25 October 1990]

The Parliament of South Australia enacts as follows:

## PART I PRELIMINARY

### Short title

1. This Act may be cited as the *Marine Environment Protection Act, 1990*.

### Commencement

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

### Interpretation

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

“coastal waters” means any part of the sea—

(a) that is within the limits of the State;

or

(b) that is from time to time included in the coastal waters of the State by virtue of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth,

and includes any estuary or other tidal waters:

“condition” includes a limitation:

“criteria” means limits or tolerances relating to the effect of pollutants and water quality characteristics on uses of water:

“declared inland waters” means waters declared by the Minister under this section to be inland waters to which this Act applies:

“inspector” means a person appointed as an inspector under this Act:

“lake” includes a lagoon, swamp, marsh or spring:

“pollutant” means any wastes or other matter whether in solid, liquid or gaseous form, but does not include—

(a) stormwater;

or

(b) any matter of a kind excluded by regulation from the application of this Act:

“public authority” means—

(a) the Crown;

(b) a municipal or district council or other body that is vested with the powers of a council;

or

(c) any authority established by statute:

“standards” means limits or tolerances relating to the quantity, quality or rate of discharges, emissions or deposits of pollutants or quantity or quality of pollutants produced or brought into circulation:

“watercourse” means a river, creek or other natural watercourse (whether modified or not) and includes an artificial channel.

(2) For the purposes of this Act, land constitutes part of the coast if the land is—

(a) within the mean high water mark and the mean low water mark on the seashore at spring tides;

(b) beneath coastal waters;

(c) beneath or within any estuary, watercourse or lake or section of watercourse or lake and subject to the ebb and flow of the tide;

or

(d) declared by the Minister under this section to be coastal land to which this Act applies.

(3) The Minister may, by notice published in the *Gazette*—

(a) declare land specified in the notice to be coastal land to which this Act applies;

or

(b) declare waters specified in the notice constituting the whole or part of—

(i) a watercourse or lake;

(ii) underground waters;

or

(iii) waste waters or other waters,

to be inland waters to which this Act applies.

(4) A declaration may be made under subsection (3) (b) in respect of waters in a specified place or area whether the waters are present there permanently or only occasionally and whether or not they are present there when the declaration is made.

(5) The Minister may, by notice published in the *Gazette*, vary or revoke a declaration under this section.

(6) The Minister may not declare any waters to be inland waters to which this Act applies, or vary or revoke any such declaration, except with the concurrence of the Minister of Water Resources.

*Note: For definition of divisional penalties see Appendix.*

#### **Act binds Crown**

4. This Act binds the Crown.

#### **Application of Act**

5. (1) Subject to this section, this Act is in addition to, and does not derogate from the provisions of, any other Act.

(2) This Act does not apply in relation to any activity to which—

(a) the *Environment Protection (Sea Dumping) Act, 1984*;

or

(b) the *Pollution of Waters by Oil and Noxious Substances Act, 1987*,

applies.

(3) This Act is subject to—

(a) *The Pulp and Paper Mills Agreement Act, 1958*;

(b) *The Pulp and Paper Mill (Hundred of Gambier) Indenture Act, 1961*;

and

(c) *The Pulp and Paper Mill (Hundreds of Mayurra and Hindmarsh) Act, 1964*.

(4) The Governor may, by regulation, exclude from the application of this Act, or specified provisions of this Act, activities of a specified kind.

## **PART II**

### **GENERAL OBJECTS AND FUNCTIONS**

#### **Objects**

6. (1) The objects of this Act are as follows:

(a) to protect the marine environment and preserve or enhance its quality for beneficial use by the community by preventing, or controlling and mitigating the effects of, pollution;

(b) to ensure that persons engaging in activities that might adversely affect the marine environment monitor and report the effects of those activities and bear the cost of any necessary ameliorative action;

(c) to promote the minimization and treatment of waste to reduce the impact of pollutants on the marine environment.

(2) The Minister, the Environmental Protection Council, a committee or any other body or person involved in the administration of this Act must act consistently with, and seek to further, the objects of this Act.

#### **Functions**

7. The Minister has the following functions:

(a) to keep under review the condition of the marine environment;

(b) to conduct or promote investigations, research, public education and other programmes and projects in relation to the marine environment and its protection;

- (c) to promote and co-ordinate action by public authorities to control the drainage of surface waters and reduce their contaminant loads to the marine environment;
  - (d) to promote public awareness of the beneficial uses of the marine environment and public commitment to achieving the objects of this Act;
  - (e) to integrate and co-ordinate Government policies that affect the marine environment and, for that purpose, to consult where necessary with other Ministers and public authorities with responsibilities in relation to land or water management, management of fisheries and other living natural resources, management of boating and shipping or the planning laws of the State;
- and
- (f) such other functions as are assigned to the Minister.

### PART III

#### ENVIRONMENTAL PROTECTION COUNCIL

##### **Additional functions of Environmental Protection Council**

8. The Environmental Protection Council has, in addition to its functions under any other Act, the following functions:

- (a) to advise the Minister in respect of the formulation of regulations and other statutory instruments for the purposes of this Act;
- (b) to provide general advice to the Minister in respect of the granting of licences under this Act;
- (c) to investigate and report on matters relevant to the administration of this Act at the request of the Minister or of its own motion.

##### **Additional members may be co-opted**

9. (1) The Environmental Protection Council may, with the approval of the Minister, or must, if so required by the Minister, co-opt as an additional member or as additional members of the Council a person or persons with knowledge or experience that may be required by the Council for the better performance of its functions under this Act.

(2) No person may be co-opted as an additional member of the Council except after publication in a newspaper circulating generally in the State of a notice seeking nominations or applications from any interested bodies or persons and after consideration by the Council and the Minister of the persons (if any) nominated or applying in the manner and within the period specified in the notice.

##### **Council to establish Marine Environment Protection Committee**

10. (1) The Environmental Protection Council must establish a special committee of the Council to be known as the *Marine Environment Protection Committee*.

(2) The Committee consists of—

- (a) the Chairman of the Council;
- (b) whichever of the following members of the Council the Council appoints as a member of the Committee:
  - (i) the member of the Council appointed as a person with knowledge of biological conservation;
  - (ii) the member of the Council appointed as a person engaged at a university in teaching or research in a field related to environmental protection;

- (c) a person appointed by the Council on the nomination of the Conservation Council of South Australia Incorporated;
- (d) a person appointed by the Council on the nomination of the Chamber of Commerce and Industry S.A. Incorporated and the South Australian Employers Federation;
- (e) a person appointed by the Council on the nomination of the South Australian Chamber of Mines and Energy Incorporated;
- (f) a person appointed by the Council on the nomination of the Minister of Fisheries;
- (g) a person appointed by the Council on the nomination of the South Australian Fishing Industry Council Incorporated;
- (h) an officer of the Public Service of the State appointed by the Council on the nomination of the Minister of Health;
- (i) a person appointed by the Council on the nomination of the Local Government Association;

and

- (j) such other members of the Council or other persons as the Council may, from time to time, with the approval of the Minister, appoint to the Committee.

(3) No more than one-half of the total number of members of the Committee may be persons employed in the Public Service of the State.

(4) At least one member of the Committee must be a woman and at least one a man.

(5) No person, other than a member of the Council, may be appointed to the Committee pursuant to subsection (2) (j) except after publication in a newspaper circulating generally in the State of a notice seeking nominations or applications from interested bodies or persons and after consideration by the Council and the Minister of the persons (if any) nominated or applying in the manner and within the period specified in the notice.

#### **Delegation from Council to the Committee**

11. (1) The Environmental Protection Council may, with the approval of the Minister, or must, if so required by the Minister, by writing over the Council's seal, delegate to the Marine Environment Protection Committee all or part of its functions under this Act together with any of the other powers or functions of the Council.

(2) A delegation pursuant to this section may be limited to a matter or class of matters specified in the instrument of delegation.

(3) A delegation pursuant to this section does not prevent the exercise by the Council of the functions or powers delegated.

(4) Where functions or powers of the Council are delegated to the Committee in accordance with a requirement of the Minister, the Council may not vary or revoke the delegation, except with the approval of the Minister, but if no such requirement has been made the Council may vary or revoke a delegation at will.

#### **Procedure at meetings of Committee, etc.**

12. (1) The Marine Environment Protection Committee may, subject to any directions of the Environmental Protection Council given with the approval of the Minister, conduct its meetings in such manner as the Committee may determine.

(2) The Committee must cause accurate minutes to be kept of proceedings at its meetings.

(3) The Council must cause—

- (a) a copy of the minutes of each meeting of the Council at which any matters relating to this Act are dealt with;

and

(b) a copy of the minutes of each meeting of the Committee, to be forwarded to the Minister as soon as practicable after they have been made and confirmed.

(4) The Minister must cause a copy of all minutes forwarded to the Minister in accordance with this section to be kept available for inspection (without fee) by members of the public during ordinary office hours at any office determined by the Minister.

**Staff, facilities, information, etc.**

13. The Minister must ensure that the Environmental Protection Council and the Marine Environment Protection Committee are provided with such staff, facilities, information and assistance as they may reasonably require for the effective performance of their functions under this Act.

## PART IV

### CONTROL OF DISCHARGES, ETC., INTO MARINE ENVIRONMENT

#### DIVISION I—DISCHARGE, ETC., OF POLLUTANTS

##### Discharge, etc., of pollutants

14. (1) A person must not discharge, emit or deposit any pollutant, or permit any pollutant to be discharged, emitted or deposited—

(a) into declared inland waters;

(b) into coastal waters;

or

(c) on land that constitutes part of the coast,

except as authorized by a licence under this Act.

Penalty: If the offender is a natural person—\$150 000 or division 3 imprisonment, or both.

If the offender is a body corporate—\$1 000 000.

(2) Subsection (1) does not prevent a person from discharging, emitting or depositing matter into a sewerage or similar system operated by a public authority if the matter is discharged, emitted or deposited into the system in accordance with the law governing that system.

#### DIVISION II—PRODUCTION OR DISTURBANCE OF POLLUTANTS

##### Production or disturbance of pollutants

15. A person must not carry on a prescribed activity in the course of which—

(a) any pollutant is produced in declared inland waters or coastal waters;

or

(b) any pollutant present on or in the bed of declared inland waters or coastal waters is disturbed and brought into circulation in those waters,

except as authorized by a licence under this Act.

Penalty: If the offender is a natural person—\$150 000 or division 3 imprisonment, or both.

If the offender is a body corporate—\$1 000 000.

#### DIVISION III—INSTALLATION OR CONSTRUCTION OF CERTAIN EQUIPMENT, STRUCTURES OR WORKS

##### Installation or construction of certain equipment, structures or works

16. (1) A person must not install, or commence the construction of, any equipment, structure or works designed or intended—

(a) for the discharge, emission or depositing of any pollutant as referred to in Division I;



or

(b) for an activity of a kind referred to in Division II,

except as authorized by a licence under this Act.

Penalty: If the offender is a natural person—\$150 000 or division 3 imprisonment, or both.

If the offender is a body corporate—\$1 000 000.

(2) A person may, unless the Minister otherwise determines, make one application and, subject to this Act, be granted a single licence authorizing the installation or construction of any equipment, structure or works together with the activity of a kind referred to in Division I or II for which the equipment, structure or works is designed or intended.

#### DIVISION IV—GENERAL LICENSING PROVISIONS

##### Application for licence

17. (1) An application for a licence under this Act must be made to the Minister in such manner and form as is determined by the Minister and must be accompanied by the prescribed fee.

(2) Where application is made for a licence and the Minister requires further information to determine the application, the Minister may, by notice in writing served on the applicant not later than two months after the application is made, require the applicant to furnish, by statement in writing, specified information.

(3) Where a notice is served under subsection (2), the application is to be taken, for the purposes of section 18 (2), not to have been duly made until the statement is furnished.

(4) The Minister may require any information included in an application or required by a notice under subsection (2) to be verified by statutory declaration.

##### Grant of licence

18. (1) Subject to this Act, the Minister may grant or refuse to grant a licence under this Act to a person who has made an application in accordance with this Act.

(2) The Minister must, by notice in writing served on the applicant, advise the applicant of his or her decision on the application within three months after the application is made and, in the case of a decision refusing a licence, state in the notice the reasons for the refusal.

##### Licence conditions

19. (1) A licence under this Act is subject to—

(a) any conditions prescribed by the regulations;

and

(b) any conditions imposed by the Minister.

(2) The Minister may impose licence conditions with respect to such matters as are contemplated by this Act or as the Minister considers necessary or expedient for the purposes of this Act.

(3) Conditions of a licence imposed by the Minister—

(a) —

(i) if imposed at the time of grant or renewal of the licence—must be included in the licence itself;

or

(ii) if imposed during the currency of the licence—must be imposed by notice in writing served on the licensee;

and

(b) may be varied or revoked at any time by notice in writing served on the licensee.

(4) The holder of a licence who contravenes, or fails to comply with, a condition of the licence is guilty of an offence.

Penalty: If the offender is a natural person—\$150 000 or division 3 imprisonment, or both.

If the offender is a body corporate—\$1 000 000.

#### **Term of licences**

20. (1) All licences under this Act are to be granted for a period of one year.

(2) Subject to this Act, a licence remains in force for the period for which it was granted and thereafter may be renewed for successive periods of one year.

#### **Application for renewal of licence**

21. (1) An application for the renewal of a licence under this Act must be made in such manner and form as is determined by the Minister and must be accompanied by the prescribed fee.

(2) An application for renewal must be made not less than the prescribed number of days before the date of expiry of the licence.

(3) The Minister may, in his or her discretion, determine a late application for renewal provided that it is delivered to the Minister before the date of expiry of the licence and the applicant pays the prescribed late application fee.

#### **Renewal of licence**

22. (1) Subject to this Act, the Minister may renew or refuse to renew the licence of a person who has made an application in accordance with this Act.

(2) The Minister must, by notice in writing served on the applicant, give a decision under subsection (1) on an application for the renewal of a licence before the date of expiry of the licence and, in the case of a decision refusing an application, state in the notice the reasons for the refusal.

#### **Matters to be considered in granting or renewing licences or attaching licence conditions**

23. (1) The Minister must in determining—

(a) whether to grant or refuse a licence or renewal of a licence;

or

(b) what conditions should attach to a licence,

give effect to or apply such policies, standards or criteria as are prescribed by regulation and applicable to the application or licence in question.

(2) Without limiting the effect of subsection (1)—

(a) the Minister may not—

(i) grant a licence unless satisfied that the applicant is a fit and proper person to hold the licence;

or

(ii) grant a licence authorizing the discharge, emission or depositing of matter of a kind prescribed by regulation for the purposes of this subsection;

and

(b) the Minister may refuse to renew a licence on any ground on which a licence may be suspended or cancelled under this Act.

**Death of licensee**

24. Where a licensee dies, the personal representative of the deceased, or some other person approved by the Minister, is to be taken to have been licensed (on the same conditions as were applicable to the former licensee) as from the date of death of the licensee until the expiration of six months from that date or until such later date as may be fixed by the Minister.

**Suspension or cancellation of licence**

25. (1) The Minister may if satisfied that—

- (a) a licensee obtained the licence improperly;
- (b) a licensee has contravened, or failed to comply with, a condition of the licence;
- (c) a licensee has otherwise contravened, or failed to comply with, this Act;
- (d) a licensee has, in carrying on an activity to which this Act relates, been guilty of negligence or improper conduct;

or

- (e) the activity authorized by a licence has had or is having (whether by itself or in combination with other activity) a significantly greater adverse effect on the environment than that anticipated at the time of the granting of the licence,

suspend or cancel the licence.

(2) Before the Minister acts under this section, the Minister must—

- (a) notify the licensee in writing of his or her proposed action;
- and
- (b) allow the licensee at least 14 days within which to make submissions in relation to the proposed action.

**DIVISION V—PUBLIC NOTIFICATION AND REGISTER****Notice to be published of action relating to licences**

26. (1) The Minister must on—

- (a) receiving an application for a licence under this Act;
  - (b) granting or refusing a licence under this Act;
- or
- (c) varying or revoking a condition of a licence, or imposing a further condition of a licence, under this Act,

cause public notice of the application or action to be given in accordance with this section.

(2) The notice must be published—

- (a) in the *Gazette* and in a newspaper circulating generally in the State;
- and
- (b) if the Minister considers it appropriate in the circumstances, in a local newspaper circulating in the area in which activity is or is proposed to be carried on in pursuance of the licence.

(3) The notice must—

- (a) set out the name and address of the applicant or licensee;

- (b) set out the location at which activity is or is proposed to be carried on in pursuance of the licence;
  - (c) set out such details of the activity or proposed activity and its likely environmental effect as the Minister considers appropriate in the circumstances;
- and
- (d) invite public comment.

### **Register**

27. (1) The Minister must keep a register in accordance with this section.

(2) The register is to be in a form determined by the Minister.

(3) The Minister must record in the register—

- (a) such information as the Minister considers appropriate relating to each application for a licence under this Act;
  - (b) the name and address of each licensee under this Act;
  - (c) the locations at which activities are carried on in pursuance of licences;
  - (d) the conditions of each licence;
  - (e) details of the effects of the activities authorized by each licence as disclosed by tests or monitoring carried out from time to time in pursuance of this Act by the licensee, or by inspectors or other persons appointed by the Minister;
  - (f) details of any licence suspension, cancellation or surrender;
- and
- (g) such other information as is prescribed.

(4) The register must be kept available for inspection, on payment of the prescribed fee, by members of the public during ordinary office hours at an office determined by the Minister.

## PART V ENFORCEMENT

### **Appointment of inspectors**

28. (1) The Minister may appoint such persons to be inspectors for the purposes of this Act as the Minister thinks fit.

(2) An appointment—

- (a) may be limited to a period stated in the instrument of appointment;

and

- (b) may be made subject to conditions limiting the area within which, or the purposes for which, the appointee may exercise the powers of an inspector.

(3) A person, other than a member of the police force, appointed as an inspector must be issued with an identity card in the prescribed form identifying the person and stating that he or she is an inspector for the purposes of this Act.

(4) Where the powers of an inspector have been limited pursuant to subsection (2) (b), the identity card issued to the inspector must contain a statement of the limitation on the inspector's powers.

(5) An inspector must, at the request of a person in relation to whom the inspector intends to exercise any powers under this Act, produce for the inspection of the person—

- (a) in the case of an inspector who is a member of the police force and is not in uniform—his or her certificate of authority;
  - or
  - (b) in the case of an inspector who is not a member of the police force—his or her identity card.
- (6) The Minister may, by notice in writing served on an inspector—
- (a) vary or revoke a condition of an appointment imposed under subsection (2) (b);
  - or
  - (b) revoke the appointment.

### **Powers of inspectors**

#### **29. (1) An inspector may—**

- (a) enter and inspect any land, premises, vehicle, vessel or place where the inspector reasonably suspects that an offence against this Act has been, is being, or is about to be, committed or where necessary for the purpose of determining whether a provision of this Act is being or has been complied with;
- (b) where reasonably necessary for that purpose, break into or open any part of, or anything in or on, the land, premises, vehicle, vessel or place, and, in the case of a vehicle or vessel, give a direction with respect to the stopping or moving of the vehicle or vessel;
- (c) direct the driver of a vehicle or vessel to dispose of any pollutant in or on the vehicle or vessel at a specified place or to store or treat the pollutant in a specified manner;
- (d) take samples of any matter from any land, premises, vehicle, vessel or place for analysis;
- (e) require any person to produce any plans, specifications, books, papers or documents reasonably required in connection with the administration of this Act;
- (f) examine, copy and take extracts from any plans, specifications, books, papers or documents so produced;
- (g) take photographs, films or video recordings as reasonably necessary in connection with the administration of this Act;
- (h) seize and examine any plant or equipment or vehicle or vessel or other thing or cause it to be examined and tested, for the purpose of determining whether a provision of this Act is being or has been complied with;
- (i) seize and retain anything that the inspector reasonably suspects has been used in, or may constitute evidence of, the commission of an offence against this Act;
- (j) require a person who the inspector reasonably suspects has committed, or is about to commit, an offence against this Act to state the person's full name and usual place of residence;
- (k) require a person who the inspector reasonably suspects has knowledge concerning any matter relating to the administration of this Act to answer questions in relation to those matters;
- (l) require a person holding or required to hold a licence under this Act to produce the licence for inspection.

(2) An inspector may only exercise the power conferred by subsection (1) (b) on the authority of a warrant issued by a justice unless the inspector believes, on reasonable grounds, that the circumstances require immediate action to be taken.

(3) A justice must not issue a warrant under subsection (2) unless satisfied, on information given on oath—

(a) that there are reasonable grounds to suspect that an offence against this Act has been, is being, or is about to be, committed;

or

(b) that the warrant is reasonably required in the circumstances.

(4) In the exercise of powers under this Act an inspector may be assisted by such persons as may be necessary or desirable in the circumstances.

(5) An occupier of premises must give to an inspector or a person assisting an inspector such assistance and provide such facilities as are necessary to enable the powers conferred by this section to be exercised.

Penalty: Division 6 fine.

(6) Subject to subsection (7), a person who—

(a) without reasonable excuse, hinders or obstructs an inspector, or a person assisting an inspector, in the exercise of powers conferred by this Act;

(b) uses abusive, threatening or insulting language to an inspector, or a person assisting an inspector;

(c) without reasonable excuse, refuses or fails to comply with a requirement or direction of an inspector under this Act;

(d) without reasonable excuse, fails to answer, to the best of the person's knowledge, information and belief, a question put by an inspector;

or

(e) falsely represents, by words or conduct, that he or she is an inspector,

is guilty of an offence.

Penalty: Division 6 fine.

(7) A person is not required to answer a question put by an inspector if the answer would tend to incriminate him or her of an offence.

(8) A person who assaults an inspector, or a person assisting an inspector acting in the exercise of powers under this Act, is guilty of an offence.

Penalty: Division 5 fine or division 5 imprisonment, or both.

(9) Where anything has been seized under subsection (1) (i) the following provisions apply:

(a) the thing seized must be held by the Crown pending proceedings for an offence against this Act related to the thing seized, unless the Minister, on application, authorizes its release to the person from whom it was seized, or any person who had legal title to it at the time of its seizure, subject to such conditions as the Minister thinks fit (including conditions as to the giving of security for satisfaction of an order under paragraph (b) (ii));

(b) where proceedings for an offence against this Act relating to the thing seized are instituted within six months of its seizure and the person charged is found guilty of the offence, the court may—

(i) order that it be forfeited to the Crown;

or

(ii) where it has been released pursuant to paragraph (a)—order that it be forfeited to the Crown or that the person to whom it was released pay

to the Minister an amount equal to its market value at the time of its seizure, as the court thinks fit;

(c) where—

(i) proceedings are not instituted for an offence against this Act relating to the thing seized within six months after its seizure;

or

(ii) proceedings having been so instituted—

(A) the person charged is found not guilty of the offence;

or

(B) the person charged is found guilty of the offence but no order for forfeiture is made under paragraph (b),

the person from whom the thing was seized, or any person with legal title to it, is entitled to recover from the Minister, by action in a court of competent jurisdiction, the thing itself, or if it has deteriorated or been destroyed, compensation of an amount equal to its market value at the time of its seizure.

(10) An inspector, or a person assisting an inspector, who—

(a) addresses offensive language to any other person;

or

(b) without lawful authority or a reasonable belief as to lawful authority, hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

Penalty: Division 6 fine.

#### **Power to require tests, monitoring or information**

**30.** (1) The Minister may, by a condition of a licence or by notice in writing—

(a) require a licensee to take specified action to test or monitor the effects of an activity authorized by the licence and to furnish to the Minister specified information relating to the results of the test or monitoring;

or

(b) require a licensee or other person to furnish to the Minister specified information that relates to an activity authorized by the licence or is otherwise reasonably required by the Minister for the purposes of this Act.

(2) The Minister may, by a condition or notice under subsection (1), require any information furnished in compliance with the condition or notice to be verified by statutory declaration.

(3) A person on whom notice is served pursuant to this section must not fail to comply with the requirements of the notice.

Penalty: Division 5 fine.

(4) Where a person—

(a) fails to comply with a condition or notice under this section;

or

(b) furnishes information that is incomplete or inaccurate,

the Minister may direct an inspector, or appoint some other person, to take such action as is reasonably required to obtain the information required by the condition or notice.

- (5) Where a person is appointed by the Minister pursuant to subsection (4)—
- (a) the person may exercise such powers of an inspector as are reasonably required for taking the action required by the Minister;
- and
- (b) the provisions of this Act apply for that purpose as if the person had been appointed an inspector under this Act.

(6) Where the Minister directs an inspector, or appoints some other person, to take action as referred to in this section, the Minister may recover as a debt the costs and expenses incurred in taking that action from the person whose default gave rise to the direction or appointment.

(7) Any information furnished by a person in compliance with a condition or notice under this section is not admissible in evidence in any proceedings against the person for an offence other than an offence against this Act or an offence of making a false declaration.

#### **Directions where contravention of or non-compliance with Act**

31. (1) If the Minister is satisfied that a person has contravened, or failed to comply with, a provision of this Act, the Minister must do such of the following as the Minister considers necessary or appropriate in the circumstances:

- (a) direct the person to refrain, either for a specified period or until further notice, from the activity in relation to which the contravention or failure occurred;
- (b) direct the person to take specified action within a specified period to ameliorate conditions resulting from the contravention or failure;
- (c) if the Minister considers that urgent action is required to ameliorate conditions resulting from the contravention or failure, take that action.

(2) A direction under this section must be in writing unless the Minister considers that the direction is urgently required, in which case, it may be given orally by an inspector.

(3) If a person fails to comply with a direction under subsection (1) (b), the Minister may take the necessary action.

(4) The costs and expenses incurred by the Minister under this section may be recovered as a debt from any person whose contravention or failure resulted in the action being taken.

(5) A person who contravenes, or fails to comply with, a direction under this section is guilty of an offence.

Penalty: If the offender is a natural person—\$150 000 or division 3 imprisonment, or both.

If the offender is a body corporate—\$1 000 000.

(6) A person who, without reasonable excuse, hinders or obstructs a person exercising a power or complying with a direction under this section is guilty of an offence.

Penalty: Division 1 fine.

#### **Power to require lodging of bond or pecuniary sum to secure compliance with Act**

32. (1) The Minister may, by a condition of a licence, require a licensee to lodge with the Minister a bond (supported by a guarantee or other security approved by the Minister), or a specified pecuniary sum, the discharge or repayment of which is conditional on the licensee not contravening any conditions of the licence fixing standards in relation to the discharge, emission, depositing, production or disturbance of pollutants by the licensee.

(2) A condition of the kind referred to in subsection (1) may not be imposed in respect of a licence except at the time of the grant or renewal of the licence.



(3) The Minister may not, by a licence condition under subsection (1), require the lodgment of a bond or a pecuniary sum of an amount greater than the amount that, in the opinion of the Minister, represents the total of the likely costs, expenses, loss and damage that might be incurred or suffered by persons as a result of a failure by the licensee to satisfy the conditions of discharge or repayment of the bond or pecuniary sum.

(4) A pecuniary sum lodged with the Minister in accordance with a licence condition under subsection (1) must be paid into the Marine Environment Protection Fund and, on satisfaction of the conditions of repayment, must be repaid to the licensee together with an amount representing interest on the pecuniary sum at the prescribed rate for the period from the date of its lodgment with the Minister until the date of its repayment.

(5) Where a licensee fails to satisfy the conditions of discharge or repayment of a bond or pecuniary sum lodged with the Minister, the Minister—

(a) may determine that the whole or a part of the amount of the bond or pecuniary sum is forfeited to the Marine Environment Protection Fund;

(b) may apply from the Fund any money so forfeited in payments for or towards costs, expenses, loss or damage incurred or suffered by the Crown, a public authority or other person as a result of the failure by the licensee;

and

(c) may, in the case of a pecuniary sum, on the expiry or termination of the licence and when satisfied that there are no valid outstanding claims in respect of costs, expenses, loss or damage incurred or suffered as a result of the failure of the licensee, repay any amount of the pecuniary sum that has not been forfeited to the Fund.

## PART VI

### REVIEW OF DECISIONS OF MINISTER

#### Review of decisions of Minister

33. (1) A person aggrieved—

(a) by a decision of the Minister made in relation to a licence or an application for a licence under Part IV;

or

(b) by a requirement or direction of the Minister under Part V,

may apply to a District Court for a review of the decision, requirement or direction.

(2) Subject to this section, an application for review must be made within three months of the making of the decision, requirement or direction to be reviewed.

(3) Where an entry is required to be made in the register under Division V of Part IV recording the effect of a decision of the Minister, an application for review of the decision must be made within three months after the entry is made.

(4) The District Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an application for review be made within the period fixed by this section.

(5) The District Court may, on a review, do one or more of the following, according to the nature of the case:

(a) confirm the decision, requirement or direction subject to review;

(b) substitute, or make in addition, any decision, requirement or direction that should, in the opinion of the Court, have been made in the first instance;

- (c) remit the subject matter of the review to the Minister for further consideration;
- (d) make any further or other order as to costs or any other matter that the case requires.

(6) The powers conferred by section 28 of the *Local and District Criminal Courts Act, 1926*, include power to make rules regulating the practice and procedure on such reviews.

(7) If a written statement of the reasons for a decision, requirement or direction referred to in subsection (1) is not furnished to a person aggrieved by the decision, requirement or direction on request made by the person during the period fixed for the making of applications for review, the period within which the person may make an application for review of the decision, requirement or direction is extended by a period equal to the period elapsing from the time of the request to the time at which the written statement of reasons is served on the person.

(8) Where the Minister or the District Court is satisfied that an application for review of a decision, requirement or direction has been made or is intended, the Minister or the Court may suspend the operation of the decision, requirement or direction until completion of the review.

(9) Where the Minister has suspended the operation of a decision, requirement or direction under this section, the Minister may terminate the suspension, and where the District Court has done so, the District Court may terminate the suspension.

(10) No appeal lies against a decision of a District Court made on a review.

## PART VII

### MARINE ENVIRONMENT PROTECTION FUND

#### **Marine Environment Protection Fund**

34. (1) The *Marine Environment Protection Fund* is established.

(2) The Fund must be kept at the Treasury.

(3) The Fund is to consist of the following money:

- (a) the prescribed percentage of licence fees paid under this Act;
  - (b) the prescribed percentage of penalties recovered in respect of offences against this Act;
  - (c) any money required to be paid into the Fund pursuant to section 32;
  - (d) any money appropriated by Parliament for the purposes of the Fund;
  - (e) any money received by way of grant, gift or bequest for the purposes of the Fund;
- and
- (f) any income from investment of money belonging to the Fund.

(4) The Fund may be applied by the Minister (without further appropriation than this subsection)—

- (a) in making any payment pursuant to section 32;
- (b) for the purposes of any investigations, research, pilot programmes or projects relating to the marine environment or its protection;

or

- (c) for the purposes of public education programmes in relation to the marine environment and its protection.

(5) The Minister must, before applying money belonging to the Fund for any purpose other than a payment required by this Act, obtain and have regard to the advice of the Environmental Protection Council.

(6) The Minister may, with the approval of the Treasurer, invest any of the money belonging to the Fund that is not immediately required for the purposes of the Fund in such manner as is approved by the Treasurer.

## PART VIII

### MISCELLANEOUS

#### **Annual report to contain certain matters**

35. The annual report prepared pursuant to the *Government Management and Employment Act, 1985*, on the operations of the administrative unit that is, under the Minister, responsible for the administration of this Act must contain a summary of—

- (a) every allegation or report (whether of an inspector or otherwise) of any contravention of, or failure to comply with, this Act;
- (b) the investigative or enforcement action (if any) taken in response to each such allegation or report and the results of that action;
- (c) if no such action was taken in any particular case—the reasons why no such action was taken.

#### **False or misleading information**

36. A person must not, in furnishing information under this Act, make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular).

Penalty: Division 5 fine.

#### **Delegation**

37. (1) The Minister may, by instrument in writing, delegate to a specified person employed in the Public Service, or the person for the time being holding a specified position in the Public Service, any power or function of the Minister under this Act.

(2) A delegation under this section may be given subject to such conditions as the Minister thinks fit and specifies in the instrument of delegation.

(3) A delegation under this section is revocable at will and does not prevent the Minister from acting personally in any matter.

#### **Confidentiality**

38. A person must not divulge any information relating to trade processes obtained (whether by that person or some other person) in the administration of this Act except—

- (a) as authorized by or under this Act;
  - (b) with the consent of the person from whom the information was obtained or to whom the information relates;
  - (c) in connection with the administration of this Act;
- or
- (d) for the purpose of any legal proceedings arising out of the administration of this Act.

Penalty: Division 5 fine.

**Protection from personal liability**

39. (1) A person engaged in the administration of this Act incurs no liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.

(2) A liability that would, but for subsection (1), lie against the person lies instead against the Crown.

**Service**

40. A notice or document required or authorized by this Act to be given to or served on a person by the Minister may be given or served—

(a) by delivering it personally to the person or an agent of the person;

(b) by leaving it for the person at his or her place of residence or business with someone apparently over the age of 16 years;

or

(c) by posting it to the person or agent of the person at his or her last known address.

**Evidentiary provisions**

41. (1) In any legal proceedings, a document apparently executed by the Minister certifying as to a matter relating to—

(a) a licence under this Act;

(b) the appointment of an inspector or any other person pursuant to this Act;

(c) a delegation under this Act;

(d) a requirement or direction of the Minister under this Act;

(e) the results of an analysis carried out by a person appointed by the Minister as an analyst for the purposes of this Act;

or

(f) the quantity of a discharge or emission,

constitutes proof, in the absence of proof to the contrary, of the matters so certified.

(2) In any legal proceedings, a document apparently executed by the Minister certifying as to the amount of the costs and expenses incurred by the Minister in taking action as authorized by this Act in consequence of a contravention of, or failure to comply with, this Act constitutes proof, in the absence of proof to the contrary, of the matter so certified.

(3) An allegation in a complaint—

(a) that specified matter was a pollutant;

or

(b) that a specified place or area was within coastal waters or declared inland waters or was land that constituted part of the coast,

constitutes proof, in the absence of proof to the contrary, of the matters so alleged.

**Vicarious liability**

42. For the purposes of this Act, an act or omission of an employee or agent is to be taken to be the act or omission of the employer or principal unless it is proved that the employee or agent was not acting in the course of his or her employment or agency.

**Offences by bodies corporate**

43. Where a body corporate is guilty of an offence against this Act, each member of the governing body and the manager of the body corporate are guilty of an offence and liable to the same penalty as may be imposed for the principal offence when committed by a natural person.

**Continuing offences**

44. (1) Where an offence against a provision of this Act is committed by a person by reason of a continuing act or omission—

(a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence;

and

(b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence.

(2) For the purposes of this section, an obligation to do something is to be regarded as continuing until the act is done notwithstanding that any period within which, or time before which, the act is required to be done has expired or passed.

**Proceedings for offences**

45. (1) Subject to subsection (2), an offence against this Act is a summary offence.

(2) An offence against this Act for which the maximum fine prescribed by this Act equals or exceeds \$150 000 is a minor indictable offence.

(3) Proceedings for an offence against this Act—

(a) may be commenced by an inspector or, with the authorization in writing of the Minister, by any other person;

and

(b) must be commenced within five years after the date on which the offence is alleged to have been committed.

(4) An apparently genuine document purporting to be under the hand of the Minister and to authorize the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorization.

(5) Where proceedings for an offence against this Act are commenced by an inspector who is an officer or employee of a municipal or district council, any penalty imposed in respect of the offence is payable to and may be retained by the council.

**Orders for ameliorative action, compensation, etc.**

46. (1) Where, in proceedings for an offence against this Act, the court finds that the defendant has contravened, or failed to comply with, this Act, the court may, in addition to any penalty it may impose, do one or more of the following:

(a) order the person to take specified action to ameliorate conditions resulting from the contravention or failure;

- (b) order the person to pay to any public authority that has taken action to ameliorate conditions resulting from the contravention or failure costs and expenses incurred by the authority in taking that action;
- (c) order the person to pay to any person who has suffered loss or damage to property as a result of the contravention or failure, or incurred costs or expenses in preventing or mitigating, or attempting to prevent or mitigate, such loss or damage, compensation for the loss or damage or an amount for or towards those costs or expenses.

(2) A person to whom an order is given under subsection (1) (a) who fails to comply with the order within the time specified in the order, or such further time as the court, on application, allows, is guilty of an offence.

Penalty: If the offender is a natural person—\$150 000 or division 3 imprisonment, or both.

If the offender is a body corporate—\$1 000 000.

### General defence

47. (1) It is a defence to a charge of an offence against this Act if the defendant proves—

(a) that the alleged offence—

(i) did not result from any deliberate or negligent act or omission on the part of the defendant;

or

(ii) was reasonably justified by the need to protect life or property in a situation of emergency that did not result from any deliberate or negligent act or omission on the part of the defendant;

and

(b) in addition, in the case of an alleged offence involving the discharge, emission, depositing, production or disturbance of any pollutant—that, as soon as practicable after the event, the defendant notified the Minister, in accordance with the regulations, of the time and place of the event, its nature and the circumstances in which it occurred.

(2) A person who would, but for the defence provided by subsection (1), be guilty of an offence against a provision of this Act is, notwithstanding that defence, to be taken to have contravened, or failed to comply with, that provision for the purposes of section 31 or 46.

### Regulations

48. (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

(a) divide licences into classes and impose different conditions on different classes of licences;

(b) prescribe forms for the purposes of this Act;

(c) prescribe fees (which may be differential) to be paid in respect of any matter under this Act and provide for the recovery of those fees;

(d) provide for the refund of fees or a specified part of fees in specified circumstances;

(e) authorize the release or publication of information of a specified kind obtained in the administration of this Act;

(f) prescribe fines (not exceeding a division 6 fine) for contravention of, or non-compliance with, a regulation.

(3) A regulation under this Act—

(a) may be of general or limited application;

(b) leave a matter in respect of which regulations may be made to be determined according to the discretion of the Minister;

and

(c) may incorporate or operate by reference to any code, standard or other document prepared or approved by a body or authority referred to in the regulation and as varied from time to time by that body or authority or the regulations.

## SCHEDULE 1

## TRANSITIONAL PROVISIONS

(1) Where due application is made for a licence under this Act and the applicant satisfies the Minister that the activity for which the licence is sought was lawfully carried on by the applicant on a continuous or regular basis during any period up to the passing of this Act, the Minister must grant the licence notwithstanding that the activity is of a kind for which a licence would not be granted apart from this subclause.

(2) Where the Minister grants a licence by virtue of subclause (1), the Minister must impose conditions of the licence in accordance with Part IV requiring the licensee, within, or in stages over, a period that the Minister considers to be reasonable in the circumstances (but not in any event exceeding eight years from the commencement of this Act)—

(a) in a case where such action is reasonably practicable in the circumstances—to take action to modify the activity to bring it into conformity with the requirements that would be applied in relation to an activity of that kind commenced after the commencement of this Act;

or

(b) in any other case—to discontinue the activity.

(3) A licence granted by virtue of subclause (1) may be renewed by the Minister during the period for which the conditions referred to in subclause (2) apply in relation to the licence notwithstanding that the activity for which the licence renewal is sought is of a kind for which a licence renewal would not be granted apart from this subclause.

(4) Where the Minister grants or renews a licence by virtue of this clause, no person, other than the licensee, is entitled to make an application for review of the decision to grant or renew the licence or the conditions imposed on the licence pursuant to this clause.

(5) In this clause—

“activity” means—

(a) an activity involving the discharge, emission or depositing of any pollutant as referred to in Division I of Part IV;

or

(b) an activity of a kind referred to in Division II of Part IV.

## SCHEDULE 2

## CONSEQUENTIAL AMENDMENTS

(1) The *Fisheries Act, 1982*, is amended—

(a) by striking out from subsection (2) of section 48 “or a permit under the *Environment Protection (Sea Dumping) Act, 1984*”;

and

(b) by striking out paragraph (c) of subsection (2) of section 48 and the word “or” immediately preceding that paragraph.

## APPENDIX

## DIVISIONAL PENALTIES

At the date of assent to this Act divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	\$60 000
2	10 years	\$40 000
3	7 years	\$30 000
4	4 years	\$15 000
5	2 years	\$8 000
6	1 year	\$4 000
7	6 months	\$2 000
8	3 months	\$1 000
9	—	\$500
10	—	\$200
11	—	\$100
12	—	\$50

Note: This appendix is provided for convenience of reference only.

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

C. L. LAUCKE, Governor's Deputy