

1960.]

*Prevention of Pollution of
Waters by Oil.*

[No. 33.

PREVENTION OF POLLUTION OF WATERS BY OIL.

9° Elizabeth II., No. XXXIII.

No. 33 of 1960.

AN ACT relating to the Prevention of the Pollution of Certain Waters by Oil and to Provide for Certain Matters arising out of The International Convention for the Prevention of Pollution of the Sea by Oil, 1954, and for purposes of and incidental thereto.

[Assented to 1st November, 1960.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Prevention of Pollution of Waters by Oil Act, 1960.* Short title and citation.

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

Interpreta-
tion.

3. (1) In this Act unless the context requires otherwise—

“discharge” means any discharge or escape howsoever caused or occasioned;

“harbour” means any harbour whether natural or artificial or as defined by any Act and which is under the control of a harbour authority, including any port, dock, estuary or arm of the sea, any river or canal and any waters in which ships can obtain shelter or ship or unship goods or passengers and which is under the control of a harbour authority;

Cf. S. 4,
No. 20 of
1918,
“person”.

“harbour authority” includes any person entrusted with the duty or invested with the power of constructing, improving, managing, regulating or maintaining any harbour, and where used in relation to waters other than those of a harbour means the State department known as the Harbour and Light Department;

“intrastate ship” means any ship within the jurisdiction except a ship which trades or proceeds to or from a port or ports outside the jurisdiction;

“jurisdiction” means the sea lying within three miles of the coast, the ports, harbours, rivers, and the inland navigable waters of the State;

“master” means the person having the command, charge or management of any ship for the time being;

“mile” means a nautical mile of six thousand and eighty feet;

“mixture containing oil” means a mixture of oil, with water or another substance;

“occupier” where used in relation to a place on land means the person by whom or on whose behalf the place is actually occupied, or if there is no occupier, the person entitled to possession of the place and where used in

relation to a vehicle means the person in charge thereof or the owner of the vehicle but not the occupier of the land on or over which the vehicle stands or moves;

“oil” means oil of any description and includes spirit produced from oil of any description and coal tar;

“oil residues” means those parts of a mixture containing oil which remain after the mixture has undergone a separation process approved by a harbour authority;

“place on land” includes a structure or apparatus on and a thing or vehicle resting on or moving over any land and anything resting on or lying under the bed or shores of any navigable waters in the jurisdiction and also includes anything afloat, except a ship, if it is anchored or attached to the bed or shore of any navigable waters in the jurisdiction;

“ship” includes every description of vessel or craft;

“tanker” means a ship constructed or adapted for carrying a cargo of oil in bulk; and

“The Convention” means The International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as accepted by Australia and as amended from time to time where the amendment is so accepted.

(2) A discharge of oil or of a mixture containing oil on to or into any land or waters, or any structure or thing having the result that the whole or any part of the oil or mixture eventually enters any waters within the jurisdiction, is for the purposes of this Act, a discharge into those waters of the oil or mixture.

(3) For the purposes of this Act, where any oil or mixture containing oil is discharged from any floating object (other than a ship) that is attached to a ship, the oil or mixture shall be deemed to have been discharged from that ship.

Construction and saving.

4. (1) This Act shall be read and construed so as to give effect to the provisions of The Convention so far as they are applicable to the jurisdiction but so as not to exceed the legislative power of the State to the extent that, if any provision of this Act would, but for this subsection, have been construed as being in excess of the power, nevertheless this Act, to the extent to which its provisions are not in excess of that power, shall be a valid enactment.

(2) This Act shall be read and construed as being in addition to and not in derogation of or in substitution for any provisions contained in any other Act or in any by-laws or regulations made thereunder and relating to the conservation, improvement, management, maintenance, preservation or regulation and control of any waters, or of any harbour in the jurisdiction or for the prevention, prohibition or regulation, whether by the adoption of standards or otherwise, of the doing or continuance of anything likely to cause the pollution of any waters in the jurisdiction.

Discharge of oil into waters.

5. Subject to the provisions of this Act, where a discharge of oil, or of any mixture containing oil, into any waters within the jurisdiction occurs from a ship, or from a place on land, or from any apparatus used for transferring oil from or to any ship, whether to or from a place on land or to or from another ship, if the discharge is—

- (a) from a ship, both the owner and the master of the ship; or
- (b) from a place on land, the occupier of that place; or
- (c) from apparatus used for transferring oil from or to a ship, the person in charge of the apparatus,

commits an offence.

Penalty: One thousand pounds.

6. (1) Where a person is charged with an offence against section five of this Act as owner or master of a ship, it is a defence to the charge if the person proves—

Special
defences.

- (a) that the discharge of oil or mixture containing oil was for the purpose of securing the safety of the ship, or preventing damage to the ship or cargo, or of saving life at sea, and was a reasonable step to take in the circumstances;
- (b) that the oil or mixture containing oil escaped as consequence of damage to the ship or of leakage which could not have been avoided, foreseen or anticipated and that all reasonable precautions were taken after the occurrence of the damage or discovery of the leakage for the purpose of preventing or reducing the escape of the oil or mixture.

(2) Where a person is charged as the occupier of a place on land with an offence against section five of this Act, or as the person in charge of any apparatus, it is a defence to the charge if the person proves—

- (a) that the escape of the oil or mixture containing oil was due to accident which could not have been avoided, foreseen or anticipated; or
- (b) that the discharge was caused by the act of a person who was in the place without the permission, express or implied, of the occupier,

and that all reasonable precautions were taken for the prompt discovery of the escape of the oil or mixture and thereafter for preventing or reducing the escape of the oil or mixture.

(3) Where a person is charged with an offence against section five of this Act in respect of the discharge of a mixture containing oil from a place

(3) Nothing in this Act affects or qualifies any rights of the appropriate harbour authority or of any other person to recover damages in respect of the consequences of any discharge.

(4) In this section "appropriate harbour authority" means the harbour authority of the harbour whose waters are affected by the discharge and where the waters so affected are outside the boundaries of a harbour means the State department known as the Harbour and Light Department.

8. (1) For the purpose of preventing the discharge of oil and mixtures containing oil into any waters within the jurisdiction, every intrastate ship shall be fitted with such equipment and shall comply with such requirements as may be prescribed by regulations made by the Governor, which regulations the Governor is hereby empowered to make.

Equipment
on ships to
prevent oil
pollution.

(2) Without restricting the general power conferred on the Governor by subsection (1) of this section, the Governor may make regulations with respect to—

- (a) the inspection of ships to which the regulations apply by persons nominated by the harbour authorities and appointed by the Minister for that purpose;
- (b) prescribing that the equipment to be installed in a ship to which the regulations apply shall be of a type tested and approved by a person so nominated and appointed for the purpose;
- (c) prescribing that the equipment so tested and approved when installed in such ship shall be further tested and approved at such times as are prescribed by a person so nominated and appointed for that purpose;
- (d) prescribing the fees to be paid for the inspection provided for in paragraph (a) of this subsection and the carrying out of tests respectively provided for in paragraphs (b) and (c) of this subsection.

(3) The Minister is hereby authorised to appoint persons nominated by the harbour authorities to carry out the inspection and tests and grant the approvals respectively provided for in subsection (2) of this section and to report on the matters referred to in section fourteen of this Act.

(4) Where the provisions of any of the regulations that apply to a ship are contravened, both the owner and the master of the ship commit an offence.

Penalty: Five hundred pounds.

Keeping of
oil records.

9. (1) The Governor may make regulations requiring the master of an intrastate ship, or the occupier of a place on land, to keep such records as he deems necessary for the purpose of this Act and in particular, but without restricting this power, any record or records of the nature referred to in this section.

(2) The regulations may require the keeping of records by the master of a ship—

- (a) of any occasion when oil or a mixture containing oil is discharged from the ship for the purpose of securing its safety or of preventing damage to the ship or cargo, or of saving life;
- (b) of any occasion on which oil or a mixture containing oil is found to be escaping, or to have escaped, from the ship in consequence of damage to the ship or by reason of leakage;
- (c) of the carrying out, on board or in connection with the ship, of such operations as may be prescribed, including operations relating to—
 - (i) the ballasting of oil tanks, whether cargo or bunker fuel tanks, and the discharge of ballast from, and cleaning of, the tanks;
 - (ii) the separation of oil from water, or from other substances, in any mixture containing oil;

- (iii) the disposal of any oil or water, or other substance, arising from operations relating to any of the matters specified in subparagraph (i) or (ii) of this paragraph; and
- (iv) the disposal of any other oil residues.

(3) The regulations may require the keeping of records by the master of a ship relating to the transfer of oil to or from the ship.

(4) The regulations may require the keeping of records by the occupier of any place on land relating to the transfer of oil from or to any ship and to, from, or through the place on land or relating to the operation of facilities provided on the place on land for the disposal of oil residues, and to any discharge of oil or a mixture containing oil occurring in the course of or in connection with the transfer or the disposal.

(5) The regulations may—

- (a) prescribe the form in which the records shall be kept and the nature of the entries to be made therein;
- (b) require the person keeping the records to retain them for a prescribed period;
- (c) require that person, at the end of that period, to transmit the records to a prescribed place or prescribed person; and
- (d) provide for the custody or disposal of the records after their transmission to that place or that person.

(6) (a) If any records required by the regulations to be kept in relation to—

- (i) a ship; or
- (ii) a place on land,

are not so kept in and according to any prescribed form then both the owner and the master of the ship or the occupier of the place on land, as the case may be, commit an offence.

Penalty: Five hundred pounds.

(b) A person who—

- (i) fails to comply with any requirement imposed by this section, or any regulations made thereunder; or
- (ii) makes an entry in any records kept under this section which is to his knowledge false or misleading in any material particular,

commits an offence.

Penalty: Five hundred pounds.

Report and investigation of discharges of oil.

10. (1) Where a discharge of oil, or of any mixture containing oil, occurs from a ship or from a place on land into any waters within the jurisdiction, the owner or master of the ship or the occupier of the place, as the case may be, shall forthwith inform the appropriate harbour authority of all material details of the occurrence and if he fails to do so he commits an offence.

Penalty: Two hundred pounds.

(2) For the purpose of investigating a discharge or suspected discharge of oil or of a mixture containing oil into any waters within the jurisdiction, the harbour master of the appropriate harbour authority, or an officer authorised in writing by it—

- (a) may go on board and inspect any ship that is within the jurisdiction;
- (b) may inspect any records required to be kept in respect of the ship by or under this Act or by any law of a country to which The Convention applies, where the ship is registered in that country;
- (c) may be accompanied and assisted by an interpreter where the records are kept in a language other than English;
- (d) may cause any entry in the records to be copied and require the person by whom they are kept to certify the copy as a true copy of the original entry.

Cf. s. 4, No. 20 of 1918, "This Act".

Oil reception facilities.

11. (1) A harbour authority may provide in such places as it deems necessary facilities for enabling ships to dispose of oil residues, or may join with any other person or with the Crown in providing the facilities, or may arrange for the provision of the facilities by any other person or by the Crown.

(2) Subject to the provisions of subsection (3) of this section, the Governor may make regulations fixing charges and imposing conditions in respect of and regulating the use of the facilities.

(3) The harbour authority, or a person providing facilities whether by arrangement or otherwise, is not obliged to make those facilities available for use by tankers, or for the reception of oil residues disposed of for the purpose of enabling a ship to undergo repairs.

(4) (a) Nothing in this section shall be construed as requiring the harbour authority or any person providing the facilities, whether by arrangement or otherwise, to allow untreated ballast water to be disposed of into the facilities.

(b) In this subsection "untreated ballast water" means water that has been used for ballast and which contains oil and has not been subjected to an effective process for separating the oil from the water.

(5) The Governor may make regulations with regard to the provision of facilities for the use of tankers or for the reception of oil residues disposed of for the purpose of enabling ships to undergo repairs requiring—

(a) the owners or occupiers of oil terminals, oil depots, oil installations or other similar establishments used for the loading or unloading of oil in bulk; and

(b) the owners or occupiers of establishments at which ships are repaired or any other work is performed in relation to ships which may involve the disposal of oil residues from the ships,

to provide facilities of a standard satisfactory to the harbour authority of the harbour where the facilities are to be provided, to maintain the facilities in good order and condition and to keep such records in respect thereof as may be prescribed.

12. (1) A person shall not transfer oil between sunset and sunrise to or from a ship in any waters within the jurisdiction unless notice has been given to and the prior permission in writing of the harbour authority if the ship is within a harbour at the time of the transfer, or the manager of the State department known as the Harbour and Light Department, or a person authorised by him for the purpose in writing, where the ship is at the time of the transfer not within a harbour, has been given.

Restriction
on transfer
of oil
at night.

(2) In the case of a transfer of oil which is to be performed at a place where such transfers are frequently and regularly carried out, the notice may be in terms of a general notice stating that transfers will be carried out within a period specified in the notice, and the permission may be general and subject to such conditions as the harbour authority or the manager, as the case may be, thinks fit.

(3) If any oil is transferred to or from a ship in contravention of this section, or if any condition attached to any permission to transfer the oil is not observed, the master of the ship commits an offence, and if the oil is transferred from or to a place on land the occupier of that place and the master each commits an offence.

Penalty: Two hundred pounds.

13. (1) The Governor may make such further regulations as he deems necessary for the purpose of carrying out the provisions of this Act, and the regulations may prescribe for the payment of such fees and the imposition of such penalties not exceeding five hundred pounds for any breach thereof as he deems appropriate.

Regulations.

- (b) without lawful excuse, refuse to answer a question that he is required under subsection (1) of this section to answer;
- (c) in answer to such a question, knowingly make a statement that is false or misleading in any particular.

Penalty: One hundred pounds.

15. (1) Where, in regard to any requirement prescribed by the regulations, the Minister is satisfied that—

Dispensa-
tions and
exceptions.

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

he may direct, after considering the recommendation of the harbour authority which in the circumstances of the case he considers to be the appropriate harbour authority, that compliance with that requirement be dispensed with.

(2) The Minister may, after considering such recommendation as is referred to in subsection (1) of this section, exempt any ship or class of ship from any of the provisions of this Act except the provisions of section five of this Act.

Cf. s. 4,
No. 20 of
1918,
"This Act".

(3) (a) When a dispensation has been directed or an exemption granted under this section, the Minister may, at the time the direction is made or the exemption granted or at any time thereafter, declare in writing that the dispensation or exemption is subject to such conditions as he deems appropriate, and may, at any time and from time to time, vary or revoke them.

18. In any proceedings taken under this Act, it shall be deemed that proof has been made, in the absence of proof to the contrary, of the fact that—

Proof of certain matters not required.

- (a) any ship in question is, or at any relevant time was, an intrastate ship;
- (b) the defendant is, or at any relevant time was, the occupier of any place on land;
- (c) the defendant is, or at any relevant time was, the person in charge of an apparatus used for transferring oil from or to a ship;
- (d) the defendant is, or at any relevant time was, the owner or master of any ship in question; and
- (e) any ship in question at any relevant time was in waters within the jurisdiction or within a harbour.

19. The following matters shall be sufficiently evidenced for all purposes by a statement in writing purporting to be signed by the Minister or the appropriate harbour authority, as the case may be—

Evidence of administrative acts.

- (a) the general or special appointment by the Minister of any person to carry out all or any of the inspections and tests referred to in section eight of this Act;
- (b) the general or special appointment of any person referred to in section ten of this Act to investigate any discharge or suspected discharge of oil or of a mixture containing oil under that section;
- (c) the general or special appointment by the Minister of any person to report to him regarding the proper observance of, and the adequacy of, the prohibitions, restrictions and obligations imposed by virtue of this Act under section fourteen of this Act; and

