

Passed by both Houses



New South Wales

# Marine Legislation Amendment (Marine Pollution) Bill 2002

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2002*



New South Wales

## **Marine Legislation Amendment (Marine Pollution) Bill 2002**

Act No , 2002

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An Act to amend the *Marine Pollution Act 1987* to make further provision relating to the protection of the sea and certain waters from pollution by oil and other noxious substances discharged from ships; to amend the *Ports Corporatisation and Waterways Management Act 1995* to make provision for the payment of money recovered for offences; and for other purposes.

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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Marine Legislation Amendment (Marine Pollution) Act 2002*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Marine Pollution Act 1987 No 299**

The *Marine Pollution Act 1987* is amended as set out in Schedule 1.

**4 Amendment of Ports Corporatisation and Waterways Management Act 1995 No 13**

The *Ports Corporatisation and Waterways Management Act 1995* is amended as set out in Schedule 2.

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## Schedule 1 Amendment of Marine Pollution Act 1987

(Section 3)

### [1] Section 3 Definitions

Omit the definition of *ship* in section 3 (1). Insert instead:

*ship* means a vessel of any type whatsoever capable of being used on or in water and includes:

- (a) a hydrofoil boat, or
- (b) an air-cushion vehicle, or
- (c) a submersible or submarine, or
- (d) a floating craft, or
- (e) a fixed or floating platform, or
- (f) a barge (whether self propelled or not), or
- (g) a sea-plane, or
- (h) a floating dock (whether self propelled or not),

but does not include a pleasure vessel.

### [2] Part 2, Division 1

Insert before section 7:

#### Division 1 Discharge of oil or oily mixture

### [3] Section 8 Prohibition of discharge of oil or oily mixtures into State waters

Omit “, and any other person whose act caused the discharge,” from section 8 (1).

### [4] Section 8 (1) (a)

Omit “2 000 penalty units”. Insert instead “\$500 000”.

### [5] Section 8 (1) (b)

Omit “10 000 penalty units”. Insert instead “\$10 000 000”.

**[6] Section 8 (2) (b)**

Omit “, other than intentional damage,”.

**[7] Section 8 (3)**

Omit the subsection. Insert instead:

- (3) For the purposes of subsection (2) (b), *damage* to a ship or its equipment does not include the following:
  - (a) damage arising as a result of the master or owner of the ship, or another person acting under the direction of the master or owner of the ship:
    - (i) acting with intent to cause the damage, or
    - (ii) acting recklessly and with the knowledge that damage would probably result, or
    - (iii) acting negligently,
  - (b) damage arising from a failure to maintain the ship or equipment,
  - (c) damage arising through wear and tear,
  - (d) defects that develop during the normal operation of the ship or equipment.

**[8] Section 8A**

Insert after section 8:

**8A Persons causing a discharge of oil or oily mixtures into State waters**

- (1) If any discharge of oil or an oily mixture occurs from a ship into State waters, each crew member of the ship, and each person involved in the operation or maintenance of the ship, whose act caused the discharge is guilty of an offence punishable, upon conviction, by a fine not exceeding:
  - (a) if the offender is a natural person—\$500 000, or
  - (b) if the offender is a body corporate—\$10 000 000.
- (2) In proceedings for an offence under subsection (1), it is sufficient for the prosecution to allege and prove that a discharge of oil or an oily mixture occurred from a ship into State waters and the crew member or person involved in the

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operation or maintenance of the ship committed an act that caused the discharge.

- (3) If any discharge of oil or an oily mixture occurs from a ship into State waters, each person responsible for the discharge is guilty of an offence punishable, upon conviction, by a fine not exceeding:
  - (a) if the offender is a natural person—\$500 000, or
  - (b) if the offender is a body corporate—\$10 000 000.
- (4) For the purposes of subsection (3) a person is responsible for the discharge if that person, or another person acting under the direction of that person, committed an act that caused the discharge and the person committed the act:
  - (a) with intent to cause the discharge, or
  - (b) recklessly and with the knowledge that a discharge would probably result, or
  - (c) negligently.
- (5) Subsections (1) and (3) do not apply to a discharge of a kind or in circumstances referred to in section 8 (2) (a), (c) or (d) or (4).
- (6) A prosecution under this section does not affect the prosecution of the master or owner of a ship (or both of them) under section 8, however a person is not liable to be convicted in respect of the same discharge of both an offence:
  - (a) under this section and section 8 (1), or
  - (b) under subsections (1) and (3).

**[9] Section 9 Oil residues**

Omit “2 000 penalty units” from section 9 (1) (a). Insert instead “\$500 000”.

**[10] Section 9 (1) (b)**

Omit “10 000 penalty units”. Insert instead “\$10 000 000”.

**[11] Section 10 Duty to report certain incidents involving oil or an oily mixture**

Omit “500 penalty units” from section 10 (1). Insert instead “\$120 000”.

**[12] Section 10 (3) (c)**

Omit “500 penalty units”. Insert instead “\$120 000”.

**[13] Section 10 (3) (d)**

Omit “2 500 penalty units”. Insert instead “\$2 750 000”.

**[14] Section 10 (6), (7) and (8)**

Omit “200 penalty units” wherever occurring. Insert instead “\$120 000”.

**[15] Section 10 (9)**

Insert “or 8A (1)” after “against section 8 (1)”.

**[16] Part 2, Division 2**

Insert after section 13:

**Division 2      Insurance**

**13A Application of Division**

- (1) This Division does not apply to:
  - (a) the following ships unless the regulations declare otherwise:
    - (i) a ship that has a gross tonnage of 400 or more,
    - (ii) a ship used wholly for the purpose of recreational or sporting activities and not for hire or reward,
    - (iii) a ship less than 30 metres in length,
    - (iv) a seaplane,
    - (v) a Government ship, other than a Government ship that is being used for commercial purposes, or
  - (b) a ship of any class declared by the regulations to be a class of exempt ship for the purposes of this Division, or
  - (c) a particular ship declared to be an exempt ship for the purposes of this Division by order of the Minister given to the owner or master of the ship.

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- (2) In this section, **Government ship** has the same meaning as in section 13 (1) of the *Protection of the Sea (Civil Liability) Act 1981* of the Commonwealth.

**13B Ships must be insured against oil pollution**

- (1) In this section:

**adequate insurance** in relation to a ship means:

- (a) such insurance or financial security against damage that may be caused by a discharge of oil or an oily mixture as the Minister:
- (i) determines, by notice published in the Gazette, is adequate in relation to a particular ship or class of ships, or
  - (ii) approves in relation to a particular ship, and notifies in writing to the owner or master of the ship, or
- (b) if a ship is required by the *Protection of the Sea (Civil Liability) Act 1981* of the Commonwealth to carry a relevant insurance certificate on board, such a certificate in respect of the ship that is in force.

**port** has the same meaning as in the *Ports Corporatisation and Waterways Management Act 1995*.

**relevant insurance certificate** has the same meaning as in the *Protection of the Sea (Civil Liability) Act 1981* of the Commonwealth.

- (2) A ship must not be in State waters unless the ship:
- (a) has adequate insurance, and
  - (b) carries on board evidence of that insurance in a form approved by the Minister.
- (3) If a ship is in State waters without having adequate insurance or carrying on board evidence of that insurance as required by this section, the master and the owner of the ship are each guilty of an offence punishable, upon conviction, by a fine not exceeding:
- (a) if the offender is a natural person—\$55 000, or
  - (b) if the offender is a body corporate—\$110 000.



- (4) If an inspector believes on reasonable grounds that the ship does not have adequate insurance or carry on board evidence of that insurance as required by this section, the inspector may detain the ship in a port or at some other place until such time as the requirements of this section are met.
- (5) If a ship, that is detained under this section, departs the port or other place at which it is detained before it is released from detention, the master and the owner are each guilty of an offence punishable, upon conviction, by a fine not exceeding:
  - (a) if the offender is a natural person—\$55 000, or
  - (b) if the offender is a body corporate—\$110 000.
- (6) A person is not guilty of an offence under subsection (5) if the person can establish that he or she was not aware that the ship had been detained.

**[17] Section 18 Prohibition of discharge of substances into State waters**

Omit “, and any other person whose act caused the discharge,” from section 18 (1).

**[18] Section 18 (1) (a)**

Omit “2 000 penalty units”. Insert instead “\$500 000”.

**[19] Section 18 (1) (b)**

Omit “10 000 penalty units”. Insert instead “\$10 000 000”.

**[20] Section 18 (2) (b)**

Omit “, other than intentional damage,”.

**[21] Section 18 (3)**

Omit the subsection. Insert instead:

- (3) For the purposes of subsection (2) (b), *damage* to a ship or its equipment does not include the following:
- (a) damage arising as a result of the master or owner of the ship, or another person acting under the direction of the master or owner of the ship:
    - (i) acting with intent to cause the damage, or
    - (ii) acting recklessly and with the knowledge that damage would probably result, or
    - (iii) acting negligently,
  - (b) damage arising from a failure to maintain the ship or equipment,
  - (c) damage arising through wear and tear,
  - (d) defects that develop during the normal operation of the ship or equipment.

**[22] Section 18A**

Insert after section 18:

**18A Persons causing a discharge of substances into State waters**

- (1) If any discharge of a liquid substance, or of a mixture containing a liquid substance, being a substance or mixture carried as cargo or part cargo in bulk, occurs from a ship into State waters, each crew member of the ship, and each person involved in the operation or maintenance of the ship, whose act caused the discharge is guilty of an offence punishable, upon conviction, by a fine not exceeding:
- (a) if the offender is a natural person—\$500 000, or
  - (b) if the offender is a body corporate—\$10 000 000.
- (2) In proceedings for an offence under subsection (1), it is sufficient for the prosecution to allege and prove that a discharge of a liquid substance, or of a mixture containing a liquid substance, being a substance or mixture carried as cargo or part cargo in bulk, occurred from a ship into State waters and

the crew member or person involved in the operation or maintenance of the ship committed an act that caused the discharge.

- (3) If any discharge of a liquid substance, or of a mixture containing a liquid substance, being a substance or mixture carried as cargo or part cargo in bulk, occurs from a ship into State waters, each person responsible for the discharge is guilty of an offence punishable, upon conviction, by a fine not exceeding:
  - (a) if the offender is a natural person—\$500 000, or
  - (b) if the offender is a body corporate—\$10 000 000.
- (4) For the purposes of subsection (3) a person is responsible for the discharge if that person, or another person acting under the direction of that person, committed an act that caused the discharge and the person committed the act:
  - (a) with intent to cause the discharge, or
  - (b) recklessly and with the knowledge that a discharge would probably result, or
  - (c) negligently.
- (5) Subsections (1) and (3) do not apply to a discharge of a kind or in circumstances referred to in section 18 (2) (a), (c) or (d) or (4)–(12).
- (6) A prosecution under this section does not affect the prosecution of the master or owner of a ship (or both of them) under section 18, however a person is not liable to be convicted in respect of the same discharge of both an offence:
  - (a) under this section and section 18 (1), or
  - (b) under subsections (1) and (3).

**[23] Section 19 Certain liquid substances to be treated as oil**

Omit “section 8 applies” from section 19 (2) (a).

Insert instead “sections 8 and 8A apply”.

**[24] Section 19 (2) (b)**

Omit “section 18 does not apply”.

Insert instead “sections 18 and 18A do not apply”

**[25] Section 20 Duty to report certain incidents involving certain substances**

Omit “500 penalty units” from section 20 (1). Insert instead “\$120 000”.

**[26] Section 20 (3) (c)**

Omit “500 penalty units”. Insert instead “\$120 000”.

**[27] Section 20 (3) (d)**

Omit “2 500 penalty units”. Insert instead “\$2 750 000”.

**[28] Section 20 (6), (7) and (8)**

Omit “200 penalty units” wherever occurring. Insert instead “\$120 000”.

**[29] Section 20 (9)**

Insert “or 18A (1)” after “against section 18 (1)”.

**[30] Section 25 Interpretation**

Omit the definition of *appropriate person* in section 25 (1). Insert instead:

*appropriate person* means:

- (a) in relation to a discharge from an apparatus on a ship:
  - (i) the owner of the ship, or
  - (ii) the master of the ship, or
  - (iii) the owner of the apparatus, or
  - (iv) the person in charge of the apparatus, and
- (b) in relation to a discharge from a ship:
  - (i) the owner of the ship, or
  - (ii) the master of the ship, or
  - (iii) the person in charge of the transfer operation of the ship, and
- (c) in relation to a discharge from an apparatus on a place on land:
  - (i) the occupier of the place, or

- (ii) the owner of the apparatus, or
- (iii) the person in charge of the apparatus, and
- (d) in relation to a discharge from a place on land the occupier of the place, and
- (e) in relation to a discharge from a purpose built pipeline:
  - (i) the occupier of the land on which the pipeline is situated, or
  - (ii) the person in charge of the pipeline
  - (iii) the owner of the pipeline.

**[31] Section 25 (3)**

Insert after section 25 (2):

- (3) For the avoidance of doubt, more than one appropriate person in relation to a discharge may be found guilty of an offence under section 27 or 28.

**[32] Section 27 Prohibition of discharges to which Part applies**

Omit “2 000 penalty units” from section 27 (1) (a).  
Insert instead “\$500 000”.

**[33] Section 27 (1) (b)**

Omit “10 000 penalty units”. Insert instead “\$10 000 000”.

**[34] Section 28 Duty to report discharge**

Omit “500 penalty units” from section 28 (1). Insert instead “\$120 000”.

**[35] Section 28 (3) and (4)**

Omit “200 penalty units” wherever occurring. Insert instead “\$120 000”.

**[36] Section 46 Recovery of costs and expenses with respect to pollution by oil**

Omit “such action as it thinks fit” from section 46 (1).  
Insert instead “such action as the Minister thinks fit”.

**[37] Section 46 (2) (b)**

Omit “the appropriate person”. Insert instead “an appropriate person”.

**[38] Section 48 Prevention of pollution**

Omit “the appropriate person” from paragraph (b) of the definition of *appropriate person* in section 48 (5).

Insert instead “an appropriate person”.

**[39] Section 51 Recovery of damages**

Omit “the appropriate person” wherever occurring.

Insert instead “an appropriate person”.

**[40] Section 52B Security taken by the Minister**

Omit “to the Minister” from section 52B (3) (a).

**[41] Section 57 Service of summonses**

Omit “the owner or the master of a ship” from section 57 (1).

Insert instead “the owner, master or crew member of a ship”.

**[42] Section 57 (1)**

Omit “the owner or master under that section”.

Insert instead “the owner, master or crew member under that section”.

**[43] Section 57 (2)**

Omit “the owner or master”.

Insert instead “the owner, master or crew member to whom the summons relates”.

**[44] Schedule 6 Repeals and savings and transitional provisions**

Omit “this Act and the *Miscellaneous Acts (Marine Pollution) Amendment Act 1987*.” from clause 4 (1).

Insert instead:

the following:

- (a) this Act,
- (b) *Miscellaneous Acts (Marine Pollution) Amendment Act 1987*,
- (c) *Marine Legislation Amendment (Marine Pollution) Act 2002*.

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## **Schedule 2 Amendment of Ports Corporatisation and Waterways Management Act 1995**

(Section 4)

### **[1] Section 21A**

Insert after section 21:

#### **21A Payment of penalties to Port Corporations**

- (1) There is payable to a Port Corporation all penalties recovered for offences against the marine legislation that are recovered in prosecutions brought by (or penalty notices issued by) members of staff of the Port Corporation.
- (2) Penalties paid to a Port Corporation under this section become the property of the Port Corporation.

### **[2] Section 42 Waterways Fund**

Omit “members of staff of the Waterways Authority” in section 42 (2) (b).  
Insert instead “any person except where the penalty is payable to a Port Corporation under section 21A”.