

Transport Operations (Marine Pollution) Regulation 2018

Explanatory notes for SL 2018 No. 106

made under the

State Penalties Enforcement Act 1999

Transport Operations (Marine Pollution) Act 1995

General Outline

Short title

Transport Operations (Marine Pollution) Regulation 2018

Authorising laws

Section 165 of the *State Penalties Enforcement Act 1999*

Section 133 of the *Transport Operations (Marine Pollution) Act 1995*

Policy objectives and the reasons for them

Consistent with the objectives of the *Transport Operations (Marine Pollution) Act 1995* (the Act), the policy objectives of the *Transport Operations (Marine Pollution) Regulation 2018* (the Regulation) are to:

- protect Queensland's marine and coastal environment by minimising discharges of ship-sourced pollutants into coastal waters;
- give effect to relevant provisions of the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL);
- impose obligations on ship owners and masters to exercise responsibility for the marine environment by ensuring the containment of all specified pollutants on board the ship and their proper disposal;
- ensure appropriate monitoring and compliance and provide flexibility to ship owners and masters for achieving compliance with the Regulation; and
- provide for severe penalties on persons who pollute Queensland's marine and coastal environment in contravention of the Regulation.

The Regulation replaces the *Transport Operations (Marine Pollution) Regulation 2008* (the 2008 Regulation) which, in accordance with Part 7 of the *Statutory Instruments Act 1992*, will automatically expire on 1 September 2018.

Achievement of policy objectives

The Regulation will achieve the policy objectives listed above by continuing to regulate the matters currently regulated under the 2008 Regulation.

The Regulation also incorporates amendments that reflect changes to MARPOL and Commonwealth legislation, as well as a number of minor amendments to reflect current drafting practices.

An outline of the Regulation is provided below.

Part 1: Preliminary

Part 1 provides that the Regulation may be cited as the *Transport Operations (Marine Pollution) Regulation 2018* and that the Regulation is to commence on 1 September 2018. Part 1 also provides that particular words used in the Regulation are defined in the Dictionary.

Part 2: Oil

Part 2 provides for matters for part 4 (Prevention of pollution by oil) of the Act including exempted discharges of oil, the requirements for shipboard oil pollution emergency plans and oil record books.

Part 2, Division 2 provides for exemptions from the discharge offence in section 26 of the Act in limited circumstances, subject to conditions such as being a certain distance from nearest land and that the discharge occurs while the ship is proceeding en route.

Part 2, Division 3 provides that a shipboard oil pollution emergency plan must be in English and comply with the requirements of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cwlth).

Part 2, Division 4 provides that, when a recordable operation or event occurs, a record of the operation or event must be kept in an oil record book. The division sets out the requirements for the form of the record book, the details of an entry, when entries must be recorded, and retaining and producing the oil record book for inspection. A maximum penalty of 350 penalty units applies for non-compliance with these requirements.

Part 3: Noxious liquid substances in bulk

Part 3 provides for matters for part 5 (Prevention of pollution by noxious liquid substances in bulk) of the Act.

Part 3, Division 2 provides for exemptions from the discharge offence in section 35 of the Act. Depending on the category of substance that had been held in the tank, the discharge conditions address such matters as the requirements and procedures for the unloading and cleaning of tanks that have held a noxious liquid substance, distance from nearest land, depth of water and the concentration of the substance in the discharge water.

Part 3, Division 3 provides that, when a recordable operation or event in relation to cargo occurs, a record of the operation or event must be kept in a cargo record book. The division sets out the requirements for the form of the cargo record book, when entries must be made, and retaining and producing of the cargo record book for inspection. A maximum penalty of 350 penalty units applies for non-compliance with these requirements.

Part 4: Packaged harmful substances

Part 4 provides for matters for part 6 (Prevention of pollution by packaged harmful substances) of the Act, in particular for section 43(b) of the Act. It provides that the procedures under the International Maritime Dangerous Goods Code (IMDG), chapter 7.8, are suitable for washing leakages overboard. In working out which of the procedures under the IMDG Code are suitable for dealing with the leakage, the physical, chemical and biological properties of the leaked substance must be taken into account.

Part 5: Sewage management

Part 5 provides for matters for part 7 (Prevention of pollution by sewage) of the Act including provisions for nil discharge waters for treated and untreated sewage, shipboard sewage management plans, sewage disposal record books, macerators and treatment systems. This provision also provides for the classification of treated sewage and standards for a sewage treatment system.

Part 5, Division 2 prescribes the nil discharge waters for untreated and treated sewage, prescribes the ships that are declared ships for section 49 of the Act and prescribes the nil discharge waters for untreated or treated sewage for a declared ship.

Part 5, Division 3 declares the ships for section 51 of the Act and sets out the minimum requirements of a shipboard sewage management plan.

Part 5, Division 4 provides that when a sewage discharge is made from the sewage holding device of a declared ship for section 49 of the Act, a record of the discharge must be made in the sewage disposal record book. The division also sets out the requirements for retaining and producing the book for inspection. A maximum penalty of 350 penalty units applies for non-compliance with the requirements of the division.

Part 5, Division 5 provides that the owner of a ship that is in coastal waters and has a fixed toilet must ensure that the ship is fitted with a macerator and that sewage cannot bypass the macerator. Sewage from a toilet must not be discharged into coastal waters, unless the sewage has passed through a macerator. A maximum penalty of 350 penalty units applies for non-compliance with the requirements of the division. These requirements do not apply where the fixed toilet is a composting toilet nor when the ship is a declared ship under section 49 of the Act and while operating in nil discharge waters, sewage discharges are made only into a reception facility.

Part 5, Division 6 provides for the required documentation for a ship's sewage treatment system. The division also provides certain requirements that must be met for a sewage treatment system including that it be installed in accordance with the manufacturer's instructions. It provides that the system must be maintained in the way required by the system service manual and is assessed by analysing the sewage, in the specified way, after it has been treated. Service records for the treatment system must also be kept. The system documentation,

system service manual and service records must be kept on board and be readily available for inspection at all reasonable times. A maximum penalty of 350 penalty units applies for non-compliance with these requirements.

Part 5, Division 6 also provides that schedule 5 specifies the required sewage quality characteristics for treated sewage.

Part 6: Garbage

Part 6 provides for matters for part 8 (Prevention of pollution by garbage) of the Act including matters relating to shipboard waste management plans and provides for exemptions from the operation of the discharge offence in section 55 of the Act.

Part 6, Division 2 sets out the minimum requirements for a shipboard waste management plan. The plan must be in English and comply with the requirements for a garbage management plan under the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cwlth).

Part 6, Division 3 sets out the conditions that must be met for the disposal of comminuted or ground food waste, food waste that has not been comminuted or ground, or food waste when used for fish feeding. It also sets out the conditions for the disposal of cargo residues, animal carcasses, and cleaning agents or additives contained in water used to wash a cargo hold of a ship, its deck or other external surfaces. If different types of garbage are mixed together, such as ground and unground food wastes, it is necessary to comply with all of the separate conditions that apply to each type of garbage contained in the mixed garbage.

Part 7: Transfer operations

Part 7 provides for matters for part 9 (Transfer operations) of the Act. Section 65 of the Act provides that a person to whom the section applies must keep records of a transfer operation that are required by a regulation and the events must be recorded in the way prescribed by the regulation. Part 7 sets out requirements for the records that must be made and the way they must be made for transfer operations involving oil and noxious liquid substances.

Part 8: Reporting requirements

Part 8 provides for matters for part 11 (Reporting requirements) of the Act. Section 67 of the Act sets out requirements for the reporting of reportable incidents about the discharge or probable discharge of pollutants and the jettisoning of packaged harmful substances.

Part 8 specifies to whom a notification of a reportable incident must be given, when it must be given and the information that the notification must contain.

Part 9: Insurance

Part 9 provides for matters for part 11A (Insurance) of the Act including the insurance limits for ships in coastal waters and the requirements for keeping documents relating to the insurance policy.

Section 67A of the Act requires that a ship with an overall length of more than 15m must have an insurance policy that, to the limits applying under a regulation, is sufficient to pay for pollution clean-up costs and the costs of salvage or removal if the ship is abandoned or wrecked.

Part 9 also provides that the certificate of insurance or another document evidencing the currency of the insurance policy for the ship must be kept on board. The insurance limit for the policy must be shown on the certificate or other document. A maximum penalty of 20 penalty units applies for non-compliance with these requirements.

Part 10: Investigation, prevention and minimisation, and enforcement

Part 10 provides for matters for part 12 (Investigation, prevention and minimisation, and enforcement) of the Act, including the appointment of authorised officers and the matters that must be taken into account by a court when considering whether it is just to make a compensation order under section 110 of the Act.

Part 11: Securing compliance with Act

Part 11 provides that the general manager's office in Brisbane is the place where undertakings for section 117L(2) of the Act must be kept.

Part 12: General

Part 12, Division 1 deals with procedures for the making, suspending or cancelling of approvals.

Part 12, Division 2 specifies the requirements for a report by an analyst.

Part 12, Division 3 provides that, for the purposes of the term *designated area* under the Act, an area within the Great Barrier Reef Coast Marine Park specified in schedule 6 is a designated area.

Part 13: Repeal and transitional provisions

Part 13 provides for the repeal of the expiring regulation, the *Transport Operations (Marine Pollution) Regulation 2008*.

Part 13, Division 2 makes continued provision for particular books that were required to be kept under the repealed regulation and for applications, exemptions and approvals under the repealed regulation.

Part 15: Minor and consequential amendments

Part 15 provides that schedule 8 amends the legislation it mentions.

Sch. 1: Recordable operations and recordable events

Schedule 1 lists the operations and events that are recordable operations and events for oil record books and cargo record books.

Sch. 2: Nil discharge waters for untreated sewage

Schedule 2 lists the waters that are nil discharge waters for untreated sewage.

Sch. 3: Nil discharge waters for treated sewage

Schedule 3 lists the waters that are nil discharge waters for treated sewage.

Sch. 4: Nil discharge waters for treated sewage or untreated sewage from declared ship

Schedule 4 lists the nil discharge waters for treated sewage or untreated sewage from a declared ship.

Sch. 5: Levels of sewage quality characteristics for treated sewage

Schedule 5 sets out the specific characteristics that must be achieved for sewage to be graded as Level A, B or C treated sewage. These grades are given operational effect in schedules 3 and 4.

Sch. 6: Designated areas within the Great Barrier Reef Coast Marine Park

Schedule 6 sets out the areas that are designated areas for the purposes of the term *designated area* under the Act.

Sch. 7: Dictionary

Schedule 7 defines particular words used in the Regulation.

Sch. 8: Consequential amendments of other legislation

Schedule 8 amends the *State Penalties Enforcement Regulation 2014*.

Consistency with policy objectives of authorising law

The regulation is consistent with the main objective of the *Transport Operations (Marine Pollution) Act 1995* which is to protect Queensland's marine and coastal environment by minimising deliberate and negligent discharges of ship-sourced pollutants into coastal waters.

Inconsistency with policy objectives of other legislation

The Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

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

The Regulation is critical for providing guidance and flexibility to the maritime industry and boating community to achieve the objectives of the Act. As the MARPOL regime is international in nature, the maritime industry can plan and conduct its operations with the benefit of a substantially uniform approach to minimising marine pollution.

The protection of the marine environment from ship-sourced pollutants is in the interests of all stakeholders.

Without regulation, the protection of the marine environment would be at risk and could have adverse economic and social implications for the State, particularly for the fishing and tourism industries.

The costs of implementing the Regulation will be minimal and will be met from existing resources.

Consistency with fundamental legislative principles

The Regulation contains a number provisions prescribing a maximum penalty that is considered high for subordinate legislation. These penalties reflect the regime under the 2008 Regulation and are authorised under section 133 of the Act. This section allows for penalties of up to 350 penalty units for the contravention of a regulation.

The high penalty levels are justifiable given the level of harm that can be caused to the marine environment and the potential impacts that offending can have on important Queensland industries such as tourism and fishing. The penalties reflect the importance of protecting and preserving Queensland's coastal waters from pollutants and serve as a deterrent to marine pollution offences. Many of the offences with high penalties relate to important record keeping requirements. Documentary offences under the Regulation are an important means of proving offences related to the discharge of pollutants under the Act.

The Regulation contains a number of exemptions from the discharge offences under the Act. The Act authorises a regulation to exempt ships from the discharge prohibitions. The exemptions in the Regulation reflect the exemptions that are allowed under MARPOL and many of these are technical in nature. As MARPOL is amended from time to time to reflect changes in pollution standards, ship construction and shipboard technologies it is considered that this technical nature is more suited to a regulation.

Consultation

The Queensland maritime industry and community are highly adapted to the requirements for managing and mitigating potential marine pollution from ships under both MARPOL and relevant Commonwealth legislation. This legislative framework has been in place in Australia for over 30 years. As a result, understanding of, and compliance with, the requirements under this Regulation are well embedded.

Consultation on the legislative framework proposed under the Regulation was undertaken with the Australian Maritime Safety Authority and the Great Barrier Reef Marine Park Authority. Neither stakeholder raised any concerns about the proposed framework.

The Queensland Productivity Commission reviewed a *Preliminary Impact Assessment* for the remake of the 2008 Regulation and advised that the assessment has satisfactorily met the requirement for a sunset review under *The Queensland Government Guide to Better Regulation*. The Commission advised that no further regulatory analysis was required.