



Transport Operations (Marine Pollution) Act 1995

Current as at 12 September 2019

© State of Queensland 2024



This work is licensed under a Creative Commons Attribution 4.0 International License.



Queensland

Transport Operations (Marine Pollution) Act 1995

Contents

		Page
Part 1	Preliminary	
Division 1	Introduction	
1	Short title	11
Division 2	Act's overall purpose	
3	Overall purpose	11
Division 3	Interpretation	
4	Definitions—the dictionary	12
5	Words and expressions used in MARPOL and this Act	13
6	Meaning of MARPOL	13
7	Meaning of agent	14
7A	Meaning of length overall	14
Division 4	Operation of Act	
8	Act binds all persons	15
9	Discharge outside coastal waters that enters coastal waters . . .	15
Part 2	Information about this Act	
10	Why this Act was enacted	15
11	Queensland's jurisdiction	16
12	The ships this Act applies to	17
13	Ship's general safety obligations, surveying and registration . . .	17
14	How this Act interacts with other environmental laws	17
Part 4	Prevention of pollution by oil	
Division 1	Purpose of part	
23	Part gives effect to Annex I to MARPOL	17
Division 2	Interpretation	
24	Definitions for part	18
25	Words and expressions used in Annex I to MARPOL and this part	18

Contents

Division 3	Discharge of oil prohibited	
26	Discharge of oil into coastal waters prohibited	18
27	Oil residues	19
Division 4	Defences	
28	Defences to discharge offence	20
Division 5	Exemptions	
29	Certain discharges permissible	20
Division 6	General	
30	Shipboard oil pollution emergency plan	21
Part 5	Prevention of pollution by noxious liquid substances in bulk	
Division 1	Purpose and application of part	
31	Part gives effect to Annex II to MARPOL	22
32	Application of part	22
Division 2	Interpretation	
33	Definitions for part	22
34	Words and expressions used in Annex II to MARPOL and this part	23
34A	Recategorisation of substances	23
Division 3	Discharge of noxious liquid substances prohibited	
35	Discharge of noxious liquid substances into coastal waters prohibited 23	
Division 4	Defences	
36	Defences to discharge offence	24
Division 5	Exemptions	
37	Certain discharges permissible	25
Division 6	General	
38	Procedures and arrangements manual	25
38A	Shipboard marine pollution emergency plan for noxious liquid substances	26
Part 6	Prevention of pollution by packaged harmful substances	
Division 1	Purpose of part	
39	Part gives effect to Annex III to MARPOL	27
Division 2	Interpretation	
40	Definitions for part	27
41	Words and expressions used in Annex III to MARPOL and this part	27
Division 3	Jettisoning of harmful substance prohibited	
42	Jettisoning of harmful substances into coastal waters prohibited	28

Division 4	Defences	
43	Defences to discharge offence	29
Division 5	Exemptions	
44	Certain discharges permissible	29
Part 7	Prevention of pollution by sewage	
Division 1	Interpretation	
45	Definitions for pt 7	29
46	Words and expressions used in Annex IV to MARPOL and this part	30
Division 2	Discharge of sewage	
47	Discharge of untreated sewage into nil discharge waters for untreated sewage prohibited	31
48	Discharge of treated sewage into nil discharge waters for treated sewage prohibited	31
48A	Ship with fixed toilet operating in prescribed nil discharge waters to be able to hold or treat sewage	32
49	Declared ship operating in prescribed nil discharge waters to be fitted with sewage holding device	32
50	Discharge of sewage from declared ship into nil discharge waters for sewage prohibited	33
50A	Discharge of sewage by prescribed ships	34
51	Shipboard sewage management plan	35
Division 3	Defence	
51A	Defence to discharge offence	36
Division 4	General	
51B	Treatment system to be in proper working order	37
51C	Other laws may also apply	37
Part 8	Prevention of pollution by garbage	
Division 1	Purpose	
52	Part gives effect to Annex V to MARPOL	38
Division 2	Interpretation	
53	Definitions for part	38
54	Words and expressions used in Annex V to MARPOL and this part	38
Division 3	Disposal of garbage prohibited	
55	Disposal of garbage into coastal waters prohibited	39
55AA	Placard about garbage disposal requirements	39
55A	Shipboard waste management plan	40
Division 4	Defences	

Contents

56	Defences to discharge offence	40
Division 5	Exemptions	
57	Certain disposals permissible	41
Part 9	Transfer operations	
Division 1	Purpose of part	
58	Responsibility for pollution from transfer operations and other matters 41	
Division 2	Interpretation	
59	Definitions for part	42
60	Words and expressions used in Annex I or II to MARPOL and this part 42	
Division 3	Discharge during transfer operation prohibited	
60A	Obligation to monitor transfer operation	43
61	Discharge of pollutant into coastal waters prohibited	43
Division 4	Defences	
62	Defences to discharge offence	44
Division 5	General	
64	Several liability—ships	45
65	Keeping of records about transfer etc.	46
Part 10	Reception facilities	
66	Reception facilities	46
Part 11	Reporting requirements	
67	Duty to report certain incidents	48
Part 11A	Insurance	
67A	Ship’s owner to have insurance	50
Part 12	Investigation, prevention and minimisation, and enforcement	
Division 1	General	
68	Functions of authorised officers	51
69	Authorised officer subject to directions of general manager	51
70	Powers of authorised officers	51
71	Limitation on powers of authorised officer	52
Division 2	Appointment of authorised officers and other matters	
72	Appointment of authorised officers	52
73	Authorised officer’s appointment conditions	52
74	Authorised officer’s identity card	53
75	Production or display of authorised officer’s identity card	54

76	Protection from liability	54
Division 3	Powers of authorised officers	
77	Entry to place by authorised officers	54
78	Warrants for entry	55
79	Warrants—applications made otherwise than in person	56
80	Boarding of ships	57
81	Authorised officer’s general powers for ships and places	58
82	Power to seize evidence from places	60
83	Power to seize after boarding ship	61
84	Power to detain ship	61
85	Procedure after detention of ship	62
86	Procedure after seizure of evidence	62
86A	Power to give notice in relation to discharge or likely discharge of pollutant	63
Division 4	Other enforcement powers of authorised officers	
87	Power to require name and address	65
88	Power to require information from certain persons	66
89	Power to require production of documents	67
Division 5	Consent to entry of premises	
90	Consent to entry	67
91	Evidence of consent	68
Division 6	Response action to discharge and authorised officer’s emergency powers	
92	Purpose of division	69
93	State has prime responsibility for directing emergency response	69
93A	Marine pollution controller	70
93B	Protection from liability	71
94	Emergency declaration may overrule local law	71
95	Authorised officer’s powers in an emergency	72
96	Authorised officer may direct emergency release of pollutant	74
Division 7	Power of intervention	
97	Definitions for division	75
98	Power of intervention	75
99	Directions under s 98 may require taking of action	77
100	Things to be done before power to intervene is exercised	77
Division 8	Offences	

Contents

101	Failure to help authorised officer—emergency	78
102	Failure to help authorised officer—other cases	79
103	Failure to obey direction	79
104	Failure to give information	80
105	False or misleading statements	81
106	False or misleading documents	81
107	Obstruction of authorised persons	81
108	Impersonation of authorised officer	82
Division 9	General	
109	Authorised officer to give notice of damage	82
110	Compensation	83
Part 13	Discharge expenses	
111	Definitions for part	83
112	General manager to set amounts for costs and expenses relating to definition discharge expenses	85
113	Detained ship must be released on giving security	85
114	Other ways detained ship may be released	86
115	Recovery of discharge expenses	87
116	External review of decisions under s 115	88
Part 13A	Securing compliance with Act	
Division 1	Purpose	
117A	Purpose of pt 13A	88
Division 2	Enforcement orders and interim enforcement orders	
117B	Proceeding for enforcement order or interim enforcement order	89
117C	Making enforcement order	89
117D	Making interim enforcement order	90
117E	Effect of order	90
117F	Powers of District Court about enforcement order or interim enforcement order	91
117G	No undertaking as to damages or costs may be required	92
117GA	Further power of District Court if enforcement order is contravened	92
117GB	Recovery by State of expenses of taking authorised action	93
117GC	Recovery by other persons of damages in particular circumstances	93
Division 3	Undertakings	
117H	General manager may seek division 3 undertaking	93
117I	Undertaking about other matter	94

117J	Variation and withdrawal of division 3 undertaking	94
117K	Enforcement of division 3 undertaking	95
117L	Register of division 3 undertakings	95
Part 13B	Review of decisions	
117M	Internal review of decisions	95
117N	External review of decisions	96
Part 14	Legal proceedings	
Division 1	Evidence	
118	Evidentiary provisions	97
119	Analyst's certificate or report produced by defendant	99
120	Responsibility for acts or omissions of representatives	100
121	Executive officer may be taken to have committed offence	100
Division 2	Legal proceedings	
122	How discharge expenses may be recovered	101
123	Indictable and summary offences	102
124	Proceedings for indictable offences	102
125	Limitation on who may summarily hear indictable offence proceedings 103	
126	Limitation on time for starting summary proceedings	103
126A	Allegations of false or misleading statements or documents	104
127	Court may make orders about rehabilitation etc.	104
Division 3	Service	
128	Special provision for service of documents	106
Part 14A	Protection for whistleblowers	
128A	Definitions for pt 14A	107
128B	Application of pt 14A	107
128C	General limitation	107
128D	Liability for conduct unaffected	108
128E	Reprisal and grounds for reprisal	109
128F	Damages entitlement or other remedy for reprisal	109
128G	False or misleading statements	109
128H	False or misleading documents	110
Part 15	Administration	
130	Delegation by chief executive	110
132A	Delegation by marine pollution controller	110
Part 15A	Appointment of analysts	

Contents

132B	Appointment and qualifications	111
132C	Appointment conditions	111
132D	When analyst stops holding office	111
132E	Resignation	111
Part 16	Miscellaneous	
132F	Recovery of damages	112
132G	Approval of forms	113
133	Regulation-making power	113
134	Exemption of defence ships from Act	114
Part 17	Transitional provisions	
Division 1	Provisions for Maritime Safety Queensland Act 2002	
136	Definitions for div 1	115
137	Transition of chief executive's functions to general manager . . .	115
138	Agreements	115
139	Notices	116
140	Appointments	116
141	Other things done by chief executive	116
142	Particular references to chief executive	117
Division 2	Provisions for Maritime and Other Legislation Amendment Act 2006	
143	Application of s 62	117
145	Authorised officers appointed by chief executive officer of port authority 117	
146	Protection from liability for port authorised officers and others and continuing liability for port authorities	118
147	Making orders under s 127 and pt 13A, div 2	118
148	Delegation under s 132 as in force before commencement	118
149	Previous exercise of powers by port authority officer not affected	119
150	Emergency response powers under pt 12, div 6	120
151	Continuing liability of port authority for compensation	120
152	If port authority has started to recover discharge expenses before commencement	121
153	Application of s 118 to particular matters	121
Division 3	Provisions for Transport Legislation Amendment Act 2008, part 5	
154	Appointments of analysts	122
155	Actions done and documents made by analysts	122
156	Recovery of damages	122
Division 4	Transitional provisions for Transport and Other Legislation	

	Amendment Act 2008, part 7, division 1	
157	Provision for prosecutions under previous s 38(4)	123
158	Application of s 50A	123
Division 6	Transitional provision for Transport and Other Legislation Amendment Act (No. 2) 2010	
160	Application of s 49	123
Division 7	Transitional provisions for Transport Legislation (Road Safety and Other Matters) Amendment Act 2019	
161	Recovery of discharge expenses incurred by particular entities .	124
162	Securing compliance for particular offences	124
Schedule 1	Dictionary	125

Transport Operations (Marine Pollution) Act 1995

An Act to protect Queensland's marine and coastal environment by minimising deliberate and negligent discharges of ship-sourced pollutants into coastal waters, and for related purposes

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the *Transport Operations (Marine Pollution) Act 1995*.

Division 2 Act's overall purpose

3 Overall purpose

- (1) The overall purpose of this Act is to protect Queensland's marine and coastal environment by minimising deliberate and negligent discharges of ship-sourced pollutants into coastal waters.
- (2) This purpose is to be achieved primarily by giving effect to relevant provisions of the following annexes of MARPOL—
 - Annex I (which deals with pollution by oil)
 - Annex II (which deals with pollution by noxious liquid substances in bulk)

[s 4]

- Annex III (which deals with pollution by harmful substances in packaged form)
 - Annex IV (which deals with pollution by sewage)
 - Annex V (which deals with pollution by garbage).
- (3) The purpose is also to be achieved by—
- (a) providing an approach to protecting Queensland's marine and coastal environment from ship-sourced pollutants complementary to the approach of the Commonwealth and the other States; and
 - (b) making provision about the discharge of sewage from ships; and
 - (c) giving power to deal with shipping casualties that are polluting, or threatening to pollute, coastal waters; and
 - (d) enhancing, through education processes, industry and community awareness of the effects of ship-sourced pollutants on Queensland's marine and coastal environment; and
 - (e) providing for the imposition of severe penalties on persons who pollute Queensland's marine and coastal environment in contravention of this Act.

Division 3 Interpretation

4 Definitions—the dictionary

- (1) A dictionary in schedule 1 defines particular words used in this Act.
- (2) Definitions found elsewhere in the Act are signposted in the dictionary.

5 Words and expressions used in MARPOL and this Act

- (1) Words and expressions used in MARPOL (other than in an annex) and this Act have the same meanings in this Act they have in MARPOL.
- (2) Subsection (1) applies—
 - (a) whether or not a particular word or expression is defined in MARPOL; and
 - (b) subject to sections 25, 34, 41, 46, 54 and 60.
- (3) Except as far as the context or subject matter otherwise indicates or requires, if a word or expression is defined in MARPOL (other than in an annex) and this Act—
 - (a) this Act's definition does not limit or exclude, but may extend, the meaning of the word or expression given under MARPOL; and
 - (b) the definitions are to be read in the context of each other and the other provisions of this Act, but, if the definitions so read are inconsistent, the MARPOL definition is displaced.

6 Meaning of *MARPOL*

- (1) *MARPOL* is the International Convention for the Prevention of Pollution from Ships, 1973—
 - (a) as corrected by the procès-verbal of rectification dated 13 June 1978; and
 - (b) as modified and added to by the 1978 Protocol; and
 - (c) as affected by any amendment made under article 16 of the Convention and that has entered force for Australia.

Note—

At the commencement of this note, the text of MARPOL is accessible through the Australian Maritime Safety Authority website at <http://www.amsa.gov.au>.

- (2) In this section—

1978 Protocol means the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, as affected by any amendment made under article VI of the Protocol that has entered force for Australia.

7 Meaning of *agent*

- (1) An **agent** of a ship owner is the person who, for the owner—
 - (a) performs a function under the Marine Safety Act or the *Transport Infrastructure Act 1994*, chapter 8; or
 - (b) performs a function under the domestic commercial vessel national law; or
 - (c) makes an arrangement for berthing the ship, or loading or unloading cargo on or from the ship, in the State; or
 - (d) makes an arrangement for the ship to load bunkers or stores in the State.
- (2) The person remains the ship owner's agent until—
 - (a) the person, or the ship owner, gives the general manager written notice that the person is no longer the ship's agent; or
 - (b) someone else in the State is appointed by the ship owner as agent; or
 - (c) the ship goes outside coastal waters.
- (3) If subsection (2)(a) and (b) do not apply, the person again becomes the ship owner's agent when the ship returns to coastal waters.

7A Meaning of *length overall*

- (1) The **length overall** of a ship is the distance in the fore and aft line from the foremost part of the hull of the ship to the aftermost part of the hull of the ship taken at the upper weather tight deck or, for an open ship, at the height of the gunwale.

- (2) However, the length overall of the ship does not include the length of appendages to the hull.

Example—

A bowsprit or boarding platform is not taken into account when measuring the length overall of a ship.

Division 4 Operation of Act

8 Act binds all persons

This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

9 Discharge outside coastal waters that enters coastal waters

- (1) The discharge of a pollutant, whether or not in packaged form, that happens outside coastal waters is taken to be a discharge into coastal waters under this Act if the discharged pollutant enters coastal waters.
- (2) The discharge is taken to happen when the discharged pollutant enters coastal waters.

Part 2 Information about this Act

10 Why this Act was enacted

- (1) In 1973, the international community responded to worldwide concern about the threat to the marine environment and coastlines posed by the discharge of ship-sourced pollutants.
- (2) The international community's response was the International Convention for the Prevention of Pollution from Ships, 1973.
- (3) The Convention, for the first time, set international standards for the proper construction of ships designed to carry oil and

noxious substances and laid down rules about the level of discharges that may be made into the sea without risk to the marine environment.

- (4) The Convention, as amended, is known as MARPOL.

Note—

See section 6 for the precise meaning of MARPOL for this Act.

- (5) MARPOL was ratified by Australia in 1987.
- (6) This Act gives effect to MARPOL by—
- (a) enacting as part of Queensland’s law provisions to give effect to relevant provisions of MARPOL; and
 - (b) providing a legislative framework in which the provisions can be enforced.
- (7) This approach complements the approach adopted by the Commonwealth and the other States.

11 Queensland’s jurisdiction

- (1) The body of law governing Australian waters is extremely complex and this section is intended to provide only a very general overview of the State’s jurisdiction in the territorial sea.
- (2) Queensland’s jurisdiction in the territorial sea is limited under the *Coastal Waters (State Powers) Act 1980* (Cwlth).
- (3) Because of this limitation, this Act only deals with discharges from ships that happen, or are taken to happen, in the first 3n miles of the territorial sea and other coastal waters subject to the ebb and flow of the tide.
- (4) These waters are referred to as coastal waters in this Act.

Note—

See the dictionary in the schedule for the precise meaning of coastal waters for this Act.

- (5) Waters beyond the 3n mile limit come under Commonwealth jurisdiction to the extent that Australia has jurisdiction.

12 The ships this Act applies to

This Act applies to all ships in coastal waters.

13 Ship's general safety obligations, surveying and registration

- (1) General safety duties for domestic commercial vessels and issues about their survey and certification are generally dealt with under the domestic commercial vessel national law.
- (2) General safety obligations for Queensland regulated ships and issues about their survey and registration are generally dealt with under the Marine Safety Act.

14 How this Act interacts with other environmental laws

- (1) This Act deals with the discharge of pollutants into coastal waters happening from ships or because of transfer operations involving ships.
- (2) If a pollutant is discharged into coastal waters from another source, other environmental laws may apply.

Note—

See, for example, the *Environmental Protection Act 1994*.

Part 4 Prevention of pollution by oil

Division 1 Purpose of part

23 Part gives effect to Annex I to MARPOL

The purpose of this part is to give effect to relevant provisions of Annex I to MARPOL.

Division 2 Interpretation

24 Definitions for part

In this part—

discharge offence means an offence against section 26(1) or 27(1).

oil includes an oily mixture.

25 Words and expressions used in Annex I to MARPOL and this part

- (1) Words and expressions used in Annex I to MARPOL and this part have the same meanings in this part they have in the annex.
- (2) Subsection (1) applies whether or not a particular word or expression is defined in Annex I.
- (3) Except as far as the context or subject matter otherwise indicates or requires, if a word or expression is defined in Annex I to MARPOL and this part—
 - (a) this part's definition does not limit or exclude, but may extend, the meaning of the word or expression given under Annex I; and
 - (b) the definitions are to be read in the context of each other and the other provisions of this Act, but, if the definitions so read are inconsistent, the Annex I definition is displaced.

Division 3 Discharge of oil prohibited

26 Discharge of oil into coastal waters prohibited

- (1) If oil is discharged from a ship into coastal waters, the following persons each commit an offence—
 - (a) the ship's owner;

- (b) the ship's master;
- (c) another member of the ship's crew whose act caused or contributed to the discharge, unless the member was complying with an instruction from the master or of someone authorised by the master to give the instruction.

Maximum penalty—

- (a) for an individual—5,000 penalty units; or
 - (b) for a corporation—100,000 penalty units.
- (2) Subsection (1) applies despite the Criminal Code, sections 23 and 24.

Note—

The Criminal Code, section 23 deals with a person's criminal responsibility for an act or omission that happens independently of the person's will or for an event which is accidental. The Criminal Code, section 24 deals with a person's criminal responsibility for an act or omission done under an honest and reasonable, but mistaken, belief in the state of things.

27 Oil residues

- (1) If any oil residues that cannot be discharged from a ship without contravening section 26(1) are not retained on board the ship while the ship is in coastal waters, the ship's master and owner each commit an offence.

Example—

A ship leaves port A with a quantity of oil residues held in a tank or space and, without leaving coastal waters, arrives at port B with a lesser quantity in the tank or space. This subsection places an onus on the ship's master to explain why there is a discrepancy in the quantity.

Maximum penalty—

- (a) for an individual—5,000 penalty units; or
 - (b) for a corporation—100,000 penalty units.
- (2) If an event contravenes subsection (1) and section 26(1), the ship's owner and master cannot be punished for the event under both provisions.

Division 4 Defences

28 Defences to discharge offence

- (1) Each of the following is a defence to a prosecution for a discharge offence—
 - (a) the discharge was necessary for the purpose of securing the safety of a ship or saving life at sea;
 - (b) the discharge resulted from damage, other than intentional damage, to the ship or its equipment and all reasonable precautions were taken after the damage happened or the discharge was discovered to prevent or minimise the discharge of the oil;
 - (c) for an oily mixture—the discharge was made to combat specific pollution incidents to minimise the damage from pollution and was approved by an authorised officer;
 - (d) the discharge was authorised by an authorised officer for training purposes.
- (2) For subsection (1)(b), damage to a ship or its equipment is intentional damage only if the damage arose in circumstances in which the ship's owner or master or, for a discharge offence against section 26(1), another member of the ship's crew—
 - (a) acted with intent to cause damage; or
 - (b) acted recklessly and with knowledge that damage would probably result.

Division 5 Exemptions

29 Certain discharges permissible

- (1) The regulations may exempt discharges from the operation of the discharge offences.

-
- (2) However, a regulation may be made only if it gives effect to an exemption allowed under MARPOL.

Example—

The regulations may prescribe that oil may be discharged outside specified areas, at a rate and under conditions prescribed under MARPOL. A discharge made outside the area, at the prescribed rate and under the prescribed conditions does not contravene this Act.

Division 6 General

30 Shipboard oil pollution emergency plan

- (1) If a ship does not have on board a shipboard oil pollution emergency plan, the ship's owner and master each commit an offence.

Maximum penalty—850 penalty units.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 121, to have also committed the offence.

- (2) In this section—

ship means a ship—

- (a) more than 24m in length overall if the ship is carrying—
- (i) oil as cargo; or
 - (ii) a vehicle that is carrying more than 400L of oil as cargo; or
- (b) otherwise, more than 35m in length overall.

Part 5 **Prevention of pollution by noxious liquid substances in bulk**

Division 1 **Purpose and application of part**

31 **Part gives effect to Annex II to MARPOL**

The purpose of this part is to give effect to relevant provisions of Annex II to MARPOL.

32 **Application of part**

This part applies to all ships carrying noxious liquid substances in bulk.

Division 2 **Interpretation**

33 **Definitions for part**

In this part—

discharge offence means an offence against section 35(1).

mixture includes ballast water, tank washings and bilge and other residues.

noxious liquid substance—

- (a) includes a mixture containing a noxious liquid substance; and
- (b) does not include a liquid substance declared under a regulation not to be a noxious liquid substance.

oil has the meaning it has in part 4.

34 Words and expressions used in Annex II to MARPOL and this part

- (1) Words and expressions used in Annex II to MARPOL and this part have the same meanings in this part they have in the annex.
- (2) Subsection (1) applies whether or not a particular word or expression is defined in Annex II.
- (3) Except as far as the context or subject matter otherwise indicates or requires, if a word or expression is defined in Annex II to MARPOL and this part—
 - (a) this part's definition does not limit or exclude, but may extend, the meaning of the word or expression given under Annex II; and
 - (b) the definitions are to be read in the context of each other and the other provisions of this Act, but, if the definitions so read are inconsistent, the Annex II definition is displaced.

34A Recategorisation of substances

- (1) A regulation may declare a category X substance, category Y substance, category Z substance or Other substance to be a substance of a different stated category.
- (2) A regulation under subsection (1) has effect to categorise the substance for this Act despite the substance being differently categorised under the International Bulk Chemical Code.

Division 3 Discharge of noxious liquid substances prohibited

35 Discharge of noxious liquid substances into coastal waters prohibited

- (1) If a noxious liquid substance is discharged from a ship into coastal waters, the following persons each commit an offence—

[s 36]

- (a) the ship's owner;
- (b) the ship's master;
- (c) another member of the ship's crew whose act caused or contributed to the discharge, unless the member was complying with an instruction from the master or of someone authorised by the master to give the instruction.

Maximum penalty—

- (a) for an individual—5,000 penalty units; or
 - (b) for a corporation—100,000 penalty units.
- (2) Subsection (1) applies despite the Criminal Code, sections 23 and 24.

Note—

See the note to section 26(2) for information about sections 23 and 24 of the Code.

Division 4 Defences

36 Defences to discharge offence

- (1) Each of the following is a defence to a prosecution for a discharge offence—
- (a) the discharge was necessary for the purpose of securing the safety of a ship or saving life at sea;
 - (b) the discharge resulted from damage, other than intentional damage, to the ship or its equipment and all reasonable precautions were taken after the damage happened or the discharge was discovered to prevent or minimise the discharge of the noxious liquid substance;
 - (c) the discharge was for the purpose of combating specific pollution incidents to minimise the damage from pollution and was approved by an authorised officer.

Note—

See Annex II, regulation 3.

-
- (2) For subsection (1)(b), damage to a ship or its equipment is taken to be intentional damage only if the damage arose in circumstances in which the ship's owner, master or other member of the ship's crew—
- (a) acted with intent to cause damage; or
 - (b) acted recklessly and with knowledge that damage would probably result.

Division 5 Exemptions

37 Certain discharges permissible

- (1) The regulations may exempt discharges from the operation of the discharge offence.
- (2) However, a regulation may be made only if it gives effect to an exemption allowed under MARPOL.

Example—

The regulations may prescribe that noxious liquid substances may be discharged outside specified areas, at a rate and under conditions prescribed under MARPOL. A discharge made outside the area, at the prescribed rate and under the prescribed conditions does not contravene this Act.

Division 6 General

38 Procedures and arrangements manual

- (1) If a ship certified to carry noxious liquid substances category X, Y or Z does not have on board a procedures and arrangements manual, the ship's owner and master each commit an offence.

Maximum penalty—350 penalty units.

[s 38A]

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 121, to have also committed the offence.

(2) In this section—

procedures and arrangements manual means a Procedures and Arrangements Manual as defined in the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cwlth), section 15.

38A Shipboard marine pollution emergency plan for noxious liquid substances

(1) If a prescribed ship does not have on board a shipboard marine pollution emergency plan for noxious substances, the ship's owner and master each commit an offence.

Maximum penalty—850 penalty units.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 121, to have also committed the offence.

(2) A regulation may prescribe minimum requirements for a shipboard marine pollution emergency plan for noxious substances.

(3) In this section—

prescribed ship means a ship—

- (a) with a gross tonnage of 150 or more; and
- (b) certified to carry noxious liquid substances.

shipboard marine pollution emergency plan for noxious substances means a shipboard marine pollution emergency plan for noxious substances complying with the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cwlth), section 22A.

Part 6 Prevention of pollution by packaged harmful substances

Division 1 Purpose of part

39 Part gives effect to Annex III to MARPOL

The purpose of this part is to give effect to relevant provisions of Annex III to MARPOL.

Division 2 Interpretation

40 Definitions for part

In this part—

discharge offence means an offence against section 42(1).

harmful substance see the International Maritime Dangerous Goods Code.

41 Words and expressions used in Annex III to MARPOL and this part

- (1) Words and expressions used in Annex III to MARPOL and this part have the same meanings in this part they have in the annex.
- (2) Subsection (1) applies whether or not a particular word or expression is defined in Annex III.
- (3) Except as far as the context or subject matter otherwise indicates or requires, if a word or expression is defined in Annex III to MARPOL and this part—
 - (a) this part's definition does not limit or exclude, but may extend, the meaning of the word or expression given under Annex III; and

[s 42]

- (b) the definitions are to be read in the context of each other and the other provisions of this Act, but, if the definitions so read are inconsistent, the Annex III definition is displaced.

Division 3 Jettisoning of harmful substance prohibited

42 Jettisoning of harmful substances into coastal waters prohibited

- (1) If a harmful substance carried as cargo in packaged form is jettisoned from a ship into coastal waters, the following persons each commit an offence—
 - (a) the ship's owner;
 - (b) the ship's master;
 - (c) another member of the ship's crew whose act caused or contributed to the jettisoning, unless the member was complying with an instruction from the master or of someone authorised by the master to give the instruction.

Maximum penalty—

- (a) for an individual—5,000 penalty units; or
 - (b) for a corporation—100,000 penalty units.
- (2) A harmful substance is taken to have been jettisoned if it is discharged into coastal waters because of a leakage of the substance.
 - (3) Subsection (1) applies despite the Criminal Code, sections 23 and 24.

Note—

See the note to section 26(2) for information about sections 23 and 24 of the Code.

Division 4 Defences

43 Defences to discharge offence

The following are defences to a prosecution for a discharge offence—

- (a) the jettisoning was made for the purpose of securing the safety of a ship or saving life at sea;
- (b) if the jettisoning was the washing of leakages overboard—the jettisoning in accordance with procedures prescribed by regulation would have impaired the safety of the ship or persons on board the ship.

Division 5 Exemptions

44 Certain discharges permissible

The regulations may exempt discharges from the operation of the discharge offence.

Part 7 Prevention of pollution by sewage

Division 1 Interpretation

45 Definitions for pt 7

In this part—

culpable person, for a discharge of treated sewage or untreated sewage from a ship, means—

- (a) the ship's owner; or
- (b) the ship's master; or

- (c) another member of the ship's crew whose act caused or contributed to the discharge, unless the member was acting under the direct supervision of the master or of someone authorised by the master for the purpose.

declared ship see section 49.

discharge offence means an offence against section 47, 48, 50 or 50A(2), (3) or (4).

sewage holding device means—

- (a) a container or receptacle that is designed or constructed to receive sewage and hold it inside the container or receptacle for disposal; or

Example for paragraph (a)—

a portable toilet or holding tank

- (b) a treatment system that is fitted with, or connected to, a container or receptacle mentioned in paragraph (a).

46 Words and expressions used in Annex IV to MARPOL and this part

- (1) Words and expressions used in Annex IV to MARPOL and this part have the same meanings in this part they have in the annex.
- (2) Subsection (1) applies whether or not a particular word or expression is defined in Annex IV.
- (3) Except as far as the context or subject matter otherwise indicates or requires, if a word or expression is defined in Annex IV to MARPOL and this part—
 - (a) this part's definition does not limit or exclude, but may extend, the meaning of the word or expression given under Annex IV; and
 - (b) the definitions are to be read in the context of each other and the other provisions of this Act, but, if the definitions so read are inconsistent, the Annex IV definition is displaced.

Division 2 Discharge of sewage

47 Discharge of untreated sewage into nil discharge waters for untreated sewage prohibited

- (1) If untreated sewage is discharged from a ship into nil discharge waters for untreated sewage, each culpable person for the discharge commits an offence.

Maximum penalty—850 penalty units.

- (2) The nil discharge waters for untreated sewage are the coastal waters prescribed under a regulation for this section.
- (3) This section applies despite the Criminal Code, sections 23 and 24.

Note—

See the note to section 26(2) for information about sections 23 and 24 of the Code.

- (4) In this section—
ship does not include—
 - (a) a declared ship under section 49; or
 - (b) a prescribed ship under section 50A.

48 Discharge of treated sewage into nil discharge waters for treated sewage prohibited

- (1) If treated sewage is discharged from a ship into nil discharge waters for treated sewage, each culpable person for the discharge commits an offence.

Maximum penalty—850 penalty units.

- (2) The nil discharge waters for treated sewage are the coastal waters prescribed under a regulation for this section.
- (3) This section applies despite the Criminal Code, sections 23 and 24.
- (4) In this section—

ship does not include—

- (a) a declared ship under section 49; or
- (b) a prescribed ship under section 50A.

48A Ship with fixed toilet operating in prescribed nil discharge waters to be able to hold or treat sewage

- (1) The owner or master of a ship must not operate the ship in nil discharge waters for treated sewage or untreated sewage from a ship, unless the owner or master complies with the requirements prescribed under a regulation in relation to the holding or treating of sewage on the ship.

Maximum penalty—850 penalty units.

- (2) The nil discharge waters for treated sewage or untreated sewage from a ship are the coastal waters prescribed under a regulation for this section.
- (3) This section applies despite the Criminal Code, sections 23 and 24.
- (4) In this section—

operate, a ship, includes anchor, berth or moor the ship.

ship—

- (a) means a ship that has a fixed toilet; and
- (b) does not include—
 - (i) a declared ship under section 49; or
 - (ii) a prescribed ship under section 50A.

49 Declared ship operating in prescribed nil discharge waters to be fitted with sewage holding device

- (1) The owner or master of a declared ship must not operate the declared ship in nil discharge waters for treated sewage or untreated sewage from a declared ship, unless—

-
- (a) the declared ship is fitted with a sewage holding device; and
 - (b) each fixed toilet on the declared ship is connected to a sewage holding device.

Maximum penalty—850 penalty units.

- (2) A declared ship is taken not to be fitted with a sewage holding device unless a sewage holding device fitted to the ship is appropriate having regard to—
 - (a) the maximum number of persons the ship is permitted to carry under—
 - (i) for a domestic commercial vessel—the domestic commercial vessel national law; or
 - (ii) for a Queensland regulated ship—the Marine Safety Act; and
 - (b) the duration of the ship's journey in the nil discharge waters.
- (3) The nil discharge waters for treated sewage or untreated sewage from a declared ship are the coastal waters prescribed under a regulation for this section.
- (4) In this section—

declared ship means a ship declared under a regulation to be a ship to which this section applies.

operate, a declared ship, includes anchor, berth or moor the declared ship.

50 Discharge of sewage from declared ship into nil discharge waters for sewage prohibited

- (1) If treated sewage or untreated sewage is discharged from a declared ship into the nil discharge waters for treated sewage or untreated sewage from a declared ship under section 49, each culpable person for the discharge commits an offence.

Maximum penalty—850 penalty units.

- (2) This section applies despite the Criminal Code, sections 23 and 24.

50A Discharge of sewage by prescribed ships

- (1) The owner or master of a prescribed ship must not operate the ship unless the ship has 1 of the following sewage systems—
- (a) a sewage treatment system;
 - (b) a sewage comminuting and disinfecting system for the temporary storage of sewage when the ship is less than 3n miles from the nearest land;
 - (c) a holding tank—
 - (i) with capacity to retain all sewage, having regard to the ship's operation, the number of persons on board and other relevant factors; and
 - (ii) constructed to have a means to indicate visually the amount of its contents.

Maximum penalty—850 penalty units.

- (2) If untreated sewage is discharged from a prescribed ship into coastal waters, each culpable person for the discharge commits an offence.

Maximum penalty—850 penalty units.

- (3) If treated sewage is discharged from a prescribed ship into prohibited discharge waters, each culpable person for the discharge commits an offence.

Maximum penalty—850 penalty units.

- (4) If treated sewage is discharged from a prescribed ship into coastal waters, each culpable person for the discharge commits an offence, unless each of the following applies—

- (a) the ship is operating a sewage treatment plant approved by the IMO;

Note—

Information on sewage treatment plants is available from MSQ, the Australian Maritime Safety Authority or the IMO's website

for the Global Integrated Shipping Information System at <http://gisis.imo.org/Public>.

- (b) the test results of the treatment system are stated in the ship's International Sewage Pollution Prevention Certificate;
- (c) the effluent does not produce visible floating solids or discolour the surrounding water.

Maximum penalty—850 penalty units.

- (5) Subsections (2), (3) and (4) apply despite the Criminal Code, sections 23 and 24.
- (6) In this section—

prescribed ship means a ship engaged in an international voyage—

- (a) with a gross tonnage of at least 400; or
- (b) with a gross tonnage of less than 400 and certified to carry more than 15 persons.

Note—

See Annex IV to MARPOL, chapter 1, regulation 2.

51 Shipboard sewage management plan

- (1) This section applies to a ship declared under a regulation for this section.
- (2) If a ship does not have on board a shipboard sewage management plan, the ship's owner and master each commit an offence.

Maximum penalty—850 penalty units.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 121, to have also committed the offence.

- (3) If a ship has on board a shipboard sewage management plan but is not fitted with any equipment that may be required to

[s 51A]

implement the plan, the ship's owner and master each commit an offence.

Maximum penalty—850 penalty units.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 121, to have also committed the offence.

- (4) A regulation may prescribe minimum requirements for a shipboard sewage management plan.

Division 3 Defence

51A Defence to discharge offence

- (1) Each of the following is a defence to a prosecution for a discharge offence—
- (a) the discharge was necessary for the purpose of securing the safety of a ship or saving life at sea;
 - (b) the discharge resulted from damage, other than intentional damage, to the ship or its equipment and all reasonable precautions were taken after the damage happened or the discharge was discovered to prevent or minimise the discharge.
- (2) For subsection (1)(b), damage to a ship or its equipment is intentional damage only if the damage arose in circumstances in which the ship's owner, master or another member of the ship's crew—
- (a) acted with intent to cause damage; or
 - (b) acted recklessly and with knowledge that damage would probably result.

Division 4 General

51B Treatment system to be in proper working order

- (1) This section applies if—
 - (a) a ship is operating in coastal waters that are outside the nil discharge waters for treated sewage under section 48 but within the nil discharge waters for untreated sewage under section 47; and
 - (b) the ship is fitted with a treatment system.
- (2) The owner or master of the ship or a member of the ship's crew responsible for the operation of the treatment system must ensure that the treatment system is not operated, or available to be operated, to discharge the sewage into the coastal waters unless the system is in proper working order.

Maximum penalty—350 penalty units.

- (3) In a proceeding for an offence against subsection (2), the fact that at a particular time an indicator on a treatment system was indicating that the system was malfunctioning is evidence that the system was not in proper working order at the time.
- (4) In this section—

malfunctioning includes the following—

 - (a) faulty;
 - (b) in need of attention;
 - (c) not in proper working order;
 - (d) out of order.

51C Other laws may also apply

This part does not limit another law imposing more stringent requirements about the discharge of sewage into coastal waters.

Example of another law—

*Transport Infrastructure (Sunshine Coast Waterways) Management
Plan 2000*

Part 8 Prevention of pollution by garbage

Division 1 Purpose

52 Part gives effect to Annex V to MARPOL

The purpose of this part is to give effect to relevant provisions of Annex V to MARPOL.

Division 2 Interpretation

53 Definitions for part

In this part—

discharge offence means an offence against section 55(1).

garbage includes plastics.

54 Words and expressions used in Annex V to MARPOL and this part

- (1) Words and expressions used in Annex V to MARPOL and this part have the same meanings in this part they have in the annex.
- (2) Subsection (1) applies whether or not a particular word or expression is defined in Annex V.
- (3) Except as far as the context or subject matter otherwise indicates or requires, if a word or expression is defined in Annex V to MARPOL and this part—

- (a) this part's definition does not limit or exclude, but may extend, the meaning of the word or expression given under Annex V; and
- (b) the definitions are to be read in the context of each other and the other provisions of this Act, but, if the definitions so read are inconsistent, the Annex V definition is displaced.

Division 3 Disposal of garbage prohibited

55 Disposal of garbage into coastal waters prohibited

- (1) If garbage is disposed of from a ship into coastal waters, the following persons each commit an offence—
 - (a) the ship's owner;
 - (b) the ship's master;
 - (c) another member of the ship's crew whose act caused or contributed to the disposal, unless the member was complying with an instruction from the master or of someone authorised by the master to give the instruction.

Maximum penalty—3,500 penalty units.

- (2) Subsection (1) applies despite the Criminal Code, sections 23 and 24.

Note—

See the note to section 26(2) for information about sections 23 and 24 of the Code.

55AA Placard about garbage disposal requirements

- (1) If a ship that is at least 12m in length overall does not display a placard complying with subsection (2), the ship's owner and master each commit an offence.

Maximum penalty—20 penalty units.

- (2) The placard must—
 - (a) notify the ship's crew and passengers of the prohibitions and requirements under this Act for the disposal of garbage; and
 - (b) be written in English and, if the ship is owned or operated by a foreign country, the working language of the ship's crew.

55A Shipboard waste management plan

- (1) This section applies to a ship—
 - (a) at least 35m in length overall; or
 - (b) designed to sleep at least 15 persons.
- (2) If the ship does not have on board a shipboard waste management plan, the ship's owner and master each commit an offence.

Maximum penalty—850 penalty units.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 121, to have also committed the offence.

- (3) If the ship is not fitted with any equipment that may be required to implement the plan, the ship's owner and master each commit an offence.

Maximum penalty—850 penalty units.

- (4) A regulation may prescribe minimum requirements for a shipboard waste management plan.

Division 4 Defences

56 Defences to discharge offence

Each of the following is a defence to a prosecution for a discharge offence—

- (a) the disposal was made for the purpose of securing the safety of the ship and the persons on board the ship or saving life at sea;
- (b) the disposal happened because of damage to the ship or its equipment and all reasonable precautions were taken before and after the damage happened to prevent or minimise the disposal;
- (c) the disposal was the accidental loss at sea of a synthetic fishing net, or synthetic material used in the repair of a synthetic fishing net, and all reasonable precautions were taken to prevent the loss.

Division 5 Exemptions

57 Certain disposals permissible

- (1) The regulations may exempt disposals from the operation of the discharge offence.
- (2) However, a regulation may be made only if it gives effect to an exemption allowed under MARPOL or relates to fishing or tourism operations.

Part 9 Transfer operations

Division 1 Purpose of part

58 Responsibility for pollution from transfer operations and other matters

The purpose of this part is—

- (a) to state when a ship's owner, master or other crew member is responsible for a discharge happening during or because of a transfer operation; and

- (b) to make provision for other matters about transfer operations.

Division 2 Interpretation

59 Definitions for part

In this part—

discharge offence means an offence against section 61(1).

noxious liquid substance has the meaning it has in part 5.

oil has the meaning it has in part 4.

transfer apparatus, for a ship, means apparatus used in the transfer of a pollutant between a ship and another ship or place.

transfer operation, for a ship, means any operation involved in preparing for, or starting, carrying on or finishing, a transfer of a pollutant between a ship and another ship or place.

60 Words and expressions used in Annex I or II to MARPOL and this part

- (1) Words and expressions used in Annex I or II to MARPOL and this part have the same meanings in this part they have in the annex.
- (2) Subsection (1) applies whether or not a particular word or expression is defined in Annex I or II.
- (3) Except as far as the context or subject matter otherwise indicates or requires, if a word or expression is defined in Annex I or II to MARPOL and this part—
 - (a) this part's definition does not limit or exclude, but may extend, the meaning of the word or expression given under Annex I or II; and
 - (b) the definitions are to be read in the context of each other and the other provisions of this Act, but, if the

definitions so read are inconsistent, the Annex I or II definition is displaced.

Division 3 Discharge during transfer operation prohibited

60A Obligation to monitor transfer operation

The ship's owner and the ship's master must ensure that a transfer operation is monitored by a member of the ship's crew.

Maximum penalty—850 penalty units.

61 Discharge of pollutant into coastal waters prohibited

- (1) If a pollutant is discharged into coastal waters during a transfer operation, the following persons each commit an offence—
- (a) the ship's owner;
 - (b) the ship's master;
 - (c) another member of the ship's crew whose act caused the discharge, unless the member was complying with an instruction from the master or of someone authorised by the master to give the instruction.

Maximum penalty—3,500 penalty units.

- (2) Subsection (1) applies despite the Criminal Code, sections 23 and 24.

Note—

See the note to section 26(2) for information about sections 23 and 24 of the Code.

Division 4 Defences

62 Defences to discharge offence

- (1) Each of the following is a defence to a prosecution for a discharge offence—
 - (a) the discharge happened because of operator error by someone not under the master's direction and the master took all reasonable precautions after the discharge happened or was discovered to prevent or minimise the discharge;
 - (b) the discharge happened because of a fault in transfer apparatus not operated at the master's direction and—
 - (i) if the person charged with committing the offence is the ship's owner or master—
 - (A) before the transfer operation, the owner or master did not know, or could not reasonably have known, about the existence of the fault and the master took all reasonable steps to find out whether the transfer apparatus was in good working order; and
 - (B) after the discharge happened or was discovered, the master took all reasonable precautions to prevent or minimise the discharge; or
 - (ii) if the person charged with committing the offence is another member of the ship's crew whose act caused the discharge—the person did not know, or could not reasonably have known, about the existence of the fault;
 - (c) the discharge happened because of a fault in transfer apparatus brought onto the ship and operated at the master's direction if—
 - (i) the master took all reasonable steps to ensure that the apparatus was in good working order

-
- immediately before the transfer operation started;
and
- (ii) the master took all reasonable precautions after the discharge happened or was discovered to prevent or minimise the discharge;
 - (d) a defence available under another part of this Act for a discharge of the relevant pollutant.
- (2) For subsection (1)(b)(i)(A), the master must prove that the master took all reasonable steps to find out from all members of the ship's crew any information concerning any fault in the transfer apparatus known to them.
- (3) In this section—
- fault*, in transfer apparatus, does not include any existing defect in the transfer apparatus resulting from an event, lack of maintenance or anything else that happened while the transfer apparatus was under the direction of the master of the ship.

Division 5 General

64 Several liability—ships

- (1) This section applies to a transfer operation involving oil or noxious liquid substances in bulk.
- (2) If—
 - (a) a discharge happens from 2 or more ships; and
 - (b) it is not reasonably practicable to identify the oil or noxious liquid substance that has discharged from a particular ship;all of the oil or noxious liquid substance discharged is taken, for this part and sections 113, 115, 122 and 127, to have been discharged from each of the ships.

65 Keeping of records about transfer etc.

- (1) This section applies to—
 - (a) a ship's owner; and
 - (b) a ship's master; and
 - (c) the occupier of a place to or from which a pollutant is transferred.
- (2) A person to whom this section applies must keep the records the person is required to keep by regulation.
Maximum penalty—350 penalty units.
- (3) If a happening required under the regulations to be recorded by a person happens, the person must record, without delay, the happening in the way prescribed under the regulations.
Maximum penalty—350 penalty units.

Part 10 Reception facilities

66 Reception facilities

- (1) This section applies to the provision of reception facilities—
 - (a) under regulation 38 of Annex I, regulation 18 of Annex II and regulation 7 of Annex V to MARPOL; or
 - (b) under part 7.
- (2) The general manager may provide, join with someone else in providing, arrange for the provision of, or direct the providing of the reception facilities.
- (3) Without limiting subsection (2), the Gold Coast Waterways Authority may also provide, join with someone else in providing, arrange for the provision of, or direct the providing of the reception facilities for Gold Coast waters.
- (4) The general manager or the Gold Coast Waterways Authority may give a notice under subsection (5) to—

-
- (a) the owner or occupier or a port operator of a port or terminal; or
 - (b) the owner or occupier or a port operator of an establishment at which ships—
 - (i) are repaired or other work is performed on ships if the repair or work involves the disposal of oily mixtures, mixtures containing noxious liquid substances, oil residues, residues of noxious liquid substances or sewage; or
 - (ii) are berthed, docked or otherwise at the establishment.
- (5) A notice may direct an owner or occupier or a port operator of a port, terminal or establishment to—
- (a) provide facilities for the reception or disposal of residues by ships berthed, docked or otherwise at the port, terminal or establishment; and
 - (b) maintain the facilities in good order and condition; and
 - (c) make the facilities available to enable ships to dispose of the residues.
- (6) A notice—
- (a) may state a time within which a direction is to be complied with; and
 - (b) must be signed by the general manager or on behalf of the Gold Coast Waterways Authority.
- (7) An owner or occupier or a port operator must comply with a notice.

Maximum penalty—

- (a) for the first offence—1,750 penalty units; and
- (b) if the contravention continues after conviction—1,750 penalty units and an additional penalty of 20 penalty units for each day after the last conviction that the contravention continues.

[s 67]

- (8) An owner's or occupier's or a port operator's obligation to comply with a notice continues until the direction given by the notice is complied with even though, in a particular case, the notice specifies a time by which compliance is required and the time has passed.
- (9) A charge against an owner or occupier or a port operator for a contravention of subsection (7) continuing after conviction may state the date of the last conviction and the day or period during which the contravention continued.
- (10) Charges under subsection (9) for a particular continuing contravention may be prosecuted from time to time.
- (11) In this section—

residues include oil, noxious liquid substances, sewage and garbage.

terminal includes an oil depot, oil installation or other place used for the loading or unloading in bulk of oil or noxious liquid substances.

Part 11 Reporting requirements

67 Duty to report certain incidents

- (1) In this section—

discharge offence has the meaning it has in parts 4 to 9.

harmful substance has the meaning it has in part 6.

noxious liquid substance has the meaning it has in part 5.

oil has the meaning it has in part 4.

reportable incident means—

 - (a) a discharge or probable discharge of—
 - (i) oil or a noxious liquid substance that happens in coastal waters; or

- (ii) untreated sewage in the nil discharge waters for untreated sewage under section 47; or
 - (iii) treated sewage in the nil discharge waters for treated sewage under section 48; or
 - (iv) for a declared ship, treated sewage or untreated sewage in the nil discharge waters for treated sewage or untreated sewage under section 49; or
- (b) the jettisoning of a harmful substance carried in packaged form from a ship that happens in coastal waters;

but does not include a discharge or jettisoning exempted by regulation.

- (2) A ship's master must notify, without delay, an authorised officer of a reportable incident in the way prescribed by regulation.

Maximum penalty—850 penalty units.

- (3) If the ship's master cannot comply with subsection (2), the ship's owner or the owner's agent must notify, without delay, an authorised officer of the reportable incident in the way prescribed by regulation, unless the owner or owner's agent has a reasonable excuse.

Maximum penalty—850 penalty units.

- (4) A person mentioned in subsection (2) or (3) who has notified an authorised officer of the reportable incident must give a report to an authorised officer about the incident if asked by an authorised officer.

Maximum penalty—850 penalty units.

- (5) The report must include the particulars, and be given to an authorised officer within the time, prescribed under a regulation.
- (6) A notice given to an authorised officer under subsection (2) or (3), and a report given to an authorised officer under subsection (4), must not, without the consent of the person

charged, be admitted in evidence in a prosecution for a discharge offence.

Part 11A Insurance

67A Ship's owner to have insurance

- (1) This section applies if a ship is more than 15m in length overall.
- (2) The ship's owner must have an insurance policy that, to the limits applying under a regulation, is sufficient to pay for—
 - (a) the clean up costs of the discharge of a pollutant from the ship into coastal waters; and
 - (b) the costs of salvage or removal of the ship from coastal waters if the ship is abandoned or wrecked.

Maximum penalty—850 penalty units.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 121, to have also committed the offence.

- (3) The Minister may recommend the making of a regulation under subsection (4) only if—
 - (a) the Minister has had regard to the risk of the ship discharging pollutants into, or being abandoned or wrecked in, coastal waters; and
 - (b) the Minister is reasonably satisfied that, for the particular type of ship, an insurance policy mentioned in subsection (2) could not reasonably be obtained or kept in force.
- (4) A regulation may exempt a ship from the application of this section.
- (5) A regulation under subsection (4) may provide that, for the exemption to apply, an owner of the ship must comply with conditions stated in the regulation.

Example of conditions that a regulation may provide—

A regulation may provide that an owner develop and implement a risk management plan including matters mentioned in the regulation or that an owner must not operate the ship with more than a stated type or quantity of pollutant on board the ship.

Part 12 **Investigation, prevention and minimisation, and enforcement**

Division 1 **General**

68 **Functions of authorised officers**

Authorised officers have the following functions—

- (a) to investigate discharges prohibited by this Act;
- (b) to monitor compliance with this Act;
- (c) to monitor transfer operations;
- (d) to examine ships using coastal waters to minimise discharges;
- (e) to take action to remove a pollutant discharged into coastal waters or mitigate its effect on Queensland's marine and coastal environment.

69 **Authorised officer subject to directions of general manager**

An authorised officer is subject to the directions of the general manager in exercising the powers of an authorised officer.

70 **Powers of authorised officers**

An authorised officer has the powers given under this or another Act.

71 Limitation on powers of authorised officer

- (1) The powers of an authorised officer may be limited—
 - (a) under the regulations; or
 - (b) under a condition of appointment; or
 - (c) by notice of the general manager given to the authorised officer.
- (2) Notice under subsection (1)(c) may be given orally, but must be confirmed in writing as soon as practicable.

Division 2 Appointment of authorised officers and other matters

72 Appointment of authorised officers

- (1) The general manager may appoint any of the following persons as authorised officers—
 - (a) officers of the public service;
 - (b) employees of a port authority;
 - (c) employees of MSQ;
 - (d) employees of the Gold Coast Waterways Authority;
 - (e) other persons prescribed under the regulations.
- (2) A person may be appointed as an authorised officer only if the general manager considers, on reasonable grounds, that the person has the necessary expertise or experience to be an authorised officer.

73 Authorised officer's appointment conditions

- (1) An authorised officer holds office on the conditions stated in the instrument of appointment.
- (2) An authorised officer—

-
- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
 - (b) may resign by signed notice of resignation given to the general manager; and
 - (c) if the conditions of appointment provide—ceases holding office as an authorised officer on ceasing to hold another office stated in the appointment conditions (the *main office*).
- (3) However, an authorised officer may not resign from the office of authorised officer (the *secondary office*) under subsection (2)(b) if a term of the authorised officer’s employment to the main office requires the authorised officer to hold the secondary office.

74 Authorised officer’s identity card

- (1) The general manager must give each authorised officer an identity card.
- (2) The identity card must—
 - (a) contain a recent photograph of the authorised officer; and
 - (b) be signed by the authorised officer; and
 - (c) include an expiry date.
- (3) A person who ceases to be an authorised officer must return the identity card to the general manager within 21 days after the person ceases to be an authorised officer, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (4) This section does not prevent the giving of a single identity card to a person under this section and for other provisions, Acts or purposes.

75 Production or display of authorised officer's identity card

- (1) An authorised officer may exercise a power in relation to someone else if the officer—
 - (a) first produces the officer's identity card for the person's inspection; or
 - (b) has the identity card displayed so it is clearly visible to the person.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for inspection by the person at the first reasonable opportunity.

76 Protection from liability

- (1) An authorised officer or a person acting under the direction of an authorised officer is not civilly liable for an act or omission done honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an authorised officer or person, the liability attaches instead to the State.

Division 3 Powers of authorised officers

77 Entry to place by authorised officers

- (1) An authorised officer may enter a place under this section if—
 - (a) its occupier consents to the entry; or
 - (b) the entry is authorised by a warrant.
- (2) An authorised officer, without the occupier's consent or a warrant, may—
 - (a) enter a public place when the place is open to the public; or

- (b) enter the land (including the curtilage) around premises to ask the occupier of the premises for consent to enter the premises.
- (3) The power of entry given to an authorised officer under this section is in addition to the powers of entry given to an authorised officer under other provisions of this part.
- (4) Unless entry is authorised by warrant, an authorised officer may only exercise the powers mentioned in section 81 for a place if its occupier consents to the use of the powers when consent for entry is given.

78 Warrants for entry

- (1) An authorised officer may apply to a magistrate for a warrant for a place.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application be given by statutory declaration.

- (4) The magistrate may issue the warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this Act; and
 - (b) the evidence is, or may be within the next 7 days, at the place.
- (5) A warrant must state—
 - (a) that the authorised officer may, with necessary and reasonable help and force, enter the place and exercise the authorised officer's powers under this Act; and
 - (b) the evidence for which the warrant is issued; and

- (c) the hours when entry may be made; and
 - (d) the day, within 14 days after the warrant's issue, the warrant ends.
- (6) The magistrate must record the reasons for issuing the warrant.

79 Warrants—applications made otherwise than in person

- (1) An authorised officer may apply for a warrant by phone, fax, radio or another form of communication if the officer considers it necessary because of urgent circumstances or other special circumstances, including, for example, the officer's remote location.
- (2) Before applying for the warrant, the authorised officer must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised officer may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised officer if it is reasonably practicable to fax the copy.
- (5) If it is not reasonably practicable to fax a copy of the warrant to the authorised officer—
 - (a) the magistrate must—
 - (i) record on the warrant the reasons for issuing the warrant; and
 - (ii) tell the authorised officer the date and time the warrant was signed; and
 - (iii) tell the authorised officer the warrant's terms; and
 - (b) the authorised officer must write on a form of warrant (the *warrant form*)—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate signed the warrant; and

-
- (iii) the warrant's terms.
- (6) The facsimile warrant, or the warrant form properly completed by the authorised officer, authorises the entry and the exercise of the other powers mentioned in the warrant issued by the magistrate.
- (7) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
- (a) the sworn application; and
 - (b) if a warrant form was completed by the authorised officer—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) Unless the contrary is proven, a court must presume a power exercised by an authorised officer was not authorised by a warrant issued under this section if—
- (a) a question arises, in a proceeding before the court, whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence.

80 Boarding of ships

- (1) An authorised officer may board a ship at any time to find out whether this Act is being or has been complied with.
- (2) An authorised officer may also board a ship at any time if the officer has reasonable grounds for suspecting that—
- (a) the ship is being, or has been, used in the commission of an offence against this Act; or
 - (b) the ship, or a document or other thing in or on the ship, may provide evidence of the commission of an offence against this Act.
- (3) However, an authorised officer must not board a ship if to do so would put the ship, or someone on the ship, at risk from damage or injury.

[s 81]

- (4) If the ship is moving or about to move, the authorised officer may signal the person in command of the ship or, if no person is in command of the ship, the person in control of the ship to stop the ship or not to move it.
- (5) To enable the ship to be boarded, the authorised officer may—
 - (a) act with any necessary and reasonable help and force; and
 - (b) require the person in control of the ship to give reasonable help to the officer.
- (6) A person must obey a signal under subsection (4), unless the person has a reasonable excuse.
Maximum penalty—350 penalty units.
- (7) A person must comply with a requirement under subsection (5)(b), unless the person has a reasonable excuse.
Maximum penalty—350 penalty units.
- (8) It is a reasonable excuse for a person to disobey a signal under subsection (4) if—
 - (a) the person reasonably believes that to obey the signal immediately would put the ship, or someone on the ship, at risk from damage or injury; and
 - (b) the person obeys the signal as soon as it is practicable to obey the signal.

81 Authorised officer's general powers for ships and places

- (1) An authorised officer who boards a ship or enters a place under this part may—
 - (a) search any part of the ship or place; or
 - (b) inspect, examine, test, measure, photograph or film anything in or on the ship or place or require a thing to be tested or measured; or
 - (c) take samples of any pollutant, substance or thing in or on the ship or place; or

-
- (d) record, measure, test or analyse the release of pollutants into coastal waters from the ship; or
 - (e) copy a document in or on the ship or place; or
 - (f) take onto or into the ship or place any persons, equipment and materials the authorised officer reasonably requires for exercising a power under this Act; or
 - (g) install or maintain any equipment and materials in or on the ship or place the authorised officer reasonably requires for a monitoring program for the release of pollutants into coastal waters from the ship; or
 - (h) require the ship's master, or any person in or on the ship, or occupier of the place to give the authorised officer reasonable help for the exercise of the powers mentioned in paragraphs (a) to (g); or
 - (i) for a ship—by written notice given to the person in control of the ship, require the person—
 - (i) to bring the ship to a stated place; and
 - (ii) to remain in control of the ship at the place for a reasonable time;

to enable the officer to exercise the powers mentioned in paragraphs (a) to (g).

- (2) If, for any reason, it is not practicable to make a requirement under subsection (1)(i) by written notice, the requirement may be made orally and confirmed by written notice as soon as practicable.
- (3) An authorised officer must not enter a part of a ship that is used only as a living area, or exercise powers under subsection (1)(a) to (g) in relation to the part, unless the authorised officer is accompanied by the master or other person in control of the ship.
- (4) Subsection (3) does not apply if the master or other person is unavailable or unwilling to accompany the authorised officer or the authorised officer is unable for another reason to comply with the subsection.

82 Power to seize evidence from places

- (1) An authorised officer who enters a place under this part with a warrant may seize the evidence for which the warrant was issued.
- (2) An authorised officer who enters a place under this part with the occupier's consent may seize a thing if—
 - (a) the authorised officer believes on reasonable grounds the thing is evidence of an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier in seeking the occupier's consent.
- (3) An authorised officer may also seize another thing if the officer believes on reasonable grounds—
 - (a) the thing is evidence of an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.
- (4) Having seized a thing, an authorised officer may—
 - (a) remove the thing from the place where the thing was seized (the *place of seizure*) to another place; or
 - (b) leave the thing at the place of seizure but restrict access to the thing.

Example of subsection (4)(b)—

An authorised officer may—

- (a) seal a thing and mark it to show it has been seized; or
 - (b) seal the entrance to a room where the seized thing is situated and mark it to show it contains a thing that has been seized.
- (5) If an authorised officer restricts access to a seized thing, a person must not tamper with the thing without the approval of the general manager.

Maximum penalty—350 penalty units.

83 Power to seize after boarding ship

- (1) An authorised officer who boards a ship under this part may seize a thing in or on the ship if the officer believes, on reasonable grounds—
 - (a) the thing is evidence of an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.
- (2) Having seized a thing, an authorised officer may—
 - (a) remove the thing from the place where the thing was seized (the *place of seizure*) to another place; or
 - (b) leave the thing at the place of seizure but restrict access to the thing.

Example of subsection (2)(b)—

An authorised officer may—

- (a) seal a thing and mark it to show it has been seized; or
 - (b) seal the entrance to a room where the seized thing is situated and mark it to show it contains a thing that has been seized.
- (3) If an authorised officer restricts access to a seized thing, a person must not tamper with the thing without the approval of the general manager.

Maximum penalty—350 penalty units.

84 Power to detain ship

- (1) An authorised officer for the State may detain a ship if the officer has clear grounds for believing a discharge offence has happened because of acts or omissions in relation to the ship in coastal waters.

Note—

See Article 220(2) of the United Nations Convention on the Law of the Sea 1982.

[s 85]

- (2) The authorised officer may, after detaining a ship, order the ship's master to move the ship to a reasonable stated place.
- (3) The ship's master must comply with the order, unless the master has a reasonable excuse.

Maximum penalty—3,500 penalty units.

- (4) The authorised officer may, acting with any necessary and reasonable help and force, escort the ship to the place.
- (5) If, before the ship is released from detention, the ship leaves the place, the ship's owner and master each commit an offence, unless there was a reasonable excuse for the ship leaving the place.

Maximum penalty—3,500 penalty units.

- (6) In this section—
discharge offence means a discharge offence within the meaning of part 4, 5, 6, 7, 8 or 9.

85 Procedure after detention of ship

As soon as practicable after a ship is detained by an authorised officer under section 84, the officer must give to the ship's master an approved notice stating that the ship—

- (a) is detained; and
- (b) may be released on giving security worked out under section 113.

86 Procedure after seizure of evidence

- (1) This section does not apply to a ship detained under section 84.
- (2) As soon as practicable after a thing is seized by an authorised officer under this part, the officer must give a receipt for it to the person from whom it was seized.
- (3) The receipt must describe generally each thing seized and its condition.

-
- (4) If, for any reason, it is not practicable to comply with subsection (2), the officer must leave the receipt at the place of seizure in a reasonably secure way and in a conspicuous position.
 - (5) Subsection (2) does not apply if—
 - (a) the thing is unattended when seized; and
 - (b) the thing's owner is unknown; and
 - (c) the owner cannot be found after reasonable inquiries (given the thing's value) have been made.
 - (6) Until a seized thing is returned or otherwise finally dealt with, an authorised officer must allow a person who would be entitled to a seized thing if it were not in the officer's possession—
 - (a) to inspect it; and
 - (b) if it is a document—to make copies of it.
 - (7) The officer must return a seized thing to the person at the end of—
 - (a) 6 months; or
 - (b) if a prosecution for an offence involving it is started within 6 months—the prosecution for the offence and any appeal from the prosecution.
 - (8) Despite subsection (7), the officer must return the seized thing to the person immediately the officer stops being satisfied its retention as evidence is necessary.
 - (9) However, the officer need not return the seized thing if the officer believes, on reasonable grounds, it is necessary to retain it to prevent its use in committing an offence.

86A Power to give notice in relation to discharge or likely discharge of pollutant

- (1) This section applies if an authorised officer is satisfied on reasonable grounds that a ship has discharged, or is likely to discharge, pollutant into coastal waters.

- (2) The authorised officer may—
 - (a) by written notice given to the owner or master of the ship, require the owner or master—
 - (i) to take stated reasonable action within a stated reasonable time; and
 - (ii) not to operate the ship, other than in a way approved by the authorised officer, until the authorised officer is satisfied on reasonable grounds that the ship is not likely to discharge pollutant into coastal waters; or
 - (b) attach a notice to the ship requiring that the ship not be operated by any person, other than in a way approved by the authorised officer, until the authorised officer is satisfied on reasonable grounds that the ship is not likely to discharge pollutant into coastal waters.
- (3) The authorised officer may make a requirement under subsection (2)(a) orally and confirm the requirement by written notice as soon as practicable.
- (4) The owner or master of a ship to whom a notice is given under subsection (2)(a) must comply with the requirement stated in the notice unless the owner or master has a reasonable excuse.
Maximum penalty—200 penalty units.
- (5) A person must not contravene a requirement under subsection (2)(b) unless the person has a reasonable excuse.
Maximum penalty—200 penalty units.
- (6) A person does not contravene this Act in relation to a discharge or likely discharge of pollutant from the ship for which an authorised officer issued a notice under subsection (2) merely because the person complies with a requirement in the notice.
- (7) For subsection (2)(b), if the authorised officer knows the identity of the owner or master of the ship, the authorised officer—

-
- (a) must give the owner or master of the ship a copy of the requirement as soon as practicable; and
 - (b) may, by written notice given to the owner or master of the ship, require the owner or master to take stated reasonable action within a stated reasonable time in relation to the ship.
- (8) The owner or master of a ship to whom a notice is given under subsection (7)(b) must comply with the requirement stated in the notice unless the owner or master has a reasonable excuse.
- Maximum penalty—200 penalty units.
- (9) If a requirement is given under subsection (2)(a)(i) or (7)(b), the authorised officer may, if requested by the owner or master of the ship, allow the ship to operate before the end of the stated reasonable time in the direction if—
- (a) the stated reasonable action in the direction has been taken; and
 - (b) the authorised officer is satisfied on reasonable grounds that the ship is not likely to discharge pollutant into coastal waters.

Division 4 Other enforcement powers of authorised officers

87 Power to require name and address

- (1) An authorised officer may require a person to state the person's name and address if the officer—
- (a) finds the person committing an offence against this Act; or
 - (b) finds the person in circumstances that lead, or has information that leads, the officer to suspect on reasonable grounds the person has just committed an offence against this Act.

[s 88]

- (2) When making the requirement, the authorised officer must warn the person it is an offence to fail to state the person's name and address unless the person has a reasonable excuse.
- (3) The authorised officer may require the person to give evidence of the correctness of the person's name or address if the officer suspects, on reasonable grounds, that the stated name or address is false.
- (4) A person must comply with a requirement under subsection (1) or (3), unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- (5) The person does not commit an offence against this section if—
 - (a) the authorised officer required the person to state the person's name and address on suspicion of the person having committed an offence against this Act; and
 - (b) the person is not proved to have committed the offence.

88 Power to require information from certain persons

- (1) This section applies if an authorised officer suspects, on reasonable grounds—
 - (a) an offence against this Act has happened; and
 - (b) a person may be able to give information about the offence.
- (2) The authorised officer may require the person to give information about the suspected offence.
- (3) When making the requirement, the authorised officer must warn the person it is an offence to fail to give the information unless the person has a reasonable excuse.

89 Power to require production of documents

- (1) An authorised officer may require a person to produce to the officer for inspection a document required to be kept by the person—
 - (a) under this Act or the Marine Safety Act; or
 - (b) under the *Commonwealth Navigation Act* or the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cwlth); or
 - (c) under the domestic commercial vessel national law.
- (2) The person must produce the document for inspection, unless the person has a reasonable excuse.
Maximum penalty—200 penalty units.
- (3) The authorised officer may keep the document to make a copy of it.
- (4) If the authorised officer makes a copy of the document, or an entry in the document, the officer may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
- (5) The person responsible for keeping the document must comply with a requirement made under subsection (4), unless the person has a reasonable excuse.
Maximum penalty—200 penalty units.
- (6) The authorised officer must return the document to the person as soon as practicable after making the copy.

Division 5 Consent to entry of premises

90 Consent to entry

- (1) This section applies if an authorised officer intends to seek the consent of an occupier of a place to an authorised officer entering the place under this part.

- (2) Before seeking the consent, the authorised officer must inform the occupier—
 - (a) of the purpose of the entry; and
 - (b) that anything found and seized may be used in evidence in court; and
 - (c) that the occupier is not required to consent.
- (3) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgement of the consent.
- (4) The acknowledgement must—
 - (a) state the occupier was informed—
 - (i) of the purpose of the entry; and
 - (ii) that anything found and seized may be used in evidence in court; and
 - (iii) that the occupier was not required to consent; and
 - (b) state the occupier gave the authorised officer consent under this part to enter the place and exercise the powers mentioned in section 81; and
 - (c) state the time and date the consent was given.
- (5) If the occupier signs an acknowledgement of consent, the authorised officer must immediately give a copy to the occupier.

91 Evidence of consent

- (1) This section applies to a proceeding if—
 - (a) a question arises whether an occupier of a place consented to the entry of the place by an authorised officer under this part; and
 - (b) an acknowledgement under section 90 is not produced in evidence.
- (2) In a proceeding to which this section applies, the court may presume the occupier did not consent, unless the contrary is proved.

Division 6 Response action to discharge and authorised officer's emergency powers

92 Purpose of division

The purpose of this division is to enable the State, through powers given to the marine pollution controller and authorised officers under this Act, to direct and coordinate the response to a discharge or probable discharge of pollutant into coastal waters.

93 State has prime responsibility for directing emergency response

- (1) This section applies if there is a discharge or probable discharge of pollutant into coastal waters (a *relevant discharge*).
- (2) The State has prime responsibility for directing and coordinating the response to a relevant discharge.
- (3) The State may enter into an agreement with a port authority or port operator about the port authority or port operator responding to a relevant discharge within the port limits of the port.
- (4) To the extent stated in either of the following agreements between the State and a port authority or port operator, the port authority or port operator has responsibility within the port limits of the port for directing and coordinating the State's response if there is a relevant discharge within the port limits—
 - (a) an agreement under subsection (3);
 - (b) an agreement of the type mentioned in subsection (3) entered into before the commencement of this subsection.

- (5) The State, port authority or port operator may consult with other interested agencies and entities and local governments in preparing a response to a relevant discharge.

93A Marine pollution controller

- (1) To facilitate the State's fulfilment of its responsibility under section 93(2), there is to be a marine pollution controller.
- (2) The marine pollution controller is the general manager.
- (3) The function of the marine pollution controller is to direct and coordinate, for the State, the response by the State and other entities if—
 - (a) there is a discharge, or probable discharge, of pollutant into coastal waters; and
 - (b) the discharge, or probable discharge, is serious or potentially serious.

Examples of other entities—

a port authority, a port operator, a local government, an entity established under the law of the Commonwealth

- (4) The marine pollution controller may perform his or her function under this section only if the marine pollution controller—
 - (a) is reasonably satisfied it is necessary to perform the function; and
 - (b) has given written notice to the chief executive that states—
 - (i) the marine pollution controller intends to perform the function; and
 - (ii) an outline of the circumstances of the discharge or probable discharge.
- (5) In performing his or her function, the marine pollution controller has all the powers under this Act of—
 - (a) the general manager; and
 - (b) an authorised officer.

93B Protection from liability

- (1) Civil liability does not attach to a protected person because of anything done or omitted to be done under this division as or for the marine pollution controller in good faith without reckless disregard for the possible occurrence of the personal injury or loss or damage to property from which liability would arise, if this section did not apply.
- (2) If subsection (1) prevents a civil liability attaching to a protected person, the liability attaches instead to the State.
- (3) In this section—
protected person means—
 - (a) the marine pollution controller; or
 - (b) a person acting under the direction of the marine pollution controller.

94 Emergency declaration may overrule local law

- (1) The Minister may, by emergency declaration, declare a local law that is inconsistent with, or hinders, the State's response to a serious discharge of pollutant into coastal waters is of no effect to the extent, and for the period (not longer than 14 days), mentioned in the Minister's declaration.
- (2) However, the Minister may make the emergency declaration only if the Minister is satisfied that urgent action is needed to deal with the discharge.
- (3) The declaration must state it is an emergency declaration and outline the nature of the emergency.
- (4) The Minister is not required to engage in consultation about the declaration.
- (5) After notification of the declaration, the Minister may publish it in the ways the Minister considers appropriate having regard to the emergency.
- (6) The Minister must repeal the declaration as soon as possible after the Minister is satisfied the emergency no longer exists.

- (7) Unless it is earlier repealed, the declaration expires 14 days after it is notified.
- (8) An emergency declaration is subordinate legislation.

95 Authorised officer's powers in an emergency

- (1) This section applies if an authorised officer is satisfied on reasonable grounds that—
 - (a) a discharge of pollutant into coastal waters has happened, or is likely to happen; and
 - (b) urgent action is necessary to prevent or minimise the discharge and its effect on Queensland's marine and coastal environment.
- (2) An authorised officer may—
 - (a) direct any person to take stated reasonable action within a stated reasonable time; or
 - (b) take the action, or authorise someone else to take the action.
- (3) Without limiting subsection (2), reasonable action includes action—
 - (a) to remove, destroy or disperse a discharged pollutant; and
 - (b) to prevent the pollutant from reaching a stated place on water or land; and
 - (c) to mitigate damage or injury caused to a stated place or thing on water or land by the pollutant; and
 - (d) to require any person—
 - (i) to do something that assists with action mentioned in paragraph (a), (b) or (c); or
 - (ii) to stop doing something that may interfere with action mentioned in paragraph (a), (b) or (c).
- (4) The direction may be given orally or by written notice.

-
- (5) If the direction is given orally, the authorised officer must, as soon as practicable, confirm the direction by written notice given to the person.
 - (6) A person to whom a direction is given under subsection (2)(a) must comply with the direction, unless the person has a reasonable excuse.
Maximum penalty—350 penalty units.
 - (7) If the authorised officer decides to take the action, the officer may—
 - (a) board any ship or, without a warrant, enter any place and take the action; and
 - (b) in taking the action, exercise any of the powers (other than investigatory powers) under this part.
 - (8) The authorised officer may exercise the powers mentioned in subsection (7) (*emergency powers*) with any necessary and reasonable help and force.
 - (9) If a person or thing is obstructing or preventing an authorised officer from boarding a ship or entering a place or taking action on or at any ship or place while the authorised officer is exercising or attempting to exercise emergency powers, a police officer may, if asked by the authorised officer, using any necessary and reasonable force—
 - (a) remove the person or thing from the place; and
 - (b) take all reasonable measures to ensure the person or thing does not again obstruct or prevent the action being taken.
 - (10) In exercising or attempting to exercise emergency powers, an authorised officer must take all reasonable steps to ensure the officer causes as little inconvenience, and does as little damage, as is practicable in the circumstances.
 - (11) This section does not limit any power an authorised officer has apart from this section.
 - (12) If an authorised officer authorises a person to take action under subsection (2)(b)—

[s 96]

- (a) the person may exercise the powers mentioned in subsection (7)(a); and
- (b) the officer must inform the person—
 - (i) of the action the person is authorised to take; and
 - (ii) of the person's powers under this section; and
 - (iii) in general terms, of section 109; and

Note—

Section 109 imposes on an authorised officer a requirement to give notice of any damage done in the exercise of a power.

- (c) subsections (8), (9) and (10) (so far as they relate to the power mentioned in subsection (7)(a)) apply to the person as if the person were the authorised officer.

96 Authorised officer may direct emergency release of pollutant

- (1) An authorised officer may give a written direction to a person to release a pollutant into coastal waters if the officer is satisfied—
 - (a) it is necessary and reasonable to release the pollutant because of an emergency; and
 - (b) there is no other practicable alternative to the release.
- (2) The authorised officer may impose reasonable conditions on the direction.
- (3) A person to whom a direction is given must—
 - (a) comply with the direction, unless the person has a reasonable excuse; and
 - (b) take all reasonable and practicable precautions to prevent or minimise—
 - (i) harm being caused to Queensland's marine and coastal environment; and
 - (ii) loss or damage to property.

Maximum penalty—200 penalty units.

- (4) A person to whom a direction is given does not contravene this Act merely because the person complies with the direction.

Division 7 Power of intervention

97 Definitions for division

In this division—

cargo includes ballast and ship's stores and fuel.

Intervention Convention means the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.

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

98 Power of intervention

- (1) This section applies if the general manager is satisfied, following a maritime casualty or acts related to a maritime casualty, that there is a potentially serious danger to the Queensland coastline, or to related Queensland interests, from the discharge or threat of discharge of pollutant into coastal waters that may reasonably be expected to result in major harmful consequences.
- (2) Without limiting subsection (1), the general manager may take measures the general manager considers necessary to prevent, minimise or eliminate the danger, including, for example—
 - (a) taking action, whether or not directions have been issued under paragraph (b) in relation to the ship—

- (i) to move the ship or part of the ship to another place; or
 - (ii) to remove cargo from the ship; or
 - (iii) to salvage the ship, part of the ship or any of the ship's cargo; or
 - (iv) to sink or destroy the ship or part of the ship; or
 - (v) to take over control of the ship or part of the ship; and
 - (b) issuing directions of the kind authorised by section 99 to—
 - (i) the ship's owner; or
 - (ii) the ship's master; or
 - (iii) any salvor in possession of the ship.
- (3) The general manager must not exercise the general manager's powers under subsection (2)(a)(iv) without the Minister's written approval.
- (4) This section does not authorise the taking of measures against a warship or other ship owned or operated by a foreign country and used, for the time being, only on government non-commercial service.
- (5) The Minister and the general manager must, in and in relation to the exercise of a power under this section—
- (a) act in accordance with section 100; and
 - (b) have regard to—
 - (i) the extent and probability of serious damage if the power is not exercised; and
 - (ii) the likelihood of the exercise of the power being effective; and
 - (iii) the extent of the damage likely to be caused by the exercise of the power.
- (6) This section does not limit any other right or power the State has apart from this section.

99 Directions under s 98 may require taking of action

- (1) A direction under section 98 issued in relation to a ship may require the doing, or prohibit the doing, of anything in relation to the ship, including, for example—
 - (a) the movement of the ship or part of the ship; and
 - (b) the removal of cargo from the ship; and
 - (c) the taking of salvage measures in relation to the ship, part of the ship or any of the ship's cargo; and
 - (d) the sinking or destruction of the ship or part of the ship; and
 - (e) the sinking, destruction or discharging into the sea of any of the ship's cargo; and
 - (f) the handing over of control of the ship or part of the ship.
- (2) The general manager must not issue a direction under subsection (1)(d) without the Minister's written approval.
- (3) Without limiting subsection (1), a direction may—
 - (a) require that anything be done in accordance with the direction, with the approval, or in accordance with the instructions, of a stated person; or
 - (b) prohibit the doing of anything other than in accordance with the direction, with the approval, or in accordance with the instructions, of a stated person.

100 Things to be done before power to intervene is exercised

- (1) Before exercising the power of intervention under section 98, the general manager must—
 - (a) to the greatest extent practicable, ensure the exercise of the power will not involve a threat to human life; and
 - (b) have regard to Australia's obligations under the Intervention Convention; and

- (c) consult with the Australian Maritime Safety Authority;
and
 - (d) consult with the relevant ship's owner.
- (2) Subsection (1)(b), (c) and (d) does not apply if, in the general manager's opinion, power to intervene must be exercised urgently.

Division 8 Offences

101 Failure to help authorised officer—emergency

- (1) This section applies if—
- (a) an authorised officer is taking action under section 95;
and
 - (b) the officer requires a person to give reasonable help to the officer under section 81(1)(h) for the exercise of a power.
- (2) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.
- Maximum penalty—350 penalty units.
- (3) If the help required is the answering of a question or producing of a document (other than a document required to be held, kept or produced by the person under this Act), it is not a reasonable excuse for the person to fail to answer the question, or produce the document, on the ground that complying with the requirement might tend to incriminate the person.
- (4) When making a requirement mentioned in subsection (3), the authorised officer must inform the person of the following—
- (a) the person is obliged to answer the question or produce the document despite the rule of law about privilege against self-incrimination;

- (b) the person may answer the question or produce the document subject to the objection that complying with the requirement might tend to incriminate the person;
 - (c) if the person makes the objection—the answer or producing of the document may not be admitted in evidence against the person in a prosecution for an offence against this Act, other than an offence (constituted by the giving of the answer or producing of the document) against section 105 or 106.
- (5) If, before giving the answer or producing the document, the person makes the objection, the answer or producing of the document is not admissible in evidence against the person in a prosecution for an offence against this Act, other than an offence (constituted by the giving of the answer or producing of the document) against section 105 or 106.

102 Failure to help authorised officer—other cases

- (1) This section applies if—
- (a) an authorised officer requires a person under section 81(1)(h) to give reasonable help to the officer in relation to the exercise of a power; and
 - (b) section 103 does not apply.
- (2) The person must comply with the requirement, unless the person has a reasonable excuse.
- Maximum penalty—200 penalty units.
- (3) If the help required is the answering of a question or producing of a document (other than a document required to be held, kept or produced by the person under this Act), it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

103 Failure to obey direction

- (1) This section applies if—

[s 104]

- (a) an authorised officer requires a person to do something under section 81(1)(i); and
 - (b) section 101 does not apply.
- (2) The person must comply with the requirement, unless the person has a reasonable excuse.
- Maximum penalty—200 penalty units.

104 Failure to give information

- (1) This section applies if—
- (a) an authorised officer requires a person to give information, including, for example, by answering a question under section 88(2); and
 - (b) section 101 does not apply.
- (2) The person must comply with the requirement, unless the person has a reasonable excuse.
- Maximum penalty—200 penalty units.
- (3) If the person is an individual, it is a reasonable excuse for the person not to comply with the requirement if complying with the requirement might tend to incriminate the person.
- (4) If the person is a corporation, it is not a reasonable excuse for the person not to comply with the requirement if complying with the requirement might tend to incriminate the person.
- (5) If information is given under section 88(2) by a person who is a corporation, the information is not admissible in evidence against a representative of the person in a civil or criminal proceeding other than a proceeding against the representative—
- (a) for an offence against this section; or
 - (b) in relation to the falsity of the information.
- (6) The person does not commit an offence against this section if the information sought by the authorised officer—
- (a) is not in fact relevant to an offence that happened; or

- (b) is about a suspected offence that did not happen.

105 False or misleading statements

A person must not state anything to an authorised officer that the person knows is false or misleading in a material particular.

Maximum penalty—350 penalty units.

106 False or misleading documents

- (1) A person must not give an authorised officer a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—350 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) informs the authorised officer, to the best of the person's ability, how it is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

107 Obstruction of authorised persons

- (1) In this section—

authorised person means—

- (a) an authorised officer; or
 - (b) a person who is authorised by an authorised officer under section 95(2)(b) to take action.
- (2) A person must not obstruct an authorised person in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—350 penalty units.

108 Impersonation of authorised officer

A person must not pretend to be an authorised officer.

Maximum penalty—200 penalty units.

Division 9 General

109 Authorised officer to give notice of damage

- (1) This section applies if—
- (a) an authorised officer damages anything in the exercise of a power under this Act; or
 - (b) a person who is authorised by an authorised officer to take action under this Act damages anything in taking the action.

Note—

See section 95(2)(b).

- (2) The authorised officer must promptly give written notice of the particulars of the damage.
- (3) The notice must be given—
- (a) if the thing is a ship or is on a ship—to the ship’s master; or
 - (b) otherwise—to the person who appears to the authorised officer to be the thing’s owner.
- (4) If the authorised officer believes the damage was caused by a latent defect in the thing or other circumstances beyond the officer’s control, the officer may state this in the notice.
- (5) If, for any reason, it is not practicable to comply with subsection (3), the authorised officer must—
- (a) leave the notice at the place where the damage happened; and
 - (b) ensure the notice is left in a reasonably secured way in a conspicuous position.

-
- (6) This section does not apply to damage the authorised officer believes, on reasonable grounds, is trivial.

110 Compensation

- (1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under this part, including, for example, in complying with a requirement made of the person under this part.
- (2) Payment of compensation from the State may be claimed and ordered—
- (a) in a proceeding brought in a court with jurisdiction for the recovery of compensation; or
 - (b) in a proceeding for an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

Part 13 Discharge expenses

111 Definitions for part

In this part—

discharge expenses means—

- (a) the reasonable costs and expenses incurred by the State or a prescribed entity in—
 - (i) investigating a discharge of pollutant; and
 - (ii) preventing or minimising the effects of a discharge of pollutant; and

- (iii) taking action to prevent or minimise the effects of a likely discharge of pollutant if—
 - (A) the State or prescribed entity reasonably believes the discharge is likely to happen and takes action to prevent or minimise its effects; and
 - (B) the likely discharge does not happen; and
 - (iv) treating animals and plants affected by a discharge of pollutant; and
 - (v) rehabilitating or restoring Queensland’s marine and coastal environment; and
 - (vi) the exercise of a power by an authorised officer or the general manager under part 12, division 6 or 7; and
- (b) an amount reasonably paid by the State under section 110.

Note—

A discharge expense incurred or paid by the State includes a cost or expense incurred, action taken or amount paid by the Gold Coast Waterways Authority. This includes a cost or expense incurred, action taken or an amount paid by an employee of the Gold Coast Waterways Authority who is an authorised officer under this Act. The *Gold Coast Waterways Authority Act 2012*, section 9(2) provides that the Gold Coast Waterways Authority represents the State.

discharge offence means a discharge offence within the meaning of part 4, 5, 6, 7, 8 or 9.

prescribed entity means—

- (a) a port authority or a port operator; or
- (b) an entity acting under the direction, guidance, management or supervision of the marine pollution controller performing a function under section 93A(3).

Examples of entities for paragraph (b)—

a local government, an entity established under the law of the Commonwealth

112 General manager to set amounts for costs and expenses relating to definition *discharge expenses*

- (1) The general manager may, by gazette notice, set an amount for the services of a person, or the use or provision of ships or equipment, for a section 111 activity.
- (2) Despite subsection (1), if the State contracts for the services of a person, or contracts or hires the use or provision of ships or equipment, for a section 111 activity, the actual cost for the contract or hiring is the amount to be used for the definition *discharge expenses*.
- (3) A claim by the State for discharge expenses based on the amounts as gazetted or incurred for a matter as mentioned in this section is, in the absence of contrary evidence, taken to be the State's reasonable costs and expenses in relation to the matter for the purposes of the definition *discharge expenses*.
- (4) The State's discharge expenses may include other matters not mentioned in a gazette notice under subsection (1).
- (5) In this section—
section 111 activity means an activity mentioned in the definition *discharge expenses*, paragraph (a).

113 Detained ship must be released on giving security

- (1) The chief executive must release a ship detained under this Act if a security is given under this section.
- (2) The amount of the security must be enough, in the chief executive's opinion, to cover—
 - (a) the State's discharge expenses in relation to the ship and, if the chief executive makes an election under subsection (3), the prescribed entity's discharge expenses; and
 - (b) the penalty likely to be payable if a successful prosecution for the discharge offence were to be taken; and
 - (c) interest on the discharge expenses.

[s 114]

- (3) The chief executive may elect to secure a prescribed entity's discharge expenses if the prescribed entity asks.
- (4) The security may be provided in any 1 or more of the following forms, or in another form, the chief executive considers appropriate—
 - (a) a bank guarantee;
 - (b) a bond;
 - (c) an insurance policy;
 - (d) a letter of undertaking.
- (5) The chief executive must make a decision about the amount and form of security within a reasonable time.

114 Other ways detained ship may be released

A ship detained under this Act must also be released if—

- (a) a proceeding is started for a discharge offence involving the ship and the proceeding is discontinued; or
- (b) a proceeding started for a discharge offence involving the ship is concluded, whether or not an appeal is pending, without anyone being convicted or discharge expenses being awarded against anyone; or
- (c) a proceeding for a discharge offence involving the ship is concluded and all discharge expenses ordered to be paid and all penalties imposed have been paid; or
- (d) the chief executive has sought to recover discharge expenses as a debt and the amount of the expenses has been paid; or
- (e) the chief executive decides for any other reason the ship should be released.

115 Recovery of discharge expenses

- (1) This section applies if the State or a prescribed entity incurs discharge expenses in relation to a discharge or likely discharge of pollutant from a ship into coastal waters.
- (2) However, this section applies in relation to discharge expenses incurred by a prescribed entity only if the chief executive makes an election under section 113(3) for the discharge expenses.
- (3) The discharge expenses are taken to be a debt payable to the State jointly and severally by the owner and the master of the ship from which the pollutant was discharged or was likely to be discharged.
- (4) The general manager may recover the discharge expenses by making a demand against the security or part of it.
- (5) Before making the demand against the security, the general manager must give to the security giver a written notice under this section.
- (6) The notice must—
 - (a) outline the action taken; and
 - (b) state the amount to be demanded against the security; and
 - (c) invite the person to make written representations to the general manager to show, within a stated time of at least 30 days, why the demand should not be made.
- (7) If, after considering all written representations made within the stated time, the general manager decides grounds still exist to make the demand for the amount or a lesser amount, the general manager must immediately give a QCAT information notice for the decision to the security giver.
- (8) The QCAT information notice must enclose a copy of section 116.
- (9) If a QCAT information notice is given under subsection (7), the general manager must not make the demand until—

[s 116]

- (a) the time to apply, as provided under the QCAT Act, to QCAT for a review of the decision has ended; and
 - (b) if an application for a review of the decision is made—the application is finally decided.
- (10) If the general manager makes the demand, the security provider—
- (a) is not required to inquire into the correctness or lawfulness of the general manager’s demand; and
 - (b) must pay the security or the part of it demanded to the general manager.
- (11) An amount recovered for a prescribed entity by the general manager must be reimbursed to the prescribed entity.

(12) In this section—

security giver means the ship’s owner or other person who arranged for the security to be given.

security provider means the person providing the security.

116 External review of decisions under s 115

A person whose interests are affected by a decision under section 115 may apply, as provided under the QCAT Act, to QCAT for a review of the decision.

Part 13A Securing compliance with Act

Division 1 Purpose

117A Purpose of pt 13A

- (1) The purpose of this part is to provide for alternative ways of ensuring compliance with this Act.

- (2) Division 2 provides for enforcement orders and interim enforcement orders if a person has failed to comply with any of the following—
 - (a) a direction, requirement or order given to the person by the general manager or an authorised officer;
 - (b) a division 3 undertaking given by the person to the general manager.
- (3) Division 3 provides for undertakings.

Division 2 Enforcement orders and interim enforcement orders

117B Proceeding for enforcement order or interim enforcement order

A prescribed applicant may bring a proceeding in the District Court for any of the following—

- (a) an enforcement order;
- (b) an order cancelling or amending an enforcement order or interim enforcement order.

117C Making enforcement order

- (1) The District Court may make an enforcement order if the court is satisfied about any of the following—
 - (a) a notice offence has been committed or, unless an enforcement order is made, will be committed;
 - (b) an intervention direction has been contravened or, unless an enforcement order is made, will be contravened;
 - (c) a division 3 undertaking has been contravened or, unless an enforcement order is made, will be contravened.
- (2) Subsection (1) applies whether or not there has been a prosecution for the notice offence.

117D Making interim enforcement order

- (1) If a prescribed applicant has brought a proceeding for an enforcement order but the District Court has not decided the proceeding, the court may make an interim enforcement order if it is satisfied it would be appropriate to make the interim enforcement order.
- (2) The District Court may make the interim enforcement order on application by the prescribed applicant or on its own initiative.
- (3) An interim enforcement order may be made subject to conditions.

117E Effect of order

- (1) An enforcement order or an interim enforcement order may direct a person (the *respondent*) to do 1 or more of the following—
 - (a) to stop an activity that constitutes, or will constitute, a notice offence or a contravention of an intervention direction or division 3 undertaking;
 - (b) not to start an activity that will constitute a notice offence or a contravention of an intervention direction or division 3 undertaking;
 - (c) to do anything required to stop committing a notice offence, or a contravention of an intervention direction or division 3 undertaking, including, for example, requiring the repair, demolition or removal of a ship or a part of a ship.
- (2) If an enforcement order or an interim enforcement order is made as mentioned in subsection (1), the District Court may do either or both of the following—
 - (a) direct the respondent to give a security bond to the State for a stated period for a matter mentioned in the enforcement order or interim enforcement order;
 - (b) make another order the court considers appropriate.

- (3) An enforcement order or interim enforcement order—
 - (a) may be in terms the District Court considers appropriate to secure compliance with this Act; and
 - (b) must state the time by which the order is to be complied with.
- (4) A person who contravenes an enforcement order or interim enforcement order commits an offence against this Act.
Maximum penalty—1,000 penalty units or 1 year's imprisonment.
- (5) The District Court may order the forfeiture to the State of all or part of the security bond given by the respondent under subsection (2)(a) if—
 - (a) a prescribed applicant applies to the court for an order for the forfeiture of all or part of the security bond; and
 - (b) the court is satisfied that the respondent contravened the enforcement order or interim enforcement order during the period for which the security bond was given, whether or not the respondent has been prosecuted for an offence against subsection (4).

117F Powers of District Court about enforcement order or interim enforcement order

- (1) The District Court's power to make an enforcement order or interim enforcement order to stop, or not to start, an activity may be exercised whether or not—
 - (a) it appears to the court that the person against whom the order is made intends to engage, or to continue to engage, in the activity; or
 - (b) the person has previously engaged in an activity of the kind; or
 - (c) there is danger of substantial damage to the Queensland marine and coastal environment if the person engages, or continues to engage, in the activity.

[s 117G]

- (2) The District Court's power to make an enforcement order or interim enforcement order to do anything may be exercised whether or not—
 - (a) it appears to the court that the person against whom the order is made intends to fail, or to continue to fail, to do the thing; or
 - (b) the person has previously failed to do a thing of the kind; or
 - (c) there is danger of substantial damage to the Queensland marine and coastal environment if the person fails, or continues to fail, to do the thing.
- (3) The District Court may cancel or amend an enforcement order or interim enforcement order.
- (4) The District Court's power under this section is in addition to its other powers.

117G No undertaking as to damages or costs may be required

To remove any doubt, it is declared that no undertaking as to damages or costs may be required of a prescribed applicant or the State in relation to an enforcement order or interim enforcement order.

117GA Further power of District Court if enforcement order is contravened

- (1) If the respondent contravenes an enforcement order, the District Court may, by further order, authorise the prescribed applicant to take the action stated in the further order.
- (2) The District Court's power under this section is in addition to its other powers.
- (3) In this section—

prescribed applicant means the prescribed applicant for the enforcement order.

respondent means the person against whom the enforcement order is made.

117GB Recovery by State of expenses of taking authorised action

- (1) This section applies if the prescribed applicant incurs expense, whether the expense is the prescribed applicant's expense or the State's expense, in taking the action stated in the further order.
- (2) The State may recover the amount of the expense, as a debt, from the persons liable for the expense.
- (3) If, under subsection (2), more than 1 person is liable for the same expense, the persons who are liable for the expense are jointly and severally liable.

117GC Recovery by other persons of damages in particular circumstances

If, in taking the action stated in the further order, the prescribed applicant attaches a ship (the *first ship*) to another ship or a buoy, wharf or pile, this Act does not prevent the owner or master of the other ship, or the owner of the buoy, wharf or pile, from recovering damages for injury or loss suffered, because of the attachment, from the owner or master of the first ship.

Division 3 Undertakings

117H General manager may seek division 3 undertaking

- (1) This section applies if the general manager believes, on reasonable grounds, that a person has contravened, will contravene or will be involved in a contravention of, this Act.
- (2) The general manager may, by written notice given to the person—

[s 117I]

- (a) state the act or omission the general manager believes is, or will constitute, the contravention or involvement with the contravention; and
- (b) ask the person to give the general manager a written undertaking under this division (a *division 3 undertaking*) that the person will not commit, continue to commit or repeat the act or omission.

117I Undertaking about other matter

Without limiting section 117H, the general manager may accept a division 3 undertaking given by a person for this division about anything for which the chief executive, general manager or marine pollution controller has a function or power under this Act.

117J Variation and withdrawal of division 3 undertaking

- (1) This section applies if the general manager has accepted a division 3 undertaking given by a person.
- (2) The person may vary or withdraw the division 3 undertaking only if the general manager agrees to the variation or withdrawal.
- (3) The general manager may—
 - (a) vary the division 3 undertaking only if the person agrees to the variation; or
 - (b) withdraw the division 3 undertaking only if the general manager reasonably believes either of the following—
 - (i) before the division 3 undertaking was accepted, the person contravened this Act in a way unknown to the general manager and, had the general manager known about the contravention, he or she would not have accepted the division 3 undertaking;
 - (ii) the division 3 undertaking is no longer necessary.

- (4) If a division 3 undertaking is varied or withdrawn under this section, the general manager must give written notice of the variation or withdrawal to the person.
- (5) The variation or withdrawal takes effect when written notice of the variation or withdrawal is given to the person.

117K Enforcement of division 3 undertaking

- (1) This section applies if the general manager believes, on reasonable grounds, a person—
 - (a) has contravened a term of a division 3 undertaking; or
 - (b) will contravene a term of a division 3 undertaking, unless an enforcement order is made.
- (2) The general manager may apply to the District Court for an enforcement order under division 2.

117L Register of division 3 undertakings

- (1) The general manager must, in any way the general manager considers appropriate, keep a register of each division 3 undertaking given to the general manager by a person under this division.
- (2) Also, the general manager must ensure the register is available for public inspection, without charge, at a place prescribed under a regulation during normal working hours.

Part 13B Review of decisions

117M Internal review of decisions

- (1) This section applies if the general manager—
 - (a) refuses an application for an approval; or
 - (b) amends, suspends or cancels an approval.

[s 117N]

- (2) The applicant or approval holder may ask the chief executive to review the general manager's decision (the *original decision*).
- (3) The applicant or approval holder is entitled to receive a statement of reasons for the original decision whether or not the provision under which the decision is made requires that the person be given a statement of reasons for the decision.
- (4) The *Transport Planning and Coordination Act 1994*, part 5, division 2—
 - (a) applies to the review as if a reference in the division to the chief executive were a reference to the general manager; and
 - (b) provides—
 - (i) for the procedure for applying for the review and the way it is to be carried out; and
 - (ii) that the person may apply to QCAT to have the original decision stayed.
- (5) In this section—

applicant, in relation to an approval, means—

 - (a) if the provision under which the approval may be applied for states that the ship's owner may apply—the ship's owner; or
 - (b) if the provision under which the approval may be applied for states that the ship's master may apply—the ship's master.

approval means an approval or exemption that may be given by the general manager under this Act.

117N External review of decisions

- (1) If a reviewed decision is not the decision sought by the applicant for the review or an affected person, the chief executive must give the applicant a QCAT information notice for the reviewed decision.

- (2) The applicant or affected person may apply, as provided under the QCAT Act, to QCAT for a review of the reviewed decision.

Note—

The QCAT Act, section 22(3) provides that QCAT may stay the operation of the reviewed decision, either on application by a person or on its own initiative.

- (3) In this section—

affected person means an owner or master of a ship whose interests are affected by the reviewed decision.

reviewed decision means the chief executive's decision on a review under section 117M.

Part 14 Legal proceedings

Division 1 Evidence

118 Evidentiary provisions

- (1) This section applies to a proceeding under this Act or another Act prescribed by regulation.
- (2) Unless a party, by reasonable notice, requires proof of—
- (a) the appointment of the chief executive, general manager, an analyst or an authorised officer; or
 - (b) the authority of the chief executive, general manager, an analyst or an authorised officer to do anything under this Act;
- the appointment or authority must be presumed.
- (3) A signature purporting to be the signature of the chief executive, general manager, an analyst or an authorised officer is evidence of the signature it purports to be.
- (4) A certificate purporting to be signed by the Minister stating that a stated person is or was the general manager at a time or

during a stated period is evidence of the matter stated in the certificate.

- (5) A certificate purporting to be signed by the chief executive or general manager stating any of the following matters is evidence of the matter—
- (a) a stated document is—
 - (i) an appointment or approval or a copy of an appointment or approval; or
 - (ii) a direction or decision, or a copy of a direction or decision, given or made under this Act; or
 - (iii) a record or document, a copy of a record or document, or an extract from a record or document, kept under this Act;
 - (b) on a stated day, or during a stated period, a stated person was or was not the holder of an approval or a stated approval;
 - (c) a stated approval was or was not in force on a stated day or during a stated period;
 - (d) on a stated day, a stated person was given a stated order or direction under this Act;
 - (e) a stated amount is payable under this Act by a stated person and has not been paid;
 - (f) a stated substance is a pollutant;
 - (g) an instrument, equipment or installation was used in accordance with conditions prescribed by regulation for its use;
 - (h) anything else prescribed by regulation.
- (6) In a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.
- (7) The production by the prosecutor of a signed analyst's report stating any of the following matters is evidence of them—

- (a) the analyst took, or received from a stated person, the sample mentioned in the report;
 - (b) the analyst analysed the sample on a stated day, or during a stated period, and at a stated place;
 - (c) the results of the analysis.
- (8) Any instrument, equipment or installation prescribed by regulation that is used by an authorised officer or analyst in accordance with the conditions (if any) prescribed by regulation is taken to be accurate and precise in the absence of evidence to the contrary.
- (9) In a proceeding in which the general manager applies to recover the costs and expenses incurred by the State, a port authority or a port operator in relation to the discharge of a pollutant the following certificates are evidence of the matters stated in them—
- (a) a certificate by the general manager stating that stated costs and expenses were incurred by the State, a port authority or a port operator and the way and purpose for which they were incurred;
 - (b) a certificate by the chief executive that an election was made under section 113(3) or 122(2).

119 Analyst's certificate or report produced by defendant

- (1) The production by the defendant in a prosecution of a signed analyst's report stating any of the following matters is evidence of them—
- (a) the analyst took, or received from a stated person, the sample mentioned in the report;
 - (b) the analyst analysed the sample on a stated day, or during a stated period, and at a stated place;
 - (c) the results of the analysis.
- (2) The defendant must send a copy of the report to the prosecutor at least 7 days before the day set down for the hearing.

120 Responsibility for acts or omissions of representatives

- (1) If, in a proceeding for an offence against this Act, it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
 - (a) the act or omission was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the state of mind.
- (2) An act or omission done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been done or omitted to be done also by the person, unless the person proves the person took all reasonable steps to prevent the acts or omissions.

121 Executive officer may be taken to have committed offence

- (1) If a corporation commits an offence against a deemed executive liability provision, each executive officer of the corporation is taken to have also committed the offence if—
 - (a) the officer authorised or permitted the corporation's conduct constituting the offence; or
 - (b) the officer was, directly or indirectly, knowingly concerned in the corporation's conduct.
- (2) The executive officer may be proceeded against for, and convicted of, the offence against the deemed executive liability provision whether or not the corporation has been proceeded against for, or convicted of, the offence.
- (3) This section does not affect either of the following—
 - (a) the liability of the corporation for the offence against the deemed executive liability provision;
 - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer

of the corporation, for the offence against the deemed executive liability provision.

(4) In this section—

deemed executive liability provision means any of the following provisions—

- section 30(1)
- section 38(1)
- section 38A(1)
- section 51(2)
- section 51(3)
- section 55A(2)
- section 67A(2)
- section 127(5).

Division 2 Legal proceedings

122 How discharge expenses may be recovered

(1) The State or a prescribed entity may recover discharge expenses as a debt.

Note—

See also the *Protection of the Sea (Civil Liability) Act 1981* (Cwlth) and the *Protection of the Sea (Oil Pollution Compensation Funds) Act 1993* (Cwlth).

(2) The chief executive may elect to recover a prescribed entity's discharge expenses if the prescribed entity asks.

(3) If the chief executive makes an election under subsection (2), the reasonable costs of the prescribed entity are taken to be a debt payable to the State and may be recovered accordingly.

(4) An amount recovered for a prescribed entity by the chief executive must be reimbursed to the prescribed entity.

[s 123]

- (5) This section does not limit the general manager's power to recover discharge expenses by making a demand against a security as mentioned in section 115(4).
- (6) In this section—
discharge expenses has the meaning given in part 13.
prescribed entity has the meaning given in part 13.

123 Indictable and summary offences

- (1) An offence against this Act for which the maximum penalty is at least 850 penalty units is an indictable offence.
- (2) Any other offence against this Act is a summary offence.

124 Proceedings for indictable offences

- (1) A proceeding for an indictable offence against this Act may be taken, at the prosecution's election—
 - (a) by way of summary proceedings under the *Justices Act 1886*; or
 - (b) on indictment.
- (2) A magistrate must not hear an indictable offence summarily if—
 - (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
 - (b) the magistrate considers that the charge should be prosecuted on indictment.
- (3) If subsection (2) applies—
 - (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
 - (b) a plea of the person charged at the start of the proceeding must be disregarded; and
 - (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken

to be evidence in the proceeding for the committal of the person for trial or sentence; and

- (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).
- (4) The maximum penalty that may be summarily imposed for an indictable offence is 1,000 penalty units.

125 Limitation on who may summarily hear indictable offence proceedings

- (1) A proceeding must be before a magistrate if it is a proceeding—
 - (a) for the summary conviction of a person on a charge for an indictable offence; or
 - (b) for an examination of witnesses for a charge for an indictable offence.
- (2) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

126 Limitation on time for starting summary proceedings

- (1) A proceeding for an offence against this Act by way of summary proceeding under the *Justices Act 1886* must start—
 - (a) within 2 years after the commission of the offence; or
 - (b) within 2 years after the offence comes to the complainant's knowledge, but within 3 years after the commission of the offence.
- (2) A statement in a complaint for an offence against this Act that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of when the matter came to the complainant's knowledge.

126A Allegations of false or misleading statements or documents

It is enough for a complaint for an offence against section 105, 106, 128G or 128H to state that a statement made, or document given, was ‘false or misleading’ to the person’s knowledge, without specifying whether it was false or whether it was misleading.

127 Court may make orders about rehabilitation etc.

- (1) If a person is convicted of an offence against this Act, the court dealing with the matter may make an order under this section in addition to—
 - (a) any other penalty the court may impose under this Act, the *Penalties and Sentences Act 1992* or another Act; or
 - (b) any other order the court may make under this Act, the *Penalties and Sentences Act 1992* or another Act.

Note—

See section 147(1) if an offence was committed entirely before the commencement of section 147.

- (2) The court may order the defendant to do 1 or more of the following—
 - (a) to take stated action to rehabilitate or restore Queensland’s marine and coastal environment damaged because of the act or omission constituting the offence;
 - (b) on application only by the prosecution, to do 1 or more of the following—
 - (i) to conduct a stated advertising or education campaign to promote compliance with the Act;
 - (ii) to make a stated private apology or publish a stated public apology to persons affected by the contravention;
 - (iii) to operate a stated ship in a particular way, including putting a stated procedure or system in

place for or on the ship to ensure compliance with the Act;

- (iv) to repair, modify or replace a stated ship or part of a ship, or repair, modify, install or replace stated machinery or equipment on a stated ship to ensure compliance with the Act;
 - (v) to start or stop a stated activity in relation to a stated ship;
 - (vi) not to own or operate any ship unless the general manager has given written consent for the ownership or operation;
- (c) to comply with another order the court considers appropriate.
- (3) Also, if—
- (a) a person is convicted of an offence against this Act or the Marine Safety Act; and
 - (b) the act or omission constituting the offence caused the State, a port authority or a port operator to incur discharge expenses in relation to a discharge or likely discharge of pollutant from a ship into coastal waters;

the court may order the defendant to pay to the State, the port authority or the port operator the amount that could be recovered under section 122(1).

- (4) An order under this section is subject to any limitation of liability that may apply under a law of the State or the Commonwealth.

Example—

Protection of the Sea (Civil Liability) Act 1981 (Cwlth)

- (5) A person who contravenes an order under this section commits an offence against this Act.

Maximum penalty—3,500 penalty units or 2 years imprisonment.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 121, to have also committed the offence.

Division 3 Service

128 Special provision for service of documents

- (1) A document may be served on a ship's master by leaving it—
 - (a) if, at the time of service, there is a person on board who is apparently in charge of the ship—with the person after explaining to the person the purpose of the document; or
 - (b) otherwise—in a reasonably secure way in a conspicuous position near the ship's controls.
- (2) If a document is required or permitted to be served on a ship's master and there is no master or apparently there is no master, the document may be served on—
 - (a) the ship's owner; or
 - (b) the owner's agent.
- (3) A document is taken to be served on all owners of a ship if it is served on—
 - (a) any owner of the ship; or
 - (b) the ship's master; or
 - (c) an owner's agent.
- (4) Nothing in this section affects—
 - (a) the operation of another law that requires or permits service of a document other than as provided in this section; or
 - (b) the court's power to authorise service of a document other than as provided in this section.

Note—

See, for example, part 10 of the *Acts Interpretation Act 1954*.

Part 14A Protection for whistleblowers

128A Definitions for pt 14A

In this part—

disclosing person see section 128C(1).

official means—

- (a) the chief executive; or
- (b) the general manager; or
- (c) the marine pollution controller; or
- (d) an authorised officer.

reprisal see section 128E(3).

128B Application of pt 14A

- (1) This part applies to a person other than a person who makes a disclosure as a public officer under the *Public Interest Disclosure Act 2010*.
- (2) If a disclosure is made under the *Public Interest Disclosure Act 2010*, this part does not limit the application of that Act and that Act does limit the application of this part.

128C General limitation

- (1) A person (the ***disclosing person***) is not civilly or criminally liable for disclosing information to an official about a person's conduct, whether committed before or after the commencement of this section, that the disclosing person honestly believes, on reasonable grounds, contravenes this Act.
- (2) Without limiting subsection (1)—

[s 128D]

- (a) in a proceeding for defamation, the disclosing person has a defence of absolute privilege for publishing the disclosed information; and
 - (b) if the disclosing person would otherwise be required to maintain confidentiality about the disclosed information under an Act, agreement, oath, rule of law or practice, the disclosing person does not—
 - (i) contravene the Act, oath, rule of law or practice by making the disclosure; or
 - (ii) breach the agreement by making the disclosure.
- (3) In this section—
agreement includes a contract or deed.

128D Liability for conduct unaffected

- (1) The liability of the disclosing person for his or her own conduct is not affected only because the disclosing person discloses the conduct to an official.
- (2) However, a court may have regard to the disclosure if the disclosing person is prosecuted for an offence involving the conduct and either of the following applies—
 - (a) the disclosing person is the master of a ship and his or her conduct was in compliance with an express instruction of the owner of the ship or someone authorised by the owner to give the instruction;
 - (b) the disclosing person is another member of a ship's crew and his or her conduct was in compliance with an express instruction of the master of the ship or someone authorised by the master to give the instruction.
- (3) Subsection (2) does not limit the *Penalties and Sentences Act 1992*.

128E Reprisal and grounds for reprisal

- (1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, anybody has made, or may make, a disclosure as mentioned in section 128C(1).
- (2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.
- (3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.
- (4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.
- (5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

128F Damages entitlement or other remedy for reprisal

- (1) A reprisal is a tort and a person who takes a reprisal is liable in damages to anyone who suffers detriment as a result.
- (2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.
- (3) If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.
- (4) This section does not limit any other remedy that may be available at law to the person against whom the reprisal is taken.

128G False or misleading statements

A person must not, for section 128C(1), state anything to an official that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

128H False or misleading documents

- (1) A person must not, for section 128C(1), give an official a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) informs the official, to the best of the person’s ability, how it is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

Part 15 Administration

130 Delegation by chief executive

- (1) The chief executive may delegate the chief executive’s functions under this Act to an employee of MSQ, authorised officer or officer of the public service.
- (2) In this section—
functions include powers.

132A Delegation by marine pollution controller

The marine pollution controller may delegate the marine pollution controller’s powers under this Act to—

- (a) an employee of MSQ; or
- (b) an authorised officer.

Part 15A Appointment of analysts

132B Appointment and qualifications

- (1) The general manager may appoint a person as an analyst.
- (2) However, the general manager may appoint a person as an analyst only if satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

132C Appointment conditions

An analyst holds office on the conditions stated in the analyst's instrument of appointment.

132D When analyst stops holding office

- (1) An analyst stops holding office if any of the following happens—
 - (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the analyst stops holding office;
 - (c) the analyst's resignation under section 132E takes effect.
- (2) Subsection (1) does not limit the ways an analyst may stop holding office.
- (3) In this section—

condition of office means a condition on which the analyst holds office.

132E Resignation

An analyst may resign by signed notice given to the general manager.

Part 16 Miscellaneous

132F Recovery of damages

- (1) This section applies if, because of a discharge prohibited by this Act, a person—
 - (a) suffers loss of, or damage to, property; or
 - (b) incurs costs or expenses in preventing or mitigating or in attempting to prevent or mitigate any loss of, or damage to, property, including the property of someone else.
- (2) The person may recover the following amounts as a debt owing to the person—
 - (a) the amount of the loss or damage mentioned in subsection (1)(a);
 - (b) the amount of the costs or expenses, reasonably incurred, mentioned in subsection (1)(b).
- (3) The following persons are jointly and severally liable for the amounts mentioned in subsection (2)—
 - (a) any person whose act or omission caused the discharge;
 - (b) if the discharge is from a ship—
 - (i) the owner of the ship;
 - (ii) the master of the ship.
- (4) However, subsection (3) does not apply to a member of a ship's crew whose act or omission caused the discharge if—
 - (a) the member was complying with an instruction from the master or of someone authorised by the master to give the instruction; or
 - (b) the member was acting under the direct supervision of the master or of someone authorised by the master for the purpose.
- (5) For subsection (1)—

- (a) a reference to a discharge prohibited by this Act is a reference to a discharge that constitutes a discharge offence in the absence of a lawful defence or excuse; and
- (b) it is immaterial—
 - (i) whether or not there would be a lawful defence or excuse to a charge for a discharge offence; and
 - (ii) whether or not a person mentioned in subsection (3) is prosecuted for a discharge offence.

132G Approval of forms

The chief executive may approve forms for use under this Act.

133 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about any of the following matters—
 - (a) marine pollution and issues about marine pollution;
 - (b) a matter necessary or convenient for giving further effect to MARPOL or another treaty, convention or international agreement or document about marine pollution;
 - (c) the way in which the tonnage of a ship is decided;
 - (d) keeping oil pollution emergency plans, including shipboard oil pollution emergency plans;
 - (e) the standard of treatment systems;
 - (f) the standard of reception facilities;
 - (g) keeping records, including, for example, an oil or cargo record book, and the nature of the entries to be made in the records;

- (h) the period for which, and the place at which, the records must be kept;
 - (i) records that must be sent to the general manager and their custody or disposal after receipt;
 - (j) imposition of fees;
 - (k) taking and analysis of samples by an analyst;
 - (l) ensuring the integrity and security of samples.
- (3) Without limiting subsection (1) or (2), a regulation may also be made—
- (a) giving effect to Annex II, regulation 16 to MARPOL; and
 - (b) declaring a stated liquid substance has been provisionally assessed under Annex II, regulation 6.3 to MARPOL as a category X substance, category Y substance, category Z substance or Other substance; and
 - (c) for a category X substance—declaring a residual concentration stated in the regulation is taken to be the residual concentration prescribed for the substance under Annex II, regulation 13.6 to MARPOL.
- (4) The regulations may provide that contravention of a regulation is an offence and prescribe a maximum penalty of not more than 350 penalty units.

134 Exemption of defence ships from Act

This Act does not apply to—

- (a) a ship under the control of the Australian Defence Force; or
- (b) a warship, naval auxiliary or other ship owned or operated by a foreign country and used, for the time being, only on government, non-commercial service of the country.

Part 17 Transitional provisions

Division 1 Provisions for Maritime Safety Queensland Act 2002

136 Definitions for div 1

In this division—

commencement means 6 August 2002.

former function of the chief executive means a function that, immediately before the commencement, was a function of the chief executive but that on the commencement became a function of the general manager.

137 Transition of chief executive's functions to general manager

(1) If—

- (a) a process relating to a former function of the chief executive was started before this section was commenced; and
- (b) the process was not completed before the commencement;

the chief executive must complete the process.

Example of a process—

the process of suspending or cancelling an approval

- (2) However, subsection (1) does not limit the chief executive's power to delegate a function under the *Transport Planning and Coordination Act 1994*.

138 Agreements

- (1) This section applies to an agreement made by the chief executive when performing a former function of the chief

executive that is in force immediately before the commencement.

- (2) The agreement continues to have effect after the commencement as if it had been made by the general manager.

139 Notices

- (1) This section applies to a notice made, given or signed by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.
- (2) The notice continues to have effect after the commencement as if it had been made, given or signed by the general manager.

140 Appointments

- (1) This section applies to an appointment made by the chief executive when performing a former function of the chief executive that is current immediately before the commencement.
- (2) The appointment continues to have effect after the commencement as if it had been made by the general manager.

141 Other things done by chief executive

- (1) This section applies to anything done, made, given or signed by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement and is not otherwise provided for under this part.
- (2) The thing continues to have effect after the commencement as if it had been done, made, given or signed by the general manager.

142 Particular references to chief executive

A reference in an Act or document to the chief executive may, if the context permits, be taken to be a reference to the general manager.

Division 2 Provisions for Maritime and Other Legislation Amendment Act 2006

143 Application of s 62

- (1) Section 62, as in force immediately after the commencement of this section, does not apply in relation to an offence against section 61 committed entirely before the commencement.
- (2) However section 62, as in force immediately before the commencement, applies in relation to an offence against section 61 committed entirely before the commencement.

145 Authorised officers appointed by chief executive officer of port authority

- (1) On the commencement of this section, a port authorised officer stops being an authorised officer for the purposes of this Act, including for the application of section 74.
- (2) A person who, immediately before the commencement, was a port authorised officer must, within 21 days after the commencement, return to the general manager the identity card given to the person under section 74, as in force at any time before the commencement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (3) Without limiting the court's power to find an excuse is a reasonable excuse, it is a reasonable excuse if—
 - (a) for the purposes of section 74 and other purposes, the identity card is a single identity card; and
 - (b) within 21 days after the commencement—

[s 146]

- (i) the person sought a new card in relation to the other purposes and gave written notice to the general manager about the other purposes; but
 - (ii) a new card in relation to the other purposes had not been issued.
- (4) The employment relationship between the person and the port authority in relation to which the person was previously appointed as an authorised officer is not affected only because of this section.

146 Protection from liability for port authorised officers and others and continuing liability for port authorities

Section 76, as in force immediately before the commencement of this section, continues to apply in relation to an act or omission of a port authorised officer or a person acting under the direction of a port authorised officer.

147 Making orders under s 127 and pt 13A, div 2

- (1) Despite section 127 as in force after the commencement of this section, section 127 as in force immediately before the commencement continues to apply to an offence committed entirely before the commencement.
- (2) An enforcement order or interim enforcement order may not be made under part 13A, division 2 in relation to an offence committed entirely before the commencement.

148 Delegation under s 132 as in force before commencement

- (1) This section applies to a delegation under section 132 by the general manager of a power under this Act as the delegation is in force immediately before the commencement of this section.
- (2) The delegation continues in force as a delegation under the *Maritime Safety Queensland Act 2002*, section 11A until it is amended or repealed under that Act.

Note—

The *Maritime Safety Queensland Act 2002*, section 11A provides for the general manager to delegate his or her functions under that Act or another Act to appropriate persons, namely an employee of MSQ, an authorised officer or a shipping inspector under the *Transport Operations (Marine Safety) Act 1994*.

149 Previous exercise of powers by port authority officer not affected

- (1) Section 145(1) does not affect the exercise of a power by a port authorised officer made under this Act before the commencement of this section as an authorised officer, including, for example, under part 12, divisions 3, 4 and 5.
- (2) However, if this Act provides that after exercising a power, an authorised officer must do a thing (*discharge a duty*), the port authorised officer must discharge the duty and give written notice to the general manager about discharging the duty.

Example for subsection (2)—

Under section 84, an authorised officer may have exercised a power and detained a ship before the commencement of this section. However, the authorised officer may not have given an approved notice under section 85 about the detention before the commencement. A person who was a port authorised officer must comply with section 85 and give a notice to the ship's master.

- (3) Also, if this Act provides that after exercising a power (the *first power*), an authorised officer may exercise another power (*other power*)—
 - (a) the port authorised officer may not exercise the other power but must give written notice to the general manager about the other power not having been exercised; and
 - (b) the general manager may exercise the other power even though the provision about the other power provides that the other power may only be exercised by the authorised officer who exercised the first power.

150 Emergency response powers under pt 12, div 6

- (1) If, immediately before the commencement of this section, a port authority had prime responsibility for a discharge as mentioned in section 93(3) as in force immediately before the commencement—
 - (a) the port authority continues to have the prime responsibility; but
 - (b) the State may assume prime responsibility in the way stated in section 93(4) as in force immediately before the commencement as if that subsection had not been omitted by the *Maritime and Other Legislation Amendment Act 2006*.
- (2) A declaration under section 94(1), as in force immediately before the commencement, is not affected only because the declaration could not be made under section 94(1) after the commencement.

151 Continuing liability of port authority for compensation

- (1) This section applies to a person who may, before the commencement of this section, claim compensation from a port authority under section 110 as in force before the commencement of this section.
- (2) Section 110, as in force immediately before the commencement, continues to apply in relation to the person and the person may make a claim under that section as if that section had not been amended.
- (3) If, under this section, the port authority pays compensation to a person, the definition *discharge expenses* in section 111 is taken to include an amount reasonably paid as compensation by the port authority.

152 If port authority has started to recover discharge expenses before commencement

- (1) If, before the commencement of this section, a port authority started to recover discharge expenses under section 115 and the matter was not completed on the commencement, the port authority may continue to recover the discharge expenses under section 115 as if—
 - (a) the section had not been amended; and
 - (b) the definition *administering authority* had not been omitted by the *Maritime and Other Legislation Amendment Act 2006*.
- (2) An appeal may be made by or against a port authority under section 116 as if that section had not been amended by the *Maritime and Other Legislation Amendment Act 2006* if—
 - (a) immediately before the commencement, an appeal may be made under section 116 by a person whose interests were affected by a decision under section 115; or
 - (b) a person's interests were affected by a decision under section 115 as in force immediately before the commencement because of subsection (1).

153 Application of s 118 to particular matters

Section 118, as in force immediately before the commencement of this section, applies in relation to a matter for a proceeding under this Act if—

- (a) a provision is amended by the *Maritime and Other Legislation Amendment Act 2006*; and
- (b) the provision, as in force immediately before the amendment, continues to apply in relation to the matter.

Division 3 Provisions for Transport Legislation Amendment Act 2008, part 5

154 Appointments of analysts

An appointment of a person as an analyst made by the general manager before the commencement of section 132B and in force immediately before the commencement—

- (a) continues in force according to its terms; and
- (b) is taken to have been made under that section.

155 Actions done and documents made by analysts

- (1) This section applies to an action done or a document made by an analyst before the commencement of section 132B.
- (2) The action or document—
 - (a) continues in force or to have effect according to its terms; and
 - (b) is taken to have been done or made as if the analyst had been appointed under that section.

156 Recovery of damages

To remove any doubt, it is declared that section 132F applies only in relation to a discharge prohibited by this Act that happens after the commencement of that section.

Division 4 **Transitional provisions for
Transport and Other Legislation
Amendment Act 2008, part 7,
division 1**

157 **Provision for prosecutions under previous s 38(4)**

- (1) This section applies if a prosecution against a person for an offence against previous section 38(4) was started but not finished before the commencement.
- (2) Despite the Criminal Code, section 11, the prosecution may continue and be dealt with as if the *Transport and Other Legislation Amendment Act 2008* had not been enacted.
- (3) In this section—

commencement means the commencement of this section.

previous section 38(4) means section 38(4) as in force before the commencement.

158 **Application of s 50A**

- (1) Section 50A does not apply to a prescribed ship that is an existing ship until 19 May 2010.
- (2) In this section—

prescribed ship see section 50A.

Division 6 **Transitional provision for Transport
and Other Legislation Amendment
Act (No. 2) 2010**

160 **Application of s 49**

Despite the amendment of section 49(1) by the *Transport and Other Legislation Amendment Act (No. 2) 2010*, section 49 as

in force before the commencement of this section continues to apply to a declared ship until the end of 30 June 2011.

Division 7 Transitional provisions for Transport Legislation (Road Safety and Other Matters) Amendment Act 2019

161 Recovery of discharge expenses incurred by particular entities

(1) Part 13 and section 122 apply to discharge expenses incurred by a prescribed entity only if the expenses are incurred after the commencement.

(2) In this section—

discharge expenses see section 111.

prescribed entity means an entity mentioned in section 111, definition *prescribed entity*, paragraph (b).

162 Securing compliance for particular offences

Part 13A applies in relation to an offence against section 86A(4), (5) or (8) only if the offence is committed after the commencement.

Schedule 1 Dictionary

section 4

act includes an omission.

agent, of a ship's owner, see section 7.

analyst means a person who is appointed as an analyst under section 132B.

approved, for a form or notice, means approved by the chief executive.

Australian Maritime Safety Authority means the Australian Maritime Safety Authority established by the *Australian Maritime Safety Authority Act 1990* (Cwlth).

authorised action, for part 13A, for a prescribed applicant, means action the prescribed applicant is authorised to take by a District Court order made under section 117GA(1).

authorised officer means a person who is appointed as an authorised officer under section 72.

boat harbour means a non-State managed boat harbour or a State managed boat harbour under the *Transport Infrastructure (Public Marine Facilities) Regulation 2000*.

canal see the *Coastal Protection and Management Act 1995*, section 9.

cargo, for part 12, division 7, see section 97.

certified to carry noxious liquid substances, for a ship, means issued with an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk.

coastal waters means the coastal waters of the State, and includes other waters within the limits of the State that are subject to the ebb and flow of the tide.

Note—

Coastal waters of the State is defined in the *Acts Interpretation Act 1954*, schedule 1.

Commonwealth Navigation Act means the *Navigation Act 2012* (Cwlth).

condition includes restriction.

convicted, of an offence, means being found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction is recorded.

culpable person, for part 7, see section 45.

damage, in an express reference to damage to a ship or its equipment, does not include any existing defect in the ship or its equipment resulting from an event, a lack of maintenance or anything else.

declared ship, for part 7 and section 160, see section 45.

designated area means each of the following areas—

- (a) the marine national park zone under the *Marine Parks (Moreton Bay) Zoning Plan 2008*;
- (b) the Noosa River;
- (c) the marine national park zone, under the *Marine Parks (Great Sandy) Zoning Plan 2006*, located near Burkitt's Reef, Hoffman's Rocks or Barolin Rock, adjacent to the Woongarra Coast;
- (d) an area within the Great Barrier Reef Coast Marine Park prescribed under a regulation.

discharge see MARPOL.

discharge expenses, for part 13, see section 111.

discharge offence see—

- for part 4—section 24
- for part 5—section 33
- for part 6—section 40
- for part 7—section 45
- for part 8—section 53
- for part 9—section 59

- for part 11—section 67(1)
- for section 84—section 84(6)
- for part 13—section 111.

disclosing person see section 128C(1).

division 3 undertaking see section 117H(2)(b).

domestic commercial vessel see the domestic commercial vessel national law, section 7.

domestic commercial vessel national law see the *Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Act 2016*, section 20.

enforcement order means an order of the District Court under part 13A, division 2—

- (a) to remedy or restrain the commission of a notice offence or a contravention of an intervention direction; or
- (b) to ensure compliance with a division 3 undertaking.

environment includes ecosystems.

executive officer, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

fixed toilet, on a ship, means a toilet fixed permanently on board the ship.

garbage see MARPOL and, for part 8, section 53.

general manager means the general manager under the *Maritime Safety Queensland Act 2002*.

Gold Coast waters see the *Gold Coast Waterways Authority Act 2012*, section 7(1).

Gold Coast Waterways Authority means the Gold Coast Waterways Authority established under the *Gold Coast Waterways Authority Act 2012*.

Great Barrier Reef Coast Marine Park means the marine park described in the *Marine Parks (Declaration) Regulation 2006*, schedule 2.

gross tonnage, for a ship, means the ship's gross tonnage decided under the Tonnage Convention within the meaning of the Commonwealth Navigation Act.

harmful substance see MARPOL and—

- for part 6—section 40
- for part 11—sections 67 and 40.

IMO means the International Maritime Organization.

incident see MARPOL.

interim enforcement order means an order under section 117D.

Intervention Convention for part 12, division 7, see section 97.

intervention direction means a direction issued under section 98(2)(b) of the kind authorised under section 99.

length overall, of a ship, see section 7A.

marina means a buoy mooring, jetty or pile mooring or combination of them where, for a fee or reward, a ship is, or may be, anchored, berthed or moored.

marine pollution controller see section 93A.

Marine Safety Act means the *Transport Operations (Marine Safety) Act 1994*.

maritime casualty, for part 12, division 7, see section 97.

MARPOL has the meaning given by section 6.

master has the meaning given by the Marine Safety Act.

mixture, for part 5, see section 33.

MSQ means Maritime Safety Queensland established under the *Maritime Safety Queensland Act 2002*.

n mile means an international nautical mile.

notice offence means an offence against any of the following provisions constituted by a person contravening an approval, direction, notice, requirement or order given to the person under this Act—

- section 66(7)
- section 84(3)
- section 84(5)
- section 86A(4), (5) or (8)
- section 89(2)
- section 95(6)
- section 96(3)
- section 103(2).

noxious liquid substance see MARPOL and—

- for part 5—section 33
- for part 9—sections 59 and 33
- for part 11—sections 67(1) and 33.

obstruct includes—

- (a) assault, threaten, abuse, insult, intimidate or hinder; and
- (b) attempt to obstruct.

occupier, of a place, includes a person who reasonably appears to be the occupier, or in charge, of the place.

official, for part 14A, see section 128A.

oil see MARPOL and—

- for part 4—section 24
- for part 5—sections 33 and 24
- for part 9—sections 59 and 24
- for part 11—sections 67 and 24.

oil tanker see MARPOL.

owner, of a seized thing, includes the person from whom the thing is seized unless the authorised officer concerned is aware of its actual owner.

owner, of a ship, has the meaning given by the Marine Safety Act.

person in control, of a ship, includes the person who has, or reasonably appears to have, command or charge of the ship.

place includes land and premises, but does not include a ship.

pollutant means a harmful substance, and includes sewage.

port authorised officer, for part 17, division 2, means a person who was, immediately before the commencement of section 145, an authorised officer appointed by the chief executive officer of a port authority.

port authority has the meaning given by the *Transport Infrastructure Act 1994*.

port limits of a port means the limits of the port under the *Transport Infrastructure Act 1994*.

port operator has the meaning given in the *Transport Infrastructure Act 1994*, section 267.

premises includes—

- (a) a building or other structure or part of a building or other structure; and
- (b) land where a building or other structure is situated.

prescribed applicant, for part 13A, means any of the following—

- (a) the chief executive;
- (b) the general manager;
- (c) the marine pollution controller.

prescribed entity, for part 13, see section 111.

prohibited discharge waters means waters of any of the following—

- (a) a boat harbour;
- (b) a canal;
- (c) a marina;
- (d) a designated area.

public place means any place that the public is entitled to use, is open to the public, or used by the public, whether or not on payment of money.

QCAT information notice means a notice complying with the QCAT Act, section 157(2).

Queensland regulated ship see the Marine Safety Act, section 10A.

related Queensland interests means Queensland interests directly affected or threatened by a maritime casualty, and include—

- (a) maritime coastal, port or estuarine activities, including, for example, fishing activities, that are an essential means of livelihood for persons; and
- (b) tourist attractions; and
- (c) the health of Queenslanders and the wellbeing of Queensland.

reportable incident, for part 11, see section 67.

representative, of a person, means—

- (a) if the person is a corporation—an executive officer, employee or agent of the corporation; or
- (b) if the person is an individual—an employee or agent of the individual.

reprisal, for part 14A, see section 128E(3).

sewage has the meaning given in Annex IV to MARPOL, and includes human faecal wastes.

sewage holding device, for part 7, see section 45.

sewage quality characteristics means any of the following—

- (a) faecal coliforms;
- (b) suspended solids;
- (c) biochemical oxygen demand;
- (d) dissolved oxygen;
- (e) total nitrogen;

- (f) total phosphorus;
- (g) total residual chlorine;
- (h) viruses;
- (i) another thing prescribed under a regulation.

ship has the meaning given by MARPOL, and includes an aircraft when it is on the surface of the water.

state of mind, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

territorial sea means the territorial sea of Australia.

toilet includes urinal.

transfer apparatus, for part 9, see section 59.

transfer operation, for part 9, see section 59.

transport coordination plan means the transport coordination plan developed under the *Transport Planning and Coordination Act 1994*.

treated sewage means sewage that has been treated in a treatment system so that the levels of sewage quality characteristics in the sewage are reduced to not more than the levels prescribed under a regulation.

treatment system means a system, installed on a ship, for treating sewage that—

- (a) is able to reduce the levels of sewage quality characteristics in sewage to not more than the levels for treated sewage; and
- (b) conforms with the standard prescribed under a regulation.

untreated sewage means sewage, other than treated sewage.