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PROTECTION OF THE SEA (PREVENTION OF POLLUTION FROM SHIPS) ACT 1983 - SECT 27A

Detention of foreign ships in connection with pollution breaches

(1) The Authority may detain a foreign ship if:

(a) the ship is voluntarily at a port and there are clear grounds for believing that a pollution breach has occurred as a result of acts or omissions in relation to the ship in the territorial sea or the exclusive economic zone; or

(b) the ship is in the territorial sea and there are clear grounds for believing that a pollution breach has occurred as a result of acts or omissions in relation to the ship while navigating in the territorial sea; or

(c) the ship is in the territorial sea or the exclusive economic zone and there is clear objective evidence that:

(i) a pollution breach has occurred as a result of acts or omissions in relation to the ship in the exclusive economic zone; and

(ii) the actions resulted in a discharge from the ship that has caused or threatens to cause major damage to the coastline of Australia, to related interests of Australia or to any resources of the territorial sea or exclusive economic zone.

(2) If the ship is detained under paragraph (1)(b) or (c), the Authority may escort it to a port.

(3) The ship must be immediately released if:

(a) security is provided in accordance with subsection (4); or

(b) all proceedings that have been instituted in respect of the pollution breach have been discontinued; or

(c) all such proceedings have been concluded (whether or not any appeal is pending) without any person being convicted of an offence or being found liable to pay an amount of money; or

(d) all such proceedings have been concluded, and all penalties and/or other amounts of money, and all costs and expenses ordered to be paid, in respect of the pollution breach have been paid; or

(e) the Authority forms the belief that the pollution breach did not occur, or did not occur as a result of actions in relation to the ship; or

(f) the Authority determines for any other reason that the ship should be released.

(4) Security referred to in paragraph (3)(a) must:

(a) be provided in a form acceptable to the Authority; and

(b) be an amount that, in the Authority's opinion, is equivalent to the maximum amount of all penalties, other amounts of money, costs and expenses that could be payable by the master and any other member of the crew of the ship and the owner of the ship in respect of the pollution breach.

(5) The master and owner of the ship are guilty of an offence if:

(a) the ship was detained at a port and leaves the port; or

(b) the ship was detained in the territorial sea and leaves the outer limits of the territorial sea; or

(c) the ship was detained in the exclusive economic zone and leaves the outer limits of the exclusive economic zone;

before it is released from detention.

Penalty: 2,000 penalty units.

(5A) An offence under subsection (5) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(5B) While a foreign ship is detained under subsection (1), a person does not have the power of seizure provided for by section 123 of the Personal Property Securities Act 2009 in relation to the ship.

(6) In this section:

"Australia" includes all the external Territories.

"pollution breach" means:

(a) a discharge or disposal from a ship that:

(i) contravenes this Act; or

(ii) gives rise to a right of recovery by the Authority under Part IVA of the *Protection of the Sea (Civil Liability) Act 1981*; or

(b) an offence against section 26FEG or 26FEN.

"port" means a port in Australia, and is taken to include an off-shore installation over which Australia has jurisdiction.



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PROTECTION OF THE SEA (PREVENTION OF POLLUTION FROM SHIPS) ACT 1983 - SECT 9

Prohibition of discharge of oil or oily mixtures into sea

(1B) Subject to subsections (2) and (4), if:

(a) oil or an oily mixture is discharged from a ship into the sea; and

(b) one of the following subparagraphs applies:

(i) the discharge occurs into the sea near a State, the Jervis Bay Territory or an external Territory and there is no law of that State or Territory that makes provision giving effect to Regulations 4, 15 and 34 of Annex I to the Convention in relation to the area of the sea where the discharge occurs;

(ia) the discharge occurs into the outer territorial sea;

(ii) the discharge occurs into the sea in the exclusive economic zone;

(iii) the discharge occurs into the sea beyond the exclusive economic zone and the ship is an Australian ship;

the master, the charterer and the owner of the ship each commit an offence punishable, on conviction, by a fine not exceeding 20,000 penalty units.

(1C) An offence against subsection (1B) is an offence of strict liability.

(2) Subsection (1B) does not apply to the discharge of oil or of an oily mixture from a ship:

(c) for the purpose of securing the safety of a ship or saving life at sea; or

(d) if the oil or oily mixture, as the case may be, escaped from the ship in consequence of non-intentional damage to the ship or its equipment, and all reasonable precautions were taken after the occurrence of the damage or the discovery of the discharge for the purpose of preventing or minimizing the escape of oil or oily mixture, as the case may be; or

(e) in the case of an oily mixture, if the discharge was for the purpose of combating specific pollution incidents in order to minimize the damage from pollution and was approved by a prescribed officer and, where the discharge occurred in the jurisdiction of the government of a country other than Australia, by that government.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code* .

(3) For the purposes of paragraph (2)(d), damage to a ship or to its equipment is not non-intentional damage if the damage:

(a) arose in circumstances where the master, the charterer or the owner of the ship:

(i) acted with intent to cause the damage; or

(ii) acted recklessly and with knowledge that the damage would probably result;

or

(b) arose as a result of the negligence of the master, the charterer or the owner of the ship.

(3A) For the purposes of this section, **damage** to a ship or to its equipment does not include:

(a) deterioration resulting from failure to maintain the ship or equipment; or

(b) defects that develop during the normal operation of the ship or equipment.

(4) Without limiting the generality of subsection (2) but subject to subsection (5), subsection (1B) does not apply to:

(a) the discharge of oil or an oily mixture from a ship that is not within a special area, if the following conditions are satisfied:

(i) the ship has a gross tonnage of equal to or greater than 400;

(ii) the ship is proceeding *en route* ;

(iii) the oily mixture is processed using oil filtering equipment meeting the requirements set out by regulation made for the purposes of this subparagraph under section 267A of the *Navigation Act 1912* ;

(iv) the oil content of the effluent without dilution does not exceed 15 parts in 1,000,000 parts;

(v) if the ship is an oil tanker--the oily mixture does not originate from the cargo pump room bilges of the ship and is not mixed with oil cargo residues; and

(b) the discharge of oil or an oily mixture from a ship within a special area other than the Antarctic area, if the following conditions are satisfied:

(i) the ship has a gross tonnage of equal to or greater than 400;

(ii) the ship is proceeding *en route* ;

(iii) the oily mixture is processed using oil filtering equipment meeting the requirements set out by regulation made for the purposes of this subparagraph under section 267A of the *Navigation Act 1912* ;

(iv) the oil content of the effluent without dilution does not exceed 15 parts per 1,000,000 parts;

(v) if the ship is an oil tanker--the oily mixture does not originate from the cargo pump room bilges of the ship and is not mixed with oil cargo residues; and

(c) the discharge of oil or an oily mixture within an area other than the Antarctic area

from a ship, if the following conditions are satisfied:

(i) the ship has a gross tonnage of less than 400;

(ii) the ship is proceeding *en route* ;

(iii) the ship has in operation equipment, of a kind that meets the requirements set out by regulation made for the purposes of this subparagraph under section 267A of the *Navigation Act 1912* , that ensures that the oil content of the effluent without dilution does not exceed 15 parts in 1,000,000 parts;

(iv) if the ship is an oil tanker--the oily mixture does not originate from the cargo pump room bilges of the ship and is not mixed with oil cargo residues; and

(d) the discharge of oil or an oily mixture (other than washings contaminated with oil) from the cargo area of an oil tanker that is not within a special area, if the following conditions are satisfied:

(i) the tanker has a gross tonnage of 150 or more;

(ii) the tanker is more than 50 nautical miles from the nearest land;

(iii) the tanker is proceeding *en route* ;

(iv) the instantaneous rate of discharge of oil content does not exceed 30 litres per nautical mile;

(v) if the tanker is delivered on or before 31 December 1979--the total quantity of oil discharged into the sea does not exceed one part in 15,000 parts of the total quantity of the cargo of oil of which oil discharged formed a part;

(vi) if the tanker is delivered after 31 December 1979--the total quantity of oil discharged into the sea does not exceed one part in 30,000 parts of the total quantity of the cargo of oil of which oil discharged formed a part;

(vii) the tanker has in operation an oil discharge monitoring and control system and a slop tank arrangement as required by regulations made for the purposes of this subparagraph under section 267A of the *Navigation Act 1912* ; and

(e) the discharge of washings contaminated with oil from an oil tanker that is not within a special area, if the following conditions are satisfied:

(i) the tanker is more than 50 nautical miles from the nearest land;

(ii) the tanker is proceeding *en route* ;

(iii) the instantaneous rate of discharge of oil content does not exceed 30 litres per nautical mile;

(iv) if the tanker is delivered on or before 31 December 1979--the total quantity of oil discharged into the sea does not exceed one part in 15,000 parts of the total quantity of the cargo of oil of which oil discharged formed a part;

(v) if the tanker is delivered after 31 December 1979--the total quantity of oil

discharged into the sea does not exceed one part in 30,000 parts of the total quantity of the cargo of oil of which oil discharged formed a part;

(vi) the tanker has in operation an oil discharge monitoring and control system and a slop tank arrangement as required by regulations made for the purposes of this subparagraph under section 267A of the *Navigation Act 1912* ; and

(f) the discharge of oil or an oily mixture from the cargo area of an oil tanker, either within or outside a special area, if the discharge is of clean or segregated ballast.

(5) A reference to an oily mixture in subsection (4) shall be read as not including a reference to an oily mixture that contains:

(a) chemicals or other substances in quantities or concentrations that are hazardous to the marine environment; or

(b) chemicals or other substances that have been introduced for the purpose of attempting to prevent the application of subsection (1) to the discharge of an oily mixture from a ship.

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