

South Australia



ANNO QUINQUAGESIMO
ELIZABETHAE II REGINAE
A.D. 2001

**PROTECTION OF MARINE WATERS (PREVENTION OF POLLUTION
FROM SHIPS) (MISCELLANEOUS) AMENDMENT ACT 2001**

No. 33 of 2001

[Assented to 3 August 2001]

An Act to amend the Protection of Marine Waters (Prevention of Pollution from Ships) Act 1987.

SUMMARY OF PROVISIONS

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2. Commencement
3. Amendment of s. 8—Prohibition of discharge of oil or oily mixtures into State waters
4. Amendment of s. 18—Prohibition of discharge of substances into State waters
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6. Amendment of s. 26—Discharge of oil into waters from vehicles, etc.
7. Insertion of s. 28A
 - 28A. Marine spill action plan
8. Amendment of s. 40—Immunity
9. Amendment of s. 43—Prescribing matters by reference to other instruments

The Parliament of South Australia enacts as follows:**Short title**

1. (1) This Act may be cited as the *Protection of Marine Waters (Prevention of Pollution from Ships) (Miscellaneous) Amendment Act 2001*.

(2) The *Protection of Marine Waters (Prevention of Pollution from Ships) Act 1987* is referred to in this Act as "the principal Act".

Commencement

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

Amendment of s. 8—Prohibition of discharge of oil or oily mixtures into State waters

3. Section 8 of the principal Act is amended—

(a) by inserting in subsection (2)(b) ", reckless or negligent" after "intentional";

(b) by striking out subsection (3) and substituting the following subsection:

(3) For the purposes of subsection (2)(b), damage to a ship or to its equipment will be taken to be—

- (a) intentional damage if the damage arose in circumstances in which the master or owner of the ship, or an employee or agent of the master or owner, acted with intent to cause the damage;
- (b) reckless damage if the damage arose in circumstances in which the master or owner of the ship, or an employee or agent of the master or owner, acted recklessly and with knowledge that damage would probably result;
- (c) negligent damage if the damage arose from a negligent act or omission on the part of the master or owner of the ship or an employee or agent of the master or owner.

Amendment of s. 18—Prohibition of discharge of substances into State waters

4. Section 18 of the principal Act is amended—

(a) by inserting in subsection (2)(b) ", reckless or negligent" after "intentional";

(b) by striking out subsection (3) and substituting the following subsection:

(3) For the purposes of subsection (2)(b), damage to a ship or to its equipment will be taken to be—

- (a) intentional damage if the damage arose in circumstances in which the master or owner of the ship, or an employee or agent of the master or owner, acted with intent to cause the damage;
- (b) reckless damage if the damage arose in circumstances in which the master or owner of the ship, or an employee or agent of the master or owner, acted recklessly and with knowledge that damage would probably result;

- (c) negligent damage if the damage arose from a negligent act or omission on the part of the master or owner of the ship or an employee or agent of the master or owner.

Amendment of s. 25A—Duty to report certain incidents

5. Section 25A of the principal Act is amended by inserting after paragraph (c) of the definition of "prescribed incident" in subsection (10) the following paragraph:

- (d) damage, failure or breakdown of a ship of 15 metres in length or more that—
- (i) affects the safety of the ship, including collision, grounding, fire, explosion, structural failure, flooding and cargo shifting; or
- (ii) results in impairment of the safety of navigation, including failure or breakdown of steering gear, propulsion plant, electrical generating systems or essential shipborne navigational aids.

Amendment of s. 26—Discharge of oil into waters from vehicles, etc.

6. Section 26 of the principal Act is amended by striking out the penalty provision at the foot of subsection (2) and substituting the following:

- Maximum penalty: (a) if the offender is a natural person—\$200 000; or
- (b) if the offender is a body corporate—\$1 000 000.

Insertion of s. 28A

7. The following section is inserted after section 28 of the principal Act:

Marine spill action plan

28A. (1) The Minister will cause to be developed and published a plan for the purpose of setting out the action to be taken where there has been or there is likely to be a discharge to which this Act applies.

(2) The plan developed and published under this section will be known as the *South Australian Marine Spill Contingency Action Plan*.

(3) The Minister will cause the plan to be reviewed from time to time.

(4) For the purposes of any legal proceedings, evidence of the contents of the plan may be given by production of a document apparently certified by the Minister to be a true copy of the plan.

(5) The Minister must cause a copy of the plan, as published from time to time, to be laid before both Houses of Parliament as soon as is reasonably practicable after the plan is published.

Amendment of s. 40—Immunity

8. Section 40 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsections:

(2) No liability attaches to any other employee or agent of the Crown engaged in the administration or enforcement of the Act for an act or omission in good faith in the exercise or purported exercise of a power or in the discharge or purported discharge of a duty under this Act.

(3) For the purposes of subsection (2), an employee or agent of the Crown who participates in the implementation of a plan developed and published under section 28A will be taken to be engaged in the administration or enforcement of this Act.

(4) A liability that would, but for this section, attach to a person attaches instead to the Crown.

Amendment of s. 43—Prescribing matters by reference to other instruments

9. Section 43 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) The regulations or orders made under this Act may make provision for or in relation to a matter by applying, adopting or incorporating, either wholly or in part, with or without modifications and as in force from time to time or as in force at a specified time—

(a) any regulations, rules, codes, orders, instructions or other subordinate legislation made, determined or issued under any other Act or under any Commonwealth Act; or

(b) any code published by the International Maritime Organization.;

(b) by inserting after subsection (2) the following subsection:

(3) If a document referred to in subsection (1) is applied, adopted or incorporated in the regulations or orders—

(a) a copy of it must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Minister; and

(b) evidence of its contents may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the document.