



Transport for NSW

# Review of the NSW Marine Pollution Act 2012

Discussion paper



Image: Destination NSW

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# 1. Forward

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The *Marine Pollution Act 2012* (**the Act**) is administered jointly by the Minister for Transport and Roads and the Minister for Regional Transport and Roads (the Ministers). It is available to view at: [legislation.nsw.gov.au/#/view/act/2012/5](https://legislation.nsw.gov.au/#/view/act/2012/5)

Section 251 of the Act requires the Ministers to review the Act to determine whether the policy objectives of the Act remain valid and that the terms of the Act remain appropriate for securing those objectives. The purpose of this Discussion Paper is to seek public comment and proposals for any amendments to the Act, to understand any concerns with the Act, and to seek views on how issues can be addressed.

The questions raised in this paper are intended to seek feedback. **They do not reflect the formal views of the NSW Government.** Transport for NSW (TfNSW) is referring to the NSW Guide to Better Regulation during this review.

**This discussion paper includes the following terms and abbreviations.**

Terminology	Description
<b>AMSA</b>	Australian Maritime Safety Authority
<b>DCV</b>	Domestic Commercial Vessel
<b>IMO</b>	International Maritime Organisation
<b>Large ship</b>	Large ship means a ship: (a) that has a gross tonnage (GT) of 400 or more, or (b) has a GT of less than 400 and that is certified to carry more than 15 persons, or (c) that does not have a measured tonnage and is certified to carry more than 15 persons.
<b>Marine pollutant</b>	Marine pollutant means any one, or any combination, of the following substances (whether in bulk, packaged or another form): Oil / a noxious liquid substance / harmful substance in packaged form / sewage / garbage.
<b>MARPOL</b>	International Convention for the Prevention of Pollution from Ships 1973: (a) as corrected by the Proces-Verbal of Rectification dated 13 June 1978, and (b) as affected by any amendment made under Article 16 of MARPOL, other than an amendment not accepted by Australia or that has not entered into force in Australia, and (c) as modified and added to by the Protocol of 1978 relating to the <i>International Convention for the Prevention of Pollution from Ships, 1973</i> , as affected by any amendment to that Protocol made under Article VI of that Protocol other than an amendment not accepted by Australia or that has not entered into force in Australia.
<b>Navigation Act</b>	Navigation Act 2012 (Commonwealth)
<b>Noxious liquid substance</b>	Noxious liquid substance means any substance indicated in the Pollution Category column of chapter 17 or 18 of the <i>International Bulk Chemical Code</i> or provisionally assessed under the provisions of regulation 6.3 as falling into category X, Y or Z.
<b>OILPOL</b>	International Convention for the Prevention of Pollution of the Sea by Oil, which was incorporated into Annex I of MARPOL in 1973
<b>PANSW</b>	Port Authority of New South Wales
<b>POEO Act</b>	<i>Protection of the Environment Operations Act 1997</i>
<b>POTS Act</b>	<i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i> (Commonwealth)
<b>TfNSW</b>	Transport for NSW
<b>the Act</b>	<i>Marine Pollution Act 2012</i>
<b>the Regulation</b>	<i>Marine Pollution Regulation 2014</i>



## 2. Public consultation

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### 2.1 How to make a submission

Interested parties are invited to submit written comments on the Act, in particular on the questions raised in 'Section 5 - Issues to be considered' of the Discussion Paper, to TfNSW.

Comments and suggestions may also be provided on individual matters raised in the Discussion Paper or on the Act as a whole. The public consultation period is 28 days.

Submissions can be made:

**By email:**

**[Freight@transport.nsw.gov.au](mailto:Freight@transport.nsw.gov.au)**

**By post:**

Review of the NSW Marine Pollution Act 2012  
Freight Policy and Government Relations  
Customer Strategy and Technology  
Transport for NSW  
PO Box K659  
Haymarket NSW 1240

### 2.2 What will happen with the submissions?

TfNSW will consider feedback received in developing potential amendments to the Act.

TfNSW will refer to the NSW Guide to Better Regulation when considering submissions received on this discussion paper, including whether there are clear obligations and accountabilities, the impacts on stakeholders and whether the proposed changes would be effective and proportional. In addition, TfNSW will also consider whether proposed changes are consistent with MARPOL and Commonwealth legislation, support effective compliance and enforcement to deal with marine pollution incidents and consider the diversity and scale of operations of the maritime sector.

Any proposed amendments to the Act will be provided to the NSW Parliament for consideration. If the proposed amendments are approved by the NSW Government, a Bill will be developed to implement the amendments. After successful passage of the Bill through both Houses of Parliament, the Bill will be forwarded to the NSW Governor for assent.

Submissions to the discussion paper will not be published. However, parts of stakeholder feedback may be included in a public review report. Please advise us if you do not wish to have your personal details or any part of your submission included in the public report. Automatically generated confidentiality statements in emails are not enough. Please be aware that even if you state that you do not wish certain information published, there may be legal circumstances that require the NSW Government to release that information (for example, under the requirements of the Government Information (Public Access) Act 2009).



## 3 Context and background

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### 3.1 The international context

The International Maritime Organization (IMO) is an agency of the United Nations mandated to develop and maintain a comprehensive regulatory framework for shipping<sup>1</sup>. Having consistent requirements for international shipping facilitates global trade, an important contributor to the NSW and Australian economy.

Since 1959 the IMO has been the catalyst for a significant global effort to minimise the environmental impacts of shipping. Central to this effort is the 1973 International Convention for the Prevention of Pollution from Ships, also known as MARPOL. The MARPOL Convention addresses pollution from ships by oil; noxious liquid substances carried in bulk; harmful substances carried by sea in packaged form; sewage, garbage; and the prevention of air pollution from ships.

MARPOL is currently in force in 158 countries, applying to 99 per cent of the world's merchant tonnage. MARPOL was amended by Protocols in 1978 and 1997 and is regularly amended to reflect technical developments in ship construction and onboard equipment, and progressive implementation of tighter discharge standards.

MARPOL is considered to have greatly contributed to a significant decrease in pollution from international shipping, particularly from oil spills. Inputs of oil into the marine environment are estimated to have decreased from 1.47 million tonnes in 1981 to 0.54 million tonnes in 1989, with a further reduction to 0.45 million tonnes in 2007.<sup>2</sup> The number of large oil spills (greater than 700 tonnes) has reduced from 24.5 per year on average from 1970 to 1979 to 1.9 per year on average from 2010 to 2018. There have been similar reductions in the number of small to medium oil spills, which has occurred despite significant increases in global shipping activity and oil movements.<sup>3</sup>

1. [imo.org/en/Pages/Default.aspx](https://www.imo.org/en/Pages/Default.aspx)

2. Group of Experts on the Scientific Aspects of Marine Pollution, Estimates of Oil Entering the Marine Environment from Sea-based Activities, GESAMP Reports and Studies No.75, 2007, p.60

3. International Tanker Owners Pollution Federation, Oil Tanker Spill Statistics 2018, 6 May 2019





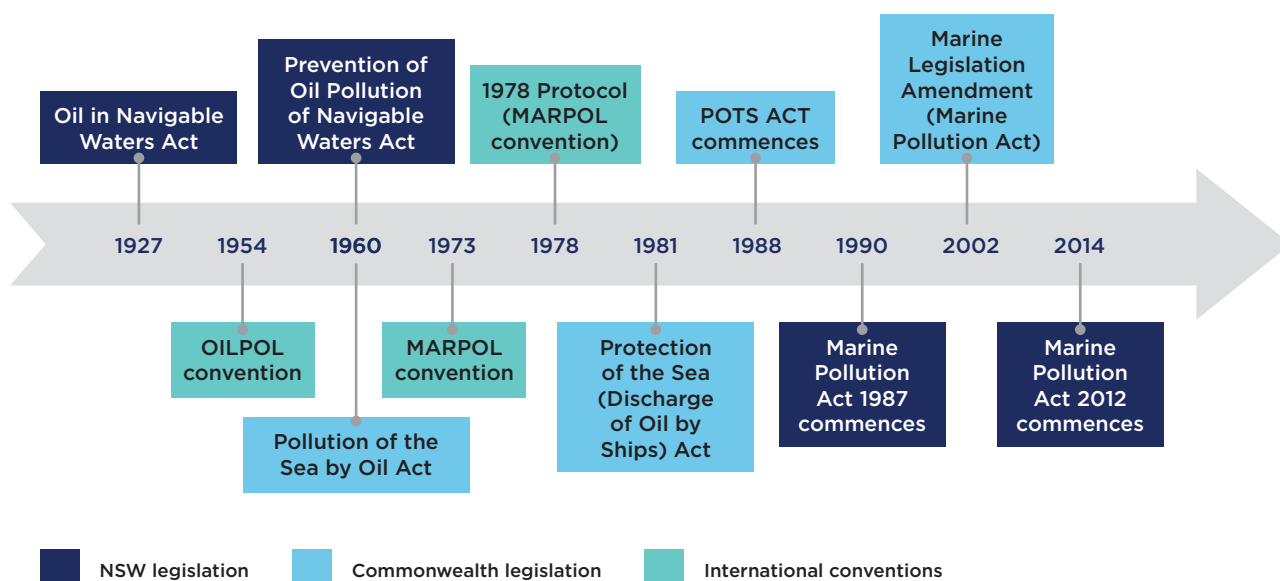
### 3.2. Marine pollution regulatory regime in Australia

The MARPOL Convention is given effect in Australia by Commonwealth legislation with complementary State and Northern Territory legislation.<sup>4</sup> Annex VI of MARPOL, dealing with air pollution from ships, is implemented by Commonwealth legislation only.

The Commonwealth Protection of the Sea (*Prevention of Pollution from Ships*) Act 1983 (the POTS Act) and the *Navigation Act 2012* give effect to MARPOL, as well as subordinate legislation in the form of Marine Orders. Marine Orders adopt international changes to technical and operational standards for maritime safety and environmental protection to ensure Commonwealth legislation is kept up to date.<sup>5</sup>

NSW has implemented laws to give effect to international standards as these have been developed, see the timeline at Figure 1. The *Marine Pollution Act 2012* is the most recent Act in a series of NSW legislative measures addressing marine pollution from vessels.

**Figure 1: Timeline of NSW marine pollution legislation**



4. [amsa.gov.au/marine-environment/marine-pollution/marpol-and-its-implementation-australia](http://amsa.gov.au/marine-environment/marine-pollution/marpol-and-its-implementation-australia)

5. [amsa.gov.au/about/regulations-and-standards-vessels/how-marine-orders-are-created](http://amsa.gov.au/about/regulations-and-standards-vessels/how-marine-orders-are-created)

In NSW, the Marine Pollution Act and the POEO Act both operate in NSW waters to address pollution. The Act applies from the low water mark on the coast to three nautical miles (5.6 kilometres) out to sea, and to other waters specified in the Regulations. Beyond three nautical miles, the Commonwealth has jurisdiction so the POTS Act applies.

The Act sets offences relating to five MARPOL pollutants: oil, noxious liquid substances, harmful substances in packaged form, sewage and garbage. The POEO Act has a water pollution offence which makes it an offence for a person to pollute 'any waters'.

The Act also includes a number of provisions related to marine pollution that are not included in MARPOL, such as prevention of pollution from transfer operations, insurance requirements, Ministerial powers to respond to pollution incidents and recovery of clean-up costs following a pollution incident.



### 3.3. Shipping and its impact on the marine environment

Global seaborne trade volumes continue to grow - global trade expanded by four per cent in 2017, and similar growth is expected over the next five years.<sup>6</sup> Since 2011, there has been an increase in most forms of vessel activity in Australia's marine waters.<sup>7</sup> NSW ports represent a significant proportion of this activity, with 6,225 commercial vessels visiting NSW ports during 2017/18.<sup>8</sup>

This increasing maritime/shipping activity increases the potential for environmental incidents. However, ongoing improvements in the management of commercial vessels are resulting in mitigation and minimisation of the associated risks.<sup>9</sup>

While around 80 percent of all pollution in seas and oceans comes from land-based activities,<sup>10</sup> the environmental impact of shipping includes potential discharges or loss of pollutants at sea, including oil, noxious liquid substances, sewage and garbage. Material discharged from shipping operations and incidents is considered one of the sources of potential coastal and marine pollution in NSW:<sup>11</sup>

6 United Nations Conference on Trade and Development, UNCTAD Review of Maritime Transport, 2018, p.15

7 Department of the Environment and Energy, Australia State of the Environment 2016, 2017, p.viii

8 Port Authority of New South Wales, Annual Report 2017/18, 2018, p.7

9 Department of the Environment and Energy, Australia State of the Environment 2016, p.viii

10 United Nations, The Ocean Conference Fact Sheet: Marine Pollution 2017, p.1

11 Environment Protection Authority, State of the Environment 2015, 2016, p.20



- Oil spills can seriously affect changes to the marine environment both as a result of physical smothering and toxic effects. In a major incident the short-term environmental impact can be severe, causing serious distress to ecosystems and to the people living near the contaminated coastline.
- Noxious liquid substances can have both a direct and indirect impact on the environment. Direct impacts include mortality of organisms, tainting of animal flesh or plant tissues used for human consumption and decreasing capacities for organism reproduction, breathing, and feeding. Indirect impacts can disturb the structure and productivity of whole ecosystems.
- The discharge of raw sewage into the sea can create a health hazard, lead to oxygen depletion and can be an obvious visual pollution in coastal areas.
- Garbage affects the environment and the flora and fauna in several ways; by entanglement in or ingestion of debris, transport of contaminants over long distances and can have effects at an ecosystem level.

Marine debris in particular is recognised as a globally relevant pressure in the marine environment, with increasing reports of impacts on marine biodiversity reported during the past four decades.<sup>12</sup>



### 3.4. The NSW marine environment

The coastline of NSW extends for more than 2,000 kilometres and the State's marine jurisdiction extends three nautical miles out to sea. As well as the mouths and lower reaches of coastal rivers, intermittently closed and open lakes and lagoons are a relatively common estuary type in NSW. The coastal, estuarine and marine waters of NSW contain high levels of biodiversity because of their wide range of oceanic, shoreline and estuarine habitats, combined with the strong influence of both subtropical and temperate currents.

<sup>12</sup> Department of the Environment and Energy, Australia State of the Environment 2016, p.59



These varied environments provide many important ecosystem services, such as preventing coastal and seabed erosion, maintaining coastal water quality, acting as critical habitats for fish and other marine life and supporting recreational and commercial activities. The tourism industry in NSW (a significant contributor to the Australian and state economies) depends on good water quality to support marine based activities such as fishing, swimming, surfing, scuba diving, boating and sailing. Coastal waters are also important for commercial and recreational fishing.

The NSW Government has developed a set of Marine Water Quality Objectives<sup>13</sup> for NSW ocean waters. A key aim of these objectives is to simplify and streamline the consideration of water quality in coastal planning and management, and ensure that environmental values and water quality needed for the community's uses and values for ocean waters are recognised and protected.

Overall, the water quality of the NSW marine environment and ecosystem health is considered to be good, though a wide range of threats and risks are recognised. The Office of Environment and Heritage report *State of the beaches 2017-2018* notes that "In general, open ocean beaches in NSW have excellent water quality."<sup>14</sup>



Image: Destination NSW

<sup>13</sup> [environment.nsw.gov.au/research-and-publications/publications-search/marine-quality-objectives-for-nsw-ocean-waters](https://environment.nsw.gov.au/research-and-publications/publications-search/marine-quality-objectives-for-nsw-ocean-waters)

<sup>14</sup> Office of Environment and Heritage, *State of the Beaches 2017-2018* Report, 2018, p.4





## 4. The Marine Pollution Act 2012

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### 4.1. Objectives of the Act

The Act is NSW's key legislative instrument regulating marine pollution discharges from vessels in NSW State waters. The objectives of the Act are to give effect to Australia's ratification of Annexes I to V of MARPOL and, in doing so protect NSW State waters from marine pollution.

### 4.2. Parts of the Marine Pollution Act 2012

The Act is made up of 22 parts and one schedule which cover a range of marine pollution functions such as discharges of marine pollutants, compliance and record keeping requirements, implementation powers and enforcement of the above matters and penalties.

Section 251 of the Act outlines the requirement to review the Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

An overview of the Act is provided in Appendix 1 and the full text of the Act can be viewed at: [legislation.nsw.gov.au/#/view/act/2012/5](https://legislation.nsw.gov.au/#/view/act/2012/5)

### 4.3. Overview of the Regulations

The Regulations are not being considered in the review of the Act, as they are subject to periodic review under the *Subordinate Legislation Act 1989*.<sup>15</sup> However, consequential amendments may be made to the Regulations as a result of changes to the Act, where required.

The Regulations consist of eight parts and nine schedules which set out requirements for the control of toilet and galley waste from certain vessels as well as a number of administrative requirements, such as reporting obligations, fees and delegations. The Regulations also adopt and modify six Commonwealth Marine Orders and designate parts of NSW waters as 'State waters' for the purposes of the Act.

An overview of the Regulations is provided in Appendix 2 and the full text of the Regulations can be viewed at: [legislation.nsw.gov.au/#/view/regulation/2014/529](https://legislation.nsw.gov.au/#/view/regulation/2014/529)

<sup>15</sup> Part 3 of the Subordinate Legislation Act 1989 [legislation.nsw.gov.au/#/view/act/1989/146](https://legislation.nsw.gov.au/#/view/act/1989/146)

## 5. Issues to be considered

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This section of the discussion paper considers a number of potential amendments to the Act. The questions and proposals raised in this section are intended to prompt feedback. **They do not reflect the formal views of the NSW Government.**

The objectives of the Act are to give effect to MARPOL and, in turn, enhance the protection of the coastal and port waters of NSW.

**Question 1:** Are the objectives of the Act still valid? Are the terms used in the Act appropriate for meeting those objectives?

### 5.1. Updating the Marine Pollution Act 2012

#### Harmonisation

The Act requires updating to ensure harmonisation with the MARPOL convention, Commonwealth legislation and the marine pollution legislation of other States and the Northern Territory.

References to other relevant legislation will be made, in particular the Commonwealth POTS Act and the MARPOL convention to incorporate recent amendments. For example, changes to Annex V of MARPOL introduced additional defences for discharges relating to food waste, cargo residues, cleaning agents and additives, and animal carcasses. The Act needs to be amended to incorporate these and other amendments to MARPOL. A list of amendments to MARPOL is provided in Appendix 3.

#### Streamlining regulatory requirements

The Act will also be updated to streamline and simplify the Act, including by removing unnecessary regulatory requirements, where appropriate. Proposed amendments include:

- Removing the requirement for the Minister to approve oil pollution emergency plans and marine pollution emergency plans, as these are now approved by the ships' Classification Society and inspected as part of Port State Control undertaken by the Australian Maritime Safety Authority (AMSA) (Part 10).
- Removing the need to obtain written permission to conduct transfer operations at night as this is outdated, given that ports now operate 24/7 (Part 8).
- Removing certification requirements for large ships on international voyages as these are not required to be issued in NSW. Ship survey and certification requirements for oil, sewage and chemicals for these ships will apply under the Commonwealth POTS Act. NSW certification of sewage management equipment will remain for most domestic commercial vessels (DCVs) in NSW waters, with the details to be developed in consultation with industry for later inclusion in the Regulations.
- Removing references to 'special areas' as there are no such areas in NSW. The IMO designates certain sea areas as 'special areas' based on their oceanographic and ecological condition, such as the Baltic Sea, Antarctic Sea and the Black Sea. No Australian seas are identified as 'special areas' (Part 3).



- Including builder's plates as a source for determining carrying capacity in addition to other methods of classifying carrying capacity. Other methods include those set out by AMSA, an interstate maritime authority or a relevant national maritime authority for overseas vessels (Part 1).

**Question 2:** Are there any issues with the proposed changes above? Are there any other provisions in the Act that could be streamlined?

## 5.2. Definitions under the Act

### 5.2.1. Broadening the definition of 'State waters' (Part 1)

The Act defines 'State waters' as, firstly, the coastal waters of the State. These waters include waters from the low water mark on the coast to three nautical miles out to sea.<sup>16</sup> 'State waters' also includes other waters as specified in the Regulations (Schedule 1). These are Botany Bay, the Clarence River (Yamba), Coffs Harbour, Eden, the Hastings River (Port Macquarie), Jervis Bay, Newcastle Harbour, Port Kembla, Port Stephens and Sydney Harbour.

Waters beyond the three nautical mile limit are under Commonwealth jurisdiction.

The existing definition does not extend the Act to all waters in NSW, meaning that different legislation applies across the NSW marine environment. In effect, this means the same type of pollution event is covered by different legislation with differing standards, depending on its location.

Commonwealth legislation describes waters in the jurisdiction of the States and the Northern Territory in section 3 (1A) of the Commonwealth POTS Act as the 'sea near a State'. To align with the Commonwealth legislation, the Act could use this definition. This would extend NSW State waters beyond what is currently prescribed into any sea waters (or tidal waters) in NSW.

While this would provide greater coverage than what is currently covered and would therefore strengthen protection of the marine environment in those waters, it would require determining where sea water ends and fresh water starts in each of NSW's tributaries. This could be confusing for vessel users to determine whether they are on waters in which the Act does or does not apply.

**Proposal:** Extend the definition of NSW State waters to cover all waters in NSW where a vessel could be used. This means the Act would cover rivers such as the Murray, Murrumbidgee and Darling Rivers and smaller inland bodies of water, as well as the ports and areas that are currently covered. This definition would provide clarity for users.

<sup>16</sup> Part 10 of the Interpretation Act 1987 [legislation.nsw.gov.au/#/view/act/1987/15/full](http://legislation.nsw.gov.au/#/view/act/1987/15/full)

### 5.2.2. Broadening the definition of 'ships' to include all vessels (Part 1)

Currently, the Act applies to 'ships', which are defined as 'a vessel of any type capable of being used on or in water' and includes a range of specified vessels and platforms, but excludes 'pleasure vessels', meaning vessels used for recreational or sporting purposes and not for hire or reward. Currently, the MARPOL Convention and Commonwealth legislation apply to recreational vessels. No other State or the Northern Territory exempt recreational vessels.

**Proposal:** Amend the definition of 'ship' to include all vessels in NSW waters.

Excluding recreational vessels from the Act raises issues of equity. Recreational vessels of the same size as commercial vessels may have the same potential to cause harm to the marine environment, but are not equally covered by the Act.

Including recreational vessels in the definition of 'ship' would align with Australia's international obligations as a signatory to MARPOL, and strengthen protection for the marine environment. It would also align NSW with neighbouring jurisdictions.

This change would mean that marine pollution incidents from all vessels in NSW waters related to oil, noxious liquid substances, substances in packaged form, sewage, garbage and transfer operations will be subject to the Act.

This change would also mean that recreational vessels would be subject to the administrative requirements of the Act. In practice, these and other administrative requirements apply only to large vessels – that is, vessels with a gross tonnage (GT) of 400 or more, and/or vessels certified to carry more than 15 people, which are already subject to those requirements under the MARPOL convention and Commonwealth legislation. The administrative impacts of this change can be mitigated by the provision of easy to access plans and placards.

The key administrative requirements that could apply to recreational vessels if the Act is amended are:

- **Garbage disposal placards** - A vessel 12 metres or more in length requires at least one garbage disposal placard (or 'sticker') to inform the crew and passengers on how to dispose of garbage while on the vessel. AMSA provides four different types of garbage placards for vessels free of charge on its website.<sup>17</sup>
- **Garbage management plans** - A vessel with a GT of 100 or more is required to have a garbage management plan outlining procedures for minimising, collecting, storing, processing and disposing of garbage on the vessel. AMSA provides an online pro-forma garbage management plan for small vessels free of charge.<sup>18</sup>

**Question 3:** Are there any comments on the planned definition changes to 'State waters' and 'ships' in Part 1 of the Act?

<sup>17</sup> [amsa.gov.au/marine-environment/marine-pollution/garbage-management](https://amsa.gov.au/marine-environment/marine-pollution/garbage-management)

<sup>18</sup> [amsa.gov.au/marine-environment/marine-pollution/garbage-management-plan-example](https://amsa.gov.au/marine-environment/marine-pollution/garbage-management-plan-example)



## 5.3. Compliance requirements

### 5.3.1. Maintenance of sewage pollution prevention equipment

The Act prohibits the discharge of untreated sewage in NSW waters. This means vessels with a fixed toilet are required to:

- be equipped with a holding tank to store sewage for discharge into a reception facility; or
- be equipped with an approved sewage treatment system; or
- use devices with portable tanks, such as a toilet cassette for discharge into a reception facility; or
- not use the toilets in NSW State waters.

Improper installation of sewage equipment can cause illegal discharges of sewage to occur. Sewage equipment can also be altered or modified in ways that enable illegal discharges or disguise illegal discharges. Untreated sewage poses serious risks to human life and the marine environment.

Effective preventative measures are required under the Act to address this risk before illegal discharges of sewage from vessels occur into NSW waters.

**Proposal:** Introduce an offence for a vessel to have defective sewage pollution prevention equipment that could make unlawful discharges of sewage, or to alter or modify any equipment in a way that enables illegal discharges of sewage.

### 5.3.2. Proceeding directly against the insurer to recover costs (Part 13)

Under the Act, certain vessels are required to hold insurance against oil pollution. The requirement applies to most vessels with a GT of 400 or less and vessels with a length of 30 metres or less, that are not used for the purpose of recreational or sporting activities.

However, there is currently no ability for the State to seek compensation directly from the insurer for these vessels, if there was an oil pollution incident. Without this power, the State is limited in its ability to recover the cost of salvage (if required) and any clean-up operation if the vessel is damaged, of little value or abandoned by the owner.

**Proposal:** Introduce powers under the Act to proceed directly against the insurer to recover costs and expenses.

A similar power to seek compensation directly from the insurer for marine pollution incidents is contained in Commonwealth law through the *Protection of the Sea (Civil Liability) Act 1981* and the *Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008*. The proposed change will apply to most vessels with a GT of 400 or less or a length of 30 metres or more that are not used for recreational or sporting activities. This will cover circumstances that Commonwealth law does not apply to.

**Question 4:** Are there any comments on the proposed inclusion of the new offence in Part 5.3.1.?

**Question 5:** Are there any comments on the proposed changes to the compliance requirements in Part 13 of the Act?

## 5.4. Implementation

### 5.4.1. Powers to take preventative action (Part 15)

The Act authorises the Minister to take any preventative or clean-up action believed necessary to combat a pollution incident, but action can only take place in circumstances where it is believed that;

- a) a relevant discharge of a marine pollutant has occurred or is occurring, or
- b) there is a probability of a relevant discharge of a marine pollutant occurring.

These scenarios do not adequately cover instances where derelict or out-of-commission vessels are not attended to, or are abandoned by the owner. This potentially limits the State's ability to take proactive measures to remove marine pollutants from certain vessels within NSW waters on behalf of the community.

**Proposal:** Amend the Act to allow the State to issue a notice to the owner of a derelict or out-of-commission vessel requiring the removal of marine pollutants (e.g. oil) from the vessel.

### 5.4.2. Obtaining security (Parts 15 and 18)

In response to ship based marine pollution incidents in NSW waters, the Act allows for vessels to be detained until the costs incurred by the State for clean up or preventative action is reimbursed or security is given (under Part 15).

However, it is a prerequisite for the detention of a vessel believed to have discharged marine pollutants that the State must have reasonable cause to believe that the vessel will depart from State waters before the completion of the investigation into the source of the pollution (under Part 18).

For vessels unlikely to depart State waters (e.g. vessels in distress), the legislative powers in the Act are not sufficient for the State to obtain security for payment for incurred costs as well as any potential penalties imposed.

**Proposal:** Remove the prerequisite to have reasonable cause to believe a vessel will depart from State waters for the purpose of detaining a vessel and obtaining payment to reimburse the State for clean-up costs.

**Question 6:** Are there any comments on the proposed changes to the implementation requirements in Part 15 and Part 18 of the Act?

**Question 7:** Are there any other issues with the Act that you would like to raise?



# Appendix 1: Overview of the Marine Pollution Act 2012

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## Definitions and application of the Act

### Part 1 – Definitions

Covers the introductory provisions, definitions, interpretations of expressions used in both the Act and MARPOL and interpretations of certain other terms.

### Part 2 – Application of the Act and exclusions

Covers the Act's relationship with other laws, including Commonwealth legislation, the application of the Act to mixtures of marine pollutants, the treatment of discharges that occur outside NSW waters that enter NSW waters and discharges to which the Act does not apply.

## Marine Pollutants

### Part 3 – Prevention of pollution by oil

Covers offences relating to discharge of oil and oily residues and available defences. Defences include if a discharge occurred due to damage to ship, or for the purposes of securing safety or saving a life or combating pollution. These are standard defences that are available for each of the five marine pollutants: oil, noxious liquid substances, harmful substances in packaged form, sewage and garbage. There are additional defences available for the discharge of oil for certain specified ships.

### Part 4 – Prevention of pollution by noxious liquid substances

Covers offences related to noxious liquid substances, including the carriage of uncategorised noxious liquid substances and the discharge of noxious liquid substances. In addition to the standard defences, defences are also available for certain types of noxious liquid substances.

### Part 5 – Prevention of pollution by harmful substances in packaged form

Covers offences related to the carriage and jettisoning (leakage or accidental discharge) of harmful substances in packaged form, the standard defences, and defences for certain leakages causing substances to be washed overboard. This Part also includes provisions related to stores or equipment, leakages that are taken to be jettisoned and empty packaging.

### Part 6 – Prevention of pollution by sewage

Covers offences related to the discharge of sewage, the standard defences and defences for discharges of comminuted (reduced to minute particles) and disinfected sewage not less than 3 nautical miles from land and discharges of treated sewage.

### Part 7 – Prevention of pollution by garbage

Covers offences related to the discharge of garbage, the standard defences and defences for accidental loss of nets and other material and for the use of certain materials used for the purposes of securing cargo.

## Transfer operations

### **Part 8 – Prevention of pollution from transfer operations**

Covers the prevention of pollution from the transfer of oil and noxious liquid substances (or a combination of those) to or from a ship or a place on land.

## Reporting and compliance

### **Part 9 – Reporting of pollution incidents**

Specifies what a ‘reportable incident’ is and sets out the obligations of the master of a vessel and other persons to report pollution incidents, as well as outlining the penalties for failure to comply with these requirements or making a false or misleading report.

### **Part 10 – Emergency plans and other plans**

Covers requirements for certain vessels to carry emergency plans and other documents, including:

- Oil emergency plan
- Marine pollution emergency plan for noxious liquid substances
- Procedures and arrangements manual
- Garbage management plan
- Placards relating to garbage management disposal requirements

### **Part 11 – Record keeping**

Covers requirements for specified vessels to carry record books for oil, cargo, and garbage. The Part also outlines penalties for failure to comply with record keeping requirements.

### **Part 12 – Certification of construction of ships**

Covers certification requirements for certain types of vessels, including construction certificates, chemical tanker certificates and sewage pollution prevention certificates.

## Insurance

### **Part 13 – Ships must be insured against damage by discharge of oil**

Covers the requirements for certain ships to be insured against oil pollution and to carry evidence of insurance, as well as provisions relating to the detaining of ships.

## Ministerial powers

### **Part 14 – Reception facilities for collecting waste**

Covers the Ministerial powers related to the provision of reception facilities for prescribed waste, which includes oil, noxious liquid substances, sewage, garbage and residues of those substances.



## **Part 15 – Minister may take action to prevent or clean up pollution**

Covers the Ministerial powers available to take action to prevent or clean up marine pollution incidents in NSW waters. These Ministerial powers cover matters such as:

- the recovery of costs and expenses of preventative or clean-up action.
- detaining ships until recovery costs and expenses are paid, or security is given in the event of a marine pollution incident.
- the establishment of an Oiled Wildlife Care Network.

## **Enforcement and penalties**

### **Part 16 – Marine environment protection notices**

Covers the classification types of marine environment protection notices and associated administrative fees and costs involved with issuing and ensuring compliance with notices. Marine environment protection notices relate to clean-up, prevention and prohibition of marine pollution.

### **Part 17 – Recovery of costs, expenses and damages**

Covers provisions for the recovery of damages, costs or expenses relating to discharges which are prohibited by the Act. This part of the Act also sets out liability where oil or a noxious liquid substance is discharged from a pipeline used in, or in connection with a transfer operation.

### **Part 18 – Detention of ships and taking of securities**

Covers the requirements for detaining ships and the taking of securities. These provisions:

- include powers to detain ships that are believed to have discharged marine pollutants;
- make it an offence for a detained ship to depart state waters; and
- specify circumstances around when a detained ship must be released if security is provided or no liability is determined.

### **Part 19 – Enforcement**

Covers provisions for the appointment of inspectors and authorised persons as well as the scope of their regulatory powers. This includes inspectors and authorised persons being permitted to enter or inspect any place on land and not unnecessarily delaying ships from beginning a voyage.

### **Part 20 – Proceedings for enforcement**

Covers provisions relating to proceedings for enforcement against marine pollution offences. These relate to the timeframes for commencing proceedings, the courts where proceedings may be dealt with, requirements around evidence and records as well as the application of defence provisions.

## Regulatory and other powers

### **Part 21 – Regulations and orders**

Covers regulation making powers, including what matters can be regulated, the making of Orders and the ability to prescribe matters by reference to other instruments.

### **Part 22 – Miscellaneous**

Covers a number of miscellaneous provisions, including the delegation of powers under the Act and the servicing of instruments under the Act.

### **Schedule 2 – Savings, transitional and other provisions**

Covers what provisions may be contained in the Regulations and the savings and transitional provisions consequent on enactment of the Act.

# Appendix 2: Overview of the Marine Pollution Regulation 2014

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## Control of toilet and galley waste

### **Division 1 – Preliminary**

Specifies that large ships are exempt from the toilet and galley waste provisions and lists definitions relevant to this part of the Regulations.

### **Division 2 – Sewage from vessels**

Sets offences and defences for the discharge of sewage into navigable waters. It also specifies no discharge zones for treated sewage, as well as certification requirements for on-board sewage treatment systems.

### **Division 3 – Holding tanks and toilets on Class 1 and Class 4 commercial vessels**

Sets the required holding tank and toilet specifications for Class 1 and Class 4 commercial vessels, including certification, holding capacity, design and construction, and maintenance requirements. Class 1 commercial vessels are passenger vessels. Class 4 commercial vessels are hire and drive vessels used by the hirer only for recreational purposes.

### **Division 4 – Plans of management about waste**

Sets requirements for management plans for waste management on Class 1 and Class 4 commercial vessels.

### **Division 5 – Other discharge from vessels**

Sets requirements for greywater tanks and discharge from commercial vessels, including penalties for failure to comply. Applies to all commercial vessels on Sydney Harbour and the Murray River, and for Class 1 and Class 4 commercial vessels on all other waterways.



## **Division 6 – Directions regarding discharge of waste**

Provides for an authorised officer as per the *Marine Safety Act 1998* to issue directions to the owner or master of a vessel discharging sewage or other waste in contravention of the toilet and galley waste provisions.

## **Emergency plans and other plans**

### **Division 1 – Oil spill response plans for trading ships**

Sets requirements for trading ships on voyages to or from Lord Howe Island to have on board an oil spill response plan and any equipment and materials as required by the plan.

### **Division 2 – Shipboard garbage management plan**

Exempts ships able to carry more than 15 but less than 37 persons as having to carry a shipboard garbage management plan as per section 107 of the Act.

## **Polluting relating to transfer operations**

### **Division 1 – Preliminary**

Outlines what references to pipelines and purpose-built pipelines include, and sets exemptions from the Act for certain people relating to a discharge from a pipeline that is not a regulated purpose-built pipeline.

### **Division 2 – Reporting of certain pollution incidents relating to transfer operations**

Sets reporting requirements for pollution incidents relating to transfer operations, including penalties for failure to comply with the requirements.

## **Reporting of pollution incidents**

Sets reporting requirements for sections 87-90 and 92 of the Act.

## **Certification of construction of ships**

Prescribes construction certificates and chemical tanker certificates issued by other jurisdictions for the purposes sections 150 and 151 of the Act. It also outlines the administrative requirements the master and owner of a ship must comply with for vessels in which a NSW certificate is in force.

## **Miscellaneous**

Provides for various administrative matters related to the operation of the Act, including prescribed officers, Ministerial orders, fees, decisions reviewable by the Civil and Administrative Tribunal, vessel exemptions, delegations, and savings relating to the *Marine Pollution Regulation 2006* and *Marine Pollution Act 1987*.

## **Schedules**

**Schedule 1: State waters** prescribes the various bodies of water which constitute State waters as referenced in the definition of State waters in the Act.

## Schedules 2 to 7: Modification of Commonwealth Marine Orders

Adopts and modifies various Commonwealth Marine Orders which give effect to MARPOL. The Orders are modified in that parts of them that are not applicable to NSW are not included. The Orders are:

- *Modification of Marine Order 1 (Administration) 2013*
- *Modification of Marine Order 91 (Marine pollution prevention – oil) 2014*
- *Modification of Marine Order 93 (Marine pollution prevention – noxious liquid substances) 2014*
- *Modification of Marine Order 94 (Marine pollution prevention – packaged harmful substance) 2014*
- *Modification of Marine Order 96 (Marine pollution prevention – sewage) 2013*

**Schedule 8: Regulated purpose-built pipelines** - sets out the regulated purpose-built pipelines referenced in Part 5 of the Regulations.

**Schedule 9: Report of reportable pollution incident relating to transfer operation** - sets the reporting requirements relating to reportable pollution incidents relating to a transfer operation.

## Appendix 3: Recent amendments to MARPOL

Since enactment of the Act, the IMO has made a number of changes to the MARPOL convention.<sup>19</sup>

No	Provision	Amendment required	Reason	Comments
1	Section 3	Insert a new definition of “fishing gear” using the wording from regulation 1 of MARPOL Annex V.	Amendments to Annex V of MARPOL - see IMO Resolution MEPC.201(62).	This is a consequence of amendments to regulation 7 of MARPOL Annex V, where reference to synthetic fishing nets or synthetic material used for their repair has been replaced by “fishing gear”.

<sup>19</sup> [imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Pages/Default.aspx](http://imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Pages/Default.aspx)



No	Provision	Amendment required	Reason	Comments
2	Section 3	Amend the existing definition of “cargo record book”	Amendments to Annex II of MARPOL – see IMO Resolution MEPC.314(74).	This is a consequence of amendments to regulation 15 of MARPOL Annex II to make provision for ships to carry record books in electronic form.
3		Amend the existing definition of “garbage record book”	Amendments to Annex V of MARPOL – see IMO Resolution MEPC.314(74).	This is a consequence of amendments to regulation 10 of MARPOL Annex V to make provision for ships to carry record books in electronic form.
4		Amend the existing definition of “oil record book”	Amendments to Annex I of MARPOL – see IMO Resolution MEPC.314(74).	This is a consequence of amendments to regulations 17 and 36 of MARPOL Annex I to make provision for ships to carry record books in electronic form.
5	Section 63 defence if discharge caused by damage	Insert a new subsection (C) to provide that, if the garbage is fishing gear, Division 1 does not apply if the discharge was made for the purposes of protecting the marine environment.	Amendments to Annex V of MARPOL – see IMO Resolution MEPC.201(62).	To give effect to new regulation 7.1.4 of MARPOL Annex V.
6	Section 65 defence if accidental loss of fishing nets	Replace the words “a synthetic fishing net, or synthetic material used in the repair of such a net, on a ship.....(etc)” with “fishing gear from a ship...(etc)”. Also amend the title of the section.	Amendments to Annex V of MARPOL – see IMO Resolution MEPC.201(62).	The amendment is designed to ensure not just fishing nets are captured within Annex V, but also items such as hooks, pots, lines and ropes.
7	Section 66 defence in relation to dunnage, lining or packing materials.	Delete the section.	Amendments to Annex V of MARPOL – see IMO Resolution MEPC.201(62).	The discharge of this type of garbage at sea is no longer permitted.

No	Provision	Amendment required	Reason	Comments
8	New provision	A new provision is required in Division 2 of part 7 to give effect to Regulation 4.1.1 of MARPOL Annex V to provide a defence, while a ship is en route and as far as practicable from the nearest land, for the discharge of comminuted or ground food waste providing the ship is at least 3 nautical miles from the nearest land. Such comminuted or ground food wastes must be capable of passing through a screen with openings no greater than 25mm.	Amendments to Annex V of MARPOL - see IMO Resolution MEPC.201(62).	New regulation 4.1.1 of MARPOL Annex V.
9	New provision	A new provision is required in Division 2 of part 7 to give effect to Regulation 4.1.2 of MARPOL Annex V to provide a defence, while a ship is en route and as far as practicable from the nearest land, for the discharge of food waste that has not been ground or comminuted providing the ship is at least 12 nautical miles from the nearest land.	Amendments to Annex V of MARPOL - see IMO Resolution MEPC.201(62).	New regulation 4.1.2 of MARPOL Annex V.
10	New provision	A new provision is required in Division 2 of part 7 to give effect to Regulation 4.1.3 of MARPOL Annex V to provide a defence, while a ship is en route and as far as practicable from the nearest land, for the discharge of cargo residues that cannot be recovered using commonly available methods for unloading, providing the ship is at least 12 nautical miles from the nearest land. Such cargo residues shall not contain any substances classified as harmful to the marine environment, in accordance with the criteria set out in Appendix I to MARPOL Annex V.	Amendments to Annex V of MARPOL - see IMO Resolution MEPC.201(62).	New regulation 4.1.3 of MARPOL Annex V.

No	Provision	Amendment required	Reason	Comments
11	New provision	A new provision is required in Division 2 of part 7 to give effect to Regulation 4.1.4 of MARPOL Annex V to provide a defence, while a ship is en route and as far as practicable from the nearest land, for the discharge of animal carcasses, taking into account guidelines developed by the International Maritime Organization.	Amendments to Annex V of MARPOL - see IMO Resolution MEPC.201(62).	New regulation 4.1.4 of MARPOL Annex V. Note that the IMO guidelines are Resolution MEPC.295(71), 2017 <i>Guidelines for the Implementation of MARPOL Annex V</i> .
12	New provision	A new provision is required in Division 2 of part 7 to give effect to Regulation 4.2 of MARPOL Annex V to provide a defence for the discharge of cleaning agents or additives contained in cargo hold, deck and external surfaces wash water, providing these substances are not harmful to the marine environment, taking into account guidelines developed by the International Maritime Organization.	Amendments to Annex V of MARPOL - see IMO Resolution MEPC.201(62).	New regulation 4.2 of MARPOL Annex V. Note that the IMO guidelines are Resolution MEPC.295(71), 2017 <i>Guidelines for the Implementation of MARPOL Annex V</i> .
13	New provision	A new provision is required in Division 2 of part 7 to give effect to Regulation 4.4 of MARPOL Annex V to provide that when garbage is mixed or contaminated by other substances prohibited from discharge or having different discharge requirements, the more stringent requirements apply.	Amendments to Annex V of MARPOL - see IMO Resolution MEPC.201(62).	New regulation 4.4 of MARPOL Annex V.
14	New provision	A new provision is required in Division 2 of part 7 to give effect to Regulation 5 of MARPOL Annex V by setting out the requirement for discharge of garbage from fixed or floating platforms.	Amendments to Annex V of MARPOL - see IMO Resolution MEPC.201(62).	New regulation 5 of MARPOL Annex V.



No	Provision	Amendment required	Reason	Comments
15	Section 107 obligation to carry shipboard garbage management plan	The use of the term “large ship” is no longer appropriate as this requirement now applies to every ship with a GT of 100 and above (was 400) and every ship which is certified to carry 15 or more persons. Suggest s.107(1) and s.107(2) be amended to refer to “a prescribed ship”, and a new s.107(3) be added. This would be similar in drafting style to section 100.	Amendments to Annex V of MARPOL - see IMO Resolution MEPC.201(62).	The requirement for ships to carry Garbage Management Plans was extended from ships with a GT of 400 or more to ships with a GT of 100 or more.
16	Section 108(2)(a) contents of shipboard garbage management plan	Add the word “minimising,” before “collecting”.	Amendments to Annex V of MARPOL - see IMO Resolution MEPC.201(62).	Extra word was added to regulation 10(2) of MARPOL Annex V.
17	New provision	A new provision is required in Division 5 of Part 10 to apply the requirement for placards to “fixed or floating platforms”	Amendments to Annex V of MARPOL - see IMO Resolution MEPC.201(62).	This reference was added in Regulation 10.1.1 of MARPOL Annex V.
18	Part 14 – reception facilities for collecting waste	Include exhaust gas cleaning residues as a ‘prescribed waste’	New MARPOL international lower sulphur fuel emission standards will come into effect from 1 January 2020 – see IMO Resolution MEPC.176(58). The use of exhaust gas cleaners is an approved equivalent method of complying with this new standard. Exhaust gas cleaners (or “scrubbers”) generate residues that must be retained on board the ship for disposal ashore.	In 2008, the IMO agreed that all ships and vessels will be required to use fuel which contains a maximum of 0.5 per cent m/m sulphur from 1 January 2020.
19	Various	In addition to the specific amendments highlighted above, a number of minor amendments are required purely as a consequence of the renumbering of regulations in MARPOL Annexes III and V.	Amendments to Annexes III and V of MARPOL - see IMO Resolutions MEPC.193(61) and MEPC.201(62).	Numbering changes only.

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ISBN 978-1-925891-86-7  
CC024