

(Reprint No. 1)



SOUTH AUSTRALIA

## ENVIRONMENT PROTECTION (SEA DUMPING) ACT 1984

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 21 October 1995.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

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*Resolution adopted on 24 September 1980*

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# ENVIRONMENT PROTECTION (SEA DUMPING) ACT 1984

being

Environment Protection (Sea Dumping) Act 1984 No. 59 of 1984  
[Assented to 31 May 1984]<sup>1</sup>

as amended by

Environment Protection (Sea Dumping) (Consistency with Commonwealth Act) Amendment Act 1993 No. 74  
of 1993 [Assented to 21 October 1993]<sup>2</sup>

<sup>1</sup> Act not in operation at the date of this reprint.

<sup>2</sup> Came into operation 21 October 1995 (by virtue of the Acts Interpretation Act 1915, s. 7(5)).

N.B. The amendments effected to this Act by the *Environment Protection (Sea Dumping) (Coastal Waters and Radioactive Material) Amendment Act 1991* had not been brought into operation at the date of, and have not been included in, this reprint.

**NOTE:**

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix.

An Act to provide for the protection of the environment by regulating the dumping into the sea, and the incineration at sea, of wastes and other matter and the dumping into the sea of certain other objects; and for related purposes.

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Environment Protection (Sea Dumping) Act 1984*.

**Commencement**

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

**Interpretation**

3. (1) In this Act, unless the contrary intention appears—

"coastal waters" means, in relation to the State, that part of the sea that is from time to time included in the coastal waters of the State by virtue of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth;

"the Convention" means the Convention entitled "Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter" being the Convention of a copy of which in the English language is set out in schedule 1, as amended by—

- (a) the amendments set out in the Attachment to the Resolution a copy of which in the English language is set out in schedule 2; and
- (b) the amendments set out in the Attachment to the Resolution a copy of which in the English language is set out in the schedule 3; and
- (c) any other amendment to the Convention—
  - (i) which is accepted by Australia; and
  - (ii) which, as a copy of that amendment in the English language, is set out in the regulations;

"holder of a permit" means the person to whom a permit has been granted under Part 3;

"inspector" means—

- (a) a person appointed as an inspector under section 20; or
- (b) a member of a police force who is an inspector by virtue of section 20;

"owner", in relation to a vessel, aircraft or platform, includes—

- (a) every person who is a co-owner of the vessel, aircraft or platform or of any part of, or any share in, the vessel, aircraft or platform; and

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- (b) every person who has the use or control (whether alone or jointly with another person or other persons) of the vessel, aircraft or platform;

"**permit**" means a permit granted under Part 3;

"**person in charge**" means—

- (a) in relation to a vessel—the master or other person in charge of the vessel; or
- (b) in relation to an aircraft—the person in charge of the aircraft; or
- (c) in relation to a platform—the person in charge of the operations conducted on or from the platform;

"**platform**" means any manmade structure at sea, that is fixed to the seabed beneath coastal waters;

"**premises**" means—

- (a) a building, structure or place (including a vehicle); or
- (b) a part of premises as defined above.

(2) Except so far as the contrary intention appears, an expression that is used both in this Act and in the Convention (whether or not a particular meaning is assigned to it by the Convention) has, in this Act, the same meaning as in the Convention.

**Exemption**

4. This Act does not apply—

- (a) in relation to the disposal of wastes or other matter directly arising from, or related to, the exploration, exploitation and associated offshore processing, of seabed mineral resources; or
- (b) in relation to a vessel, aircraft or platform belonging to an arm of the Defence Forces of Australia or to the naval, military or air forces of a foreign country.

**Act to bind the Crown**

5. (1) This Act binds the Crown but nothing in this Act renders the State liable to be prosecuted for an offence.

(2) Subsection (1) does not affect any liability of a person in charge of a vessel, aircraft or platform of which the State is the owner to be prosecuted for an offence.

**PART 2**  
**REGULATION OF DUMPING AND INCINERATION AT SEA**

**DIVISION 1—DUMPING AT SEA**

**Dumping of wastes or other matter**

6. Where, otherwise than in accordance with a permit, any wastes or other matter are dumped into coastal waters from any vessel, aircraft or platform, the owner and the person in charge of the vessel, aircraft or platform and the owner of the wastes or other matter are each guilty of an offence.

**Dumping of vessels, etc.**

7. Where, otherwise than in accordance with a permit, a vessel, aircraft or platform is dumped into coastal waters, the owner of the vessel, aircraft or platform that is so dumped is guilty of an offence and, in addition, where the dumping takes place from a vessel, aircraft or platform, the owner and the person in charge of the vessel, aircraft or platform are each guilty of an offence.

**Loading of wastes or other matter for dumping**

8. (1) Where, otherwise than in accordance with a permit, any prescribed matter is loaded on any vessel or aircraft in the State or in coastal waters, or on any platform, for the purpose of being dumped into the sea or being incinerated at sea, the owner and the person in charge of the vessel, aircraft or platform and the owner of the prescribed matter are each guilty of an offence.

(2) In subsection (1)—

"prescribed matter" means—

- (a) any wastes or other matter; or
- (b) any vessel, aircraft or platform.

**Defences to charge of an offence**

9. It is a defence to a charge of an offence under section 6 or 7 if the defendant proves that—

- (a) the dumping the subject of the charge was necessary to secure the safety of human life, or of a vessel, aircraft or platform, at sea in a case of *force majeure* caused by stress of weather; or
- (b) the dumping the subject of the charge was the only reasonable way of averting a threat to human life, or to the safety of a vessel, aircraft or platform, at sea and there was every probability that the damage caused by such dumping would be less than would otherwise occur,

and, in either case, that—

- (c) the dumping was so conducted as to minimise the likelihood of damage to human or marine life; and
- (d) a report of the dumping, setting out the prescribed information, was furnished to the Minister as soon as practicable after the occurrence of the dumping.

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**Offences under this Division**

10. The penalty upon conviction of an offence under this Division is a fine not exceeding—

- (a) where the offence relates to wastes or other matter to which Annex I to the Convention applies—the sum of fifty thousand dollars if the offender is a natural person or the sum of one hundred thousand dollars if the offender is a body corporate; or
- (b) where the offence relates to wastes or other matter to which Annex II to the Convention applies—the sum of twenty-five thousand dollars if the offender is a natural person or the sum of fifty thousand dollars if the offender is a body corporate; or
- (c) in any other case—the sum of ten thousand dollars if the offender is a natural person or the sum of twenty thousand dollars if the offender is a body corporate.

**DIVISION 2—INCINERATION AT SEA**

**Incineration at sea**

11. (1) This section applies to incineration at sea carried out on, or carried out from—

- (a) a vessel in coastal waters; or
- (b) a platform.

(2) The incineration at sea of wastes or other matter listed in paragraphs 2, 3, 4, 6 and 7 of Annex I to the Convention, being incineration to which this section applies, is prohibited.

(3) The incineration at sea, otherwise than in accordance with a permit, of wastes or other matter listed in paragraphs 1 and 5 of Annex I to the Convention, being incineration to which this section applies, is prohibited.

(4) The incineration at sea, otherwise than in accordance with a permit, of wastes or other matter listed in Annex II, being incineration to which this section applies, is prohibited.

(5) The incineration at sea, otherwise than in accordance with a permit, of any wastes or other matter (other than wastes or other matter referred to in subsection (2), (3) or (4)), being incineration to which this section applies, is prohibited.

(6) The owner and the person in charge of a vessel or platform on which incineration at sea in contravention of this section is carried out and the owner of the wastes or other matter so incinerated are each guilty of an offence against this section and liable, on conviction, to a fine not exceeding—

- (a) where the incineration was in contravention of subsection (2)—the sum of fifty thousand dollars if the offender is a natural person or the sum of one hundred thousand dollars if the offender is a body corporate; or
- (b) where the incineration was in contravention of subsection (3)—the sum of forty thousand dollars if the offender is a natural person or the sum of eighty thousand dollars if the offender is a body corporate; or
- (c) where the incineration was in contravention of subsection (4)—the sum of twenty-five thousand dollars if the offender is a natural person or the sum of fifty thousand dollars if the offender is a body corporate; or

- (d) where the incineration was in contravention of subsection (5)—the sum of ten thousand dollars if the offender is a natural person or the sum of twenty thousand dollars if the offender is a body corporate.

### DIVISION 3—REPARATION ON ACCOUNT OF DUMPING

#### Restoration of environment

##### 12. Where—

- (a) wastes or other matter are, or a vessel, aircraft or platform is, dumped into coastal waters; and
- (b) the Minister considers that that dumping is likely to—
- (i) cause an obstruction, or constitute a danger, to vessels; or
  - (ii) result in harm to human or marine life; or
  - (iii) result in interference with the exercise of the sovereign rights of Australia as a coastal State to explore and exploit the natural resources of the seabed and subsoil lying beneath Australian waters,

the Minister may cause to be taken such steps as he thinks proper to repair or remedy any condition, or to mitigate any damage, arising from that dumping.

#### Liability for expenses incurred by the State resulting from dumping

##### 13. (1) Where—

- (a) a person has been convicted of an offence under section 6 or 7; and
- (b) by reason of the exercise by the Minister of his powers under section 12, the State has incurred expenses or other liabilities in repairing or remedying any condition, or mitigating any damage, arising from the dumping that constituted the offence,

a person so convicted is liable to pay to the State an amount equal to the total amount of those expenses and liabilities of the State and that amount may be recovered, as a debt due to the State by the person, by action in a court of competent jurisdiction.

(2) Where two or more persons have been convicted of offences referred to in subsection (1) in respect of the same act of dumping, the State is not, by virtue of that subsection, entitled to recover from those persons amounts that, in the aggregate, exceed the total amount of the expenses and liabilities incurred by the State, by reason of the exercise by the Minister of his powers under section 12, as a result of that dumping.

(3) Subject to subsection (4), where the owner of a vessel, aircraft or platform—

- (a) has been convicted of an offence under section 6 or 7 with respect to dumping from the vessel, aircraft or platform; and
- (b) is liable by virtue of subsection (1) to pay an amount to the State in respect of that offence,

that amount is a charge upon the vessel, aircraft or platform, as the case may be, and, in the case of a vessel or aircraft, the vessel or aircraft may be detained by an inspector until the amount is paid or security for the payment of the amount is provided to the satisfaction of the Minister.

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(4) Subsection (3) does not entitle a person to detain a vessel or aircraft unless the vessel or aircraft is in the State or in coastal waters.

(5) Where—

- (a) a vessel that has been detained under subsection (3) goes to sea before it is released from detention; or
- (b) an aircraft that has been detained under subsection (3) leaves the State before it is released from detention,

the master and owner of the vessel or aircraft, as the case may be, shall each be guilty of an offence and shall be liable—

- (c) in the case of the master—to a fine not exceeding the sum of five thousand dollars or imprisonment for a term not exceeding two years, or both; or
- (d) in the case of the owner, if the owner is not a body corporate—to a fine not exceeding the sum of five thousand dollars or imprisonment for a term not exceeding two years, or both; or
- (e) in the case of the owner, if the owner is a body corporate—to a fine not exceeding the sum of ten thousand dollars.

**PART 3  
PERMITS**

**Application for permit**

14. (1) Subject to this Act, a person may make an application to the Minister for the grant of a permit under this Act.

(2) Subject to section 15, a person may not make an application under subsection (1)—

- (a) in relation to the dumping or loading for dumping of any wastes or other matter to which Annex I to the Convention applies; or
- (b) in relation to the incineration at sea of wastes or other matter listed in paragraph 2, 3, 4, 6 and 7 of Annex I to the Convention.

(3) An application for a permit must be made in accordance with the appropriate form approved by the Minister from time to time.

(4) Where an application is made for the grant of a permit and the Minister requires further information for the purpose of enabling him to deal with the application, he may, by notice in writing served on the applicant not later than sixty days after the application is made, require the applicant to furnish to the Minister, as specified in the notice, a statement in writing setting out that further information and, if a notice is so served, the application shall be deemed, for the purposes of section 15, not to have been duly made until the statement is furnished.

(5) Where, in his preliminary consideration of an application for a permit for dumping, the Minister forms the view that, in order to enable him to decide whether a permit should be granted or not, or to formulate conditions that should be imposed in respect of a permit if a permit is granted, it will be necessary for research and analysis to be undertaken to determine the effect that the proposed dumping may have on the marine environment, the Minister, before giving further consideration to the application, may require the applicant to enter into an agreement with the State that includes one or more of the following provisions:

- (a) that the applicant will, at his own expense but subject to the direction and supervision of the Minister, undertake such research and analysis as is specified in the agreement, being research and analysis relating to the effect that the proposed dumping might have on the marine environment;
- (b) that the applicant will reimburse the State the amount, as ascertained by the Minister, of any expense incurred by the State in undertaking research and analysis of a kind referred to in paragraph (a);
- (c) that the applicant will reimburse the State the amount, as ascertained by the Minister, of any expense incurred by the State in supervising any research and analysis undertaken by the applicant in accordance with the agreement;
- (d) that, if the applicant fails, or neglects, to carry out any research or analysis as required by the agreement—
  - (i) the State may undertake the necessary research and analysis; and
  - (ii) in that event, the applicant will reimburse the State the amount, as ascertained by the Minister, of the expense incurred by the State in connection with such undertaking;

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- (e) that the applicant is to give a security to the State for the payment of any amount that he may become liable to pay to the State under the agreement;
- (f) that the applicant will report to the Minister the results of any research and analysis undertaken by him in accordance with the agreement.

(6) Where an applicant is required under subsection (5) to enter into an agreement with the State providing for the undertaking of research and analysis as specified in the agreement, his application shall be deemed, for the purposes of section 15, not to have been duly made until the research and analysis has been completed to the satisfaction of the Minister.

**Grant of permit**

15. (1) Subject to this section, the Minister may, in his discretion, grant, or refuse to grant, a permit to a person who has made an application in accordance with section 14.

(2) The Minister shall give a decision under subsection (1) on an application for a permit within ninety days after the application is made.

(3) Subject to subsection (4), a permit for dumping or loading for dumping shall not be granted in respect of any wastes or other matter to which Annex I to the Convention applies.

(4) The Minister may grant a permit for dumping or loading for dumping wastes or other matter to which Annex I to the Convention applies if, in the opinion of the Minister, there is an emergency posing an unacceptable risk relating to human health and admitting no other feasible solution.

(5) In considering the granting of a permit for dumping or loading, the Minister shall have regard to—

- (a) the factors set forth in Annex III to the Convention; and
- (b) in a case to which Section B of Annex II to the Convention applies—the matters set out in that Section; and
- (c) in a case to which Section D of Annex II to the Convention applies—any recommendations referred to in that Section.

(6) A permit for incineration at sea of wastes or other matter listed in paragraphs 1 and 5 of Annex I to the Convention shall not be granted except in accordance with the Regulations for the Control of Incineration of Wastes and Other Matter at Sea set forth in the Addendum to that Annex and, in considering the granting of such a permit, the Minister shall take full account of the Technical Guidelines on the Control of Incineration of Wastes and Other Matter at Sea adopted by the Contracting Parties to the Convention in consultation.

(7) A permit for incineration at sea of wastes or other matter listed in Annex II to the Convention shall not be granted except in accordance with the Regulations for the Control of Incineration of Wastes and Other Matter at Sea set forth in the Addendum to Annex I, to the extent that those regulations are applicable, and, in considering the granting of such a permit, the Minister shall take full account of the Technical Guidelines on the Control of Incineration of Wastes and Other Matter at Sea adopted by the Contracting Parties to the Convention in consultation, to the extent that those guidelines are applicable.

(8) Before granting a permit for dumping, the Minister may require the applicant to enter into an agreement with the State that includes one or more of the following provisions:

- (a) that the applicant will, at his own expense but subject to the direction and supervision of the Minister, undertake such research and monitoring as is specified in the agreement, being research and monitoring relating to the consequences of the release into the marine environment through the proposed dumping operation of any contaminants;
- (b) that the applicant will investigate, as specified in the agreement and subject to the direction and supervision of the Minister, the possibility of avoiding or reducing the need for further dumping by him;
- (c) that the applicant will reimburse the State the amount, as ascertained by the Minister, of any expense incurred by the State in undertaking research, monitoring or investigation of a kind referred to in a preceding paragraph;
- (d) that the applicant will reimburse the State the amount, as ascertained by the Minister, of any expense incurred by the State in supervising any research, monitoring or investigation undertaken by the applicant in accordance with the agreement;
- (e) that, if the applicant fails, or neglects, to carry out any research, monitoring or investigation as required by the agreement—
  - (i) the State may undertake the necessary research, monitoring or investigation, as the case may be; and
  - (ii) in that event, the applicant will reimburse the State the amount, as ascertained by the Minister, of the expense incurred by the State in connection with such undertaking;
- (f) that the applicant is to give a security to the State for the payment of any amount that he may become liable to pay to the State under the agreement;
- (g) that the applicant will report to the Minister the results of any research, monitoring or investigation undertaken by him in accordance with the agreement.

(9) A permit granted under this section shall be expressed, in accordance with the Convention, to be either a general permit or a special permit.

#### **Suspension and revocation of permits**

16. (1) The Minister may, at any time, by notice in writing served on the holder of a permit, vary, suspend or revoke the permit where he is satisfied that—

- (a) a provision of this Act relating to the permit or a condition imposed in respect of the permit has been contravened; or
- (b) it is necessary or expedient to do so in order properly to regulate the activities with which this Act is concerned.

(2) A suspension of a permit may be of indefinite duration or for a period specified in the notice.

(3) Where proceedings for an offence in relation to a permit are commenced during a period of suspension of the permit, the suspension may be continued until the proceedings (including any appeal) are completed.

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(4) During the period of suspension of a permit, the permit has no force or effect, but the period of currency of the permit continues to run.

(5) The suspension of a permit does not prevent its revocation.

(6) The revocation or suspension of a permit takes effect when notice of the revocation or suspension, as the case may be, is served on the holder of the permit or on such later date (if any) as is specified in the notice.

**Conditions in respect of permits**

17. (1) The Minister may, when granting a permit or at any time while a permit is in force, impose conditions in respect of the permit and may, at any time, revoke, suspend or vary, or cancel a suspension of, a condition so imposed.

(2) A condition imposed in respect of a permit, or a revocation, suspension, variation or cancellation of suspension of such a condition, takes effect when notice of the condition or of the revocation, suspension, variation or cancellation is served on the holder of the permit or on such later date (if any) as is specified in the notice.

**Radioactive wastes or other matter**

18. (1) Where the Minister proposes to grant a permit for the dumping or loading of wastes or other matter that are radioactive, the Minister shall—

- (a) state in the permit that the permit is a permit for dumping or loading, as the case may be, radioactive wastes or other matter; and
- (b) appoint such escorting officers (if any) as he thinks necessary to be present on board any vessel on which the wastes or other matter are to be carried for the purpose of—
  - (i) observing the loading, and stowing, on board the vessel of the wastes or other matter; and
  - (ii) monitoring the levels of radiation caused by the wastes or other matter; and
  - (iii) observing the dumping into the sea of the wastes or other matter in accordance with the permit; and
  - (iv) giving to the master of the vessel—
    - (A) such directions as the escorting officer thinks necessary in relation to any matter arising out of the presence on board the vessel of the wastes or other matter; or
    - (B) such directions as the escorting officer thinks necessary to ensure that the handling or stowing of the wastes or other matter on board the vessel, or the dumping into the sea of such wastes or other matter, is in accordance with the permit or with any condition imposed in respect of the permit (including a direction to cease loading, or to cease dumping into the sea, the wastes or other matter or any part of the wastes or other matter).

(2) It shall be a condition of every permit for dumping or loading radioactive wastes or other matter that the holder of the permit will ensure that—

- (a) any escorting officers appointed by the Minister in relation to the permit—
  - (i) are received on board any vessel used, or to be used, for the carriage of the wastes or other matter concerned during all times when their presence on board is necessary for the purpose of carrying out their functions; and
  - (ii) are supplied with any necessary food and accommodation, being food and accommodation of an acceptable standard, when they are on board the vessel; and
- (b) in the case of a permit for dumping—any escorting officers on board when dumping has ceased are, in accordance with arrangements agreed between the holder of the permit and the Minister, returned to the port of embarkation or such other place as is agreed between the holder of the permit and the Minister.

(3) When a vessel that has on board an escorting officer for the purpose of carrying out his functions in relation to radioactive wastes or other matter on board, or to be loaded on board, the vessel, the person in charge of the vessel—

- (a) shall permit the escorting officer to have access to every part of the vessel to which it is necessary that he have access for the purpose of carrying out his functions; and
- (b) when requested by the escorting officer so to do, shall give to the escorting officer any information in the possession of the person in charge concerning the radioactive wastes or other matter; and
- (c) shall not take any action, or cause or permit any action to be taken, in relation to the radioactive wastes or other matter that is in contravention of any direction given to him by the escorting officer in the carrying out of his functions.

Penalty: Ten thousand dollars.

(4) It is a defence to a charge of an offence under subsection (3)(c) if the person in charge of the vessel proves that the action the subject of the charge was necessary to ensure the safety of the vessel or of any person on board.

(5) For the purposes of this section, wastes or other matter shall not be regarded as being radioactive if they are not, by virtue of regulations made under the *Radiation Protection and Control Act 1982* subject to any control under Part 3 of that Act.

#### **Applications to Minister to vary operation of permits**

19. (1) The holder of a permit may make application to the Minister for the revocation or variation of a condition imposed in respect of the permit.

(2) The holder of a permit that is suspended may make application to the Minister for the cancellation of that suspension.

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(3) The Minister shall, within sixty days after the receipt of an application under subsection (1) or (2)—

- (a) if he is satisfied that the application should be granted—
  - (i) revoke the condition;
  - (ii) vary the condition in accordance with the application;
  - (iii) cancel the suspension of the permit,  
as the case may be;
- (b) if he is not so satisfied—refuse to grant the application.

**Matters to be published in Gazette**

19A. The Minister must cause to be published in the *Gazette* particulars of—

- (a) applications for permits; and
- (b) permits granted and any conditions imposed in respect of those permits; and
- (c) refusals to grant permits; and
- (d) any revocation, suspension or cancellation of suspension of a permit; and
- (e) any revocation, suspension, variation or cancellation of suspension of a condition imposed in respect of a permit.

**PART 4  
INSPECTORS**

**Appointment of inspectors**

20. (1) The Minister may, by instrument in writing, appoint persons to be inspectors for the purposes of this Act.

(2) Every member of the police force of the State shall, by virtue of his office, be an inspector for the purposes of this Act.

**Identity cards and their production**

21. (1) The Minister shall, subject to subsection (2), issue to every inspector an identity card stating the name of that person and the fact that he is an inspector under this Act.

(2) The issue of an identity card is not required in the case of an inspector who is a member of the police force of the State.

(3) An inspector shall, upon demand by any person in relation to whom he is exercising or proposing to exercise any of his powers under this Act, produce his identity card, or where the inspector is a member of the police force not in uniform, his warrant card, for the inspection of that person.

(4) Where a person in possession of an identity card issued to him under subsection (1) ceases to be an inspector, he shall forthwith return the identity card to the Minister.

Penalty: One thousand dollars.

**Boarding of vessels, etc., by inspector**

22. (1) This section applies to—

- (a) any vessel or any aircraft that is in the State;
- (b) any vessel, or any aircraft capable of landing on water, that is in coastal waters, or any platform.

(2) An inspector may, with such assistance as he thinks necessary, board any vessel, aircraft or platform to which this section applies for the purpose of exercising the functions of an inspector in accordance with section 24 if he believes on reasonable grounds that there is in, or on, that vessel, aircraft or platform—

- (a) any matter or thing that is to be dumped into the sea or incinerated at sea; or
- (b) any matter or thing that may afford evidence as to the commission of an offence against this Act,

and, in the case of a vessel or aircraft, may, for that purpose, stop and detain that vessel or aircraft.

(3) An inspector may require any person on board a vessel, aircraft or platform to which this section applies whom he finds committing, or whom he suspects on reasonable grounds of having committed, an offence against this Act to state his full name and usual place of residence.

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(4) Where an inspector believes on reasonable grounds that a vessel to which this section applies and that is in coastal waters has been used or otherwise involved in the commission of an offence against this Act, he may bring, or require the person in charge of the vessel to bring, the vessel to the nearest port in South Australia to which it is safe and practicable to bring the vessel.

(5) An inspector may, for the purposes of this Act, require the person in charge of a vessel, aircraft or platform to which this section applies to give information concerning the vessel, aircraft or platform and her crew and any other person on board the vessel, aircraft or platform.

(6) A person who, without reasonable excuse, fails to comply with a requirement made of him by an inspector under this section shall be guilty of an offence.

Penalty: Two thousand dollars.

**Access to premises**

23. (1) An inspector may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the functions of an inspector in accordance with section 24.

(2) Where an inspector has reason to believe that there is on premises—

(a) any matter or thing that is to be dumped into the sea or incinerated at sea; or

(b) any matter or thing that may afford evidence as to the commission of an offence against this Act,

the inspector may apply to a Justice of the Peace for a warrant authorising the inspector to enter the premises for the purpose of exercising the functions of an inspector in accordance with section 24.

(3) If, on an application under subsection (2), the Justice of the Peace is satisfied, by information on oath—

(a) that there is reasonable ground for believing that there is on the premises to which the application relates—

(i) any matter or thing that is to be dumped into the sea or incinerated at sea; or

(ii) any matter or thing that may afford evidence as to the commission of an offence against this Act; and

(b) that the issue of the warrant is reasonably required for the purposes of this Act,

the Justice of the Peace may grant a warrant authorising the inspector, with such assistance as he thinks necessary, to enter the premises, during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose of exercising the functions of an inspector in accordance with section 24.

(4) Where an inspector has entered any premises in pursuance of this section, he may exercise the functions of an inspector in accordance with section 24.

**Functions of inspector**

24. (1) The functions of an inspector who boards a vessel, aircraft or platform under section 22 or enters premises under section 23 are as follows:

- (a) to search for, and take possession of, any matter or thing that may afford evidence as to the commission of an offence against this Act;
- (b) to search for, inspect, take extracts from and make copies of any document that relates to the loading, dumping or incineration at sea of any matter or thing;
- (c) to inspect, and take samples of, any wastes or other matter;
- (d) to observe—
  - (i) the loading on a vessel or aircraft, in accordance with a permit, of any matter or thing that is to be dumped into the sea or incinerated at sea; or
  - (ii) the dumping into the sea, or the incineration at sea, in accordance with a permit, of any matter or thing.

(2) For the purposes of carrying out his functions under subsection (1), an inspector may break open any hold or compartment, or any container or other receptacle, on a vessel, aircraft or platform or on any premises.

**Powers of arrest of inspectors**

25. (1) An inspector may arrest without warrant any person—

- (a) who hinders or assaults an inspector or a person accompanying or assisting an inspector; or
- (b) where he has reason to believe that the person has committed an offence against this Act and—
  - (i) failed to state truthfully his name or usual place of residence when required to do so; or
  - (ii) would fail to attend court in answer to a summons issued in respect of the offence; or
  - (iii) would continue or repeat the offence if not arrested.

(2) Where a person is arrested under subsection (1), an inspector shall forthwith bring the person, or cause him to be brought, before a Justice of the Peace or other proper authority to be dealt with in accordance with the law.

(3) Nothing in this section prevents the arrest of a person in accordance with any other law.

**Immunity from personal liability**

26. (1) No personal liability shall attach to an inspector, or any person lawfully assisting an inspector, for any act or omission by him in good faith and in the exercise or discharge, or purported exercise or discharge, of the powers, duties or functions of an inspector under this Act.

(2) A liability that would, but for subsection (1), lie against an inspector or other person shall lie against the Crown.

**PART 5  
MISCELLANEOUS**

**Appeal from refusal to grant a permit**

27. (1) Subject to subsection (2), a right of appeal to the Supreme Court lies against—

- (a) a refusal of the Minister to grant a permit under this Act; or
- (b) a decision of the Minister to vary, suspend or revoke a permit under this Act.

(2) An appeal must be instituted within thirty days of the date of the decision appealed against, but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be instituted within that time.

(3) The Supreme Court may, on the hearing of an appeal, exercise any one or more of the following powers:

- (a) affirm, vary or quash the decision of the Minister and make any incidental or other order that may be just in the circumstances;
- (b) remit the matter to the Minister for his reconsideration;
- (c) make any order as to costs.

**Injunctions**

28. (1) The Supreme Court may—

- (a) upon application by the Attorney-General or by an interested person, grant an injunction restraining a person from engaging in conduct that constitutes, or would constitute, an offence under Division 1 or 2 of Part 2; and
- (b) make any order incidental or supplementary to an order made or an application under paragraph (a), including an order as to costs.

(2) The reference in subsection (1)(a) to an interested person shall be read as including a reference to a person whose use or enjoyment of any part of the sea, or of the air space above, or of the seabed or subsoil beneath, any part of the sea, is, or is likely to be, adversely affected by the conduct concerned.

(3) The reference in subsection (1)(a) to engaging in conduct shall be read as including a reference to—

- (a) doing, refusing to do, or refraining from doing, any act or thing; or
- (b) causing or permitting another person to do, refuse to do, or refrain from doing, any act or thing.

**Delegation**

29. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person all or any of his powers under this Act, other than this power of delegation.

(2) Where a power delegated under this section by the Minister is exercised by the delegate, the power shall, for the purposes of this Act, be deemed to have been exercised by the Minister.

(3) A delegation under this section may be expressed as a delegation to the person from time to time holding, or performing the duties of, a specified office in the Public Service of the State.

(4) A delegate under this section is, in the exercise of his delegated powers, subject to the directions of the Minister.

(5) A delegation under this section does not prevent the exercise of a power by the Minister.

**False statements**

30. (1) A person who, in, or in connection with, an application for a permit—

- (a) makes a statement that, to his knowledge, is false or misleading in a material particular; or
- (b) furnishes to the Minister, an officer or any other person acting in the administration of this Act a document that, to the knowledge of the first mentioned person, contains information that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable—

- (c) if the person is a natural person—to a fine not exceeding the sum of five thousand dollars or imprisonment for two years, or both; or
- (d) if the person is a body corporate—to a fine not exceeding the sum of twenty thousand dollars.

(2) A person who—

- (a) makes to an inspector a statement that, to the knowledge of the person, is false or misleading in a material particular; or
- (b) furnishes to an inspector a document that, to the knowledge of the person, contains information that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable—

- (c) if the person is a natural person—to a fine not exceeding the sum of one thousand dollars; or
- (d) if the person is a body corporate—to a fine not exceeding the sum of two thousand dollars.

**Compliance with conditions of permit**

31. The holder of a permit who contravenes, or fails to comply with, a condition imposed in respect of the permit shall be guilty of an offence and shall be liable—

- (a) if the person is a natural person—to a fine not exceeding the sum of five thousand dollars; or
- (b) if the person is a body corporate—to a fine not exceeding the sum of ten thousand dollars.

**No time limit for prosecution**

32. A prosecution for an offence against this Act may be brought at any time.

**Evidence**

33. (1) In proceedings for an offence against this Act—

- (a) an allegation in a complaint that a person is, or was on a specified day, the owner or person in charge of a specified vessel, aircraft or platform (as the case may be) shall, in the absence of proof to the contrary, be deemed to be proof of the matter alleged; and
- (b) any record kept in pursuance of this Act is admissible as *prima facie* evidence of the facts stated in the record; and
- (c) a copy of an entry in such a record, being a copy certified by the person by whom the record is required to be kept to be a true copy of the entry, is admissible as *prima facie* evidence of the facts stated in the entry; and
- (d) a document purporting to be a record kept in pursuance of this Act, or purporting to be such a certified copy as is referred to in paragraph (c), shall, unless the contrary is established, be deemed to be such a record or certified copy, as the case may be.

(2) In proceedings for an offence against this Act, evidence of a distance or position as determined by the use of an electronic, optical, mechanical or other device by an inspector or any other competent person shall, in the absence of proof to the contrary, be accepted as proof of the distance or position.

(3) In proceedings for an offence against this Act, a statement made in evidence by an inspector that a place or area described or indicated by him was within coastal waters shall, in the absence of proof to the contrary, be accepted as proof of the matter so stated.

(4) In proceedings for an offence against this Act, any conditions of a permit under this Act may be proved by the production of an apparently genuine document purporting to be a copy of the conditions certified by the Minister.

**Evidence of analyst**

34. (1) The Minister may appoint a person to be an analyst for the purposes of this Act.

(2) Subject to subsection (4), in proceedings for an offence against this Act a certificate signed by an analyst appointed under subsection (1) setting out, in relation to a substance, one or more of the following:

- (a) that he or she is appointed as the analyst under subsection (1);
- (b) when and from whom the substance was received;
- (c) what labels or other means of identification accompanied the substance when it was received;
- (d) what container the substance was in when it was received;
- (e) a description, including the weight, of the substance when it was received;
- (f) the name of any method used to analyse the substance or any portion of it;
- (g) the results of any such analysis;

- (h) how the substance was dealt with after handling by the analyst, including details of:
- (i) the quantity of the substance retained after analysis; and
  - (ii) names of any person to whom any of the retained substance was given after analysis; and
  - (iii) measures taken to secure any retained quantity of the substance after analysis,

constitutes proof, in the absence of proof to the contrary, of the matters in the certificate and the correctness of the results of the analysis.

(3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

(4) A certificate shall not be admitted in evidence in pursuance of subsection (2) in proceedings for an offence unless the person charged with the offence has been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings.

#### **Fees**

35. (1) The regulations may prescribe the fees to be paid in respect of an application for a permit or of any other application under this Act.

(2) A fee prescribed in respect of an application under this Act shall be paid when the application is made or at such other time (if any) as is prescribed and, if the fee is not so paid, the application shall be deemed not to be duly made.

(3) The Minister may, if he considers it necessary or desirable to do so, waive the payment of any fee payable in respect of an application and, if he does so, subsection (2) does not apply in relation to that application.

#### **Operation of Prevention of Pollution of Waters by Oil Act 1961 not affected**

36. Nothing in this Act shall derogate from the provisions of the *Prevention of Pollution of Waters by Oil Act 1961*.

#### **Regulations**

37. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) provide for the manner of service of notices and proceedings under this Act; and
- (b) provide for the imposition of penalties not exceeding \$1 000 if the offender is a natural person and \$5 000 if the offender is a body corporate.

(3) Regulations prescribing matters for the purposes of this Act may prescribe those matters by reference to regulations for the time being in force under the *Environment Protection (Sea Dumping) Act 1981* of the Commonwealth as in force for the time being.

Environment Protection (Sea Dumping) Act 1984

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SCHEDULE 1

CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY  
DUMPING OF WASTES AND OTHER MATTER

THE CONTRACTING PARTIES TO THIS CONVENTION,

RECOGNIZING that the marine environment and the living organisms which it supports are of vital importance to humanity, and all people have an interest in assuring that it is so managed that its quality and resources are not impaired;

RECOGNIZING that the capacity of the sea to assimilate wastes and render them harmless, and its ability to regenerate natural resources, is not unlimited;

RECOGNIZING that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction;

RECALLING Resolution 2749 (XXV) of the General Assembly of the United Nations on the principles governing the sea-bed and the ocean floor and the subsoil thereof, beyond the limits of national jurisdiction;

NOTING that marine pollution originates in many sources, such as dumping and discharges through the atmosphere, rivers, estuaries, outfalls and pipelines, and that it is important that States use the best practicable means to prevent such pollution and develop products and processes which will reduce the amount of harmful wastes to be disposed of;

BEING CONVINCED that international action to control the pollution of the sea by dumping can and must be taken without delay but that this action should not preclude discussion of measures to control other sources of marine pollution as soon as possible; and

WISHING to improve protection of the marine environment by encouraging States with a common interest in particular geographical areas to enter into appropriate agreements supplementary to this Convention;

HAVE AGREED as follows:

ARTICLE I

Contracting Parties shall individually and collectively promote the effective control of all sources of pollution of the marine environment, and pledge themselves especially to take all practicable steps to prevent the pollution of the sea by the dumping of waste and other matter that is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

ARTICLE II

Contracting Parties shall, as provided for in the following Articles, take effective measures individually, according to their scientific, technical and economic capabilities, and collectively, to prevent marine pollution caused by dumping and shall harmonize their policies in this regard.

ARTICLE III

For the purposes of this Convention:

1. (a) "Dumping" means:

- (i) any deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;

- (ii) any deliberate disposal at sea of vessels, aircraft, platforms or other man-made structures at sea.

(b) "Dumping" does not include:

- (i) the disposal at sea of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms, or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structures;
- (ii) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention.

(c) The disposal of wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of sea-bed mineral resources will not be covered by the provisions of this Convention.

2. "Vessels and aircraft" means waterborne or airborne craft of any type whatsoever. This expression includes air cushioned craft and floating craft, whether self-propelled or not.

3. "Sea" means all marine waters other than the internal waters of States.

4. "Wastes or other matter" means material and substances of any kind, form or description.

5. "Special permit" means permission granted specifically on application in advance and in accordance with Annex II and Annex III.

6. "General permit" means permission granted in advance and in accordance with Annex III.

7. "The Organization" means the Organization designated by the Contracting Parties in accordance with Article XIV(2).

#### ARTICLE IV

1. In accordance with the provisions of this Convention Contracting Parties shall prohibit the dumping of any wastes or other matter in whatever form or condition except as otherwise specified below:

- (a) the dumping of wastes or other matter listed in Annex I is prohibited;
- (b) the dumping of wastes or other matter listed in Annex II requires a prior special permit;
- (c) the dumping of all other wastes or matter requires a prior general permit.

2. Any permit shall be issued only after careful consideration of all the factors set forth in Annex III, including prior studies of the characteristics of the dumping site, as set forth in Sections B and C of that Annex.

3. No provision of this Convention is to be interpreted as preventing a Contracting Party from prohibiting, insofar as that Party is concerned, the dumping of wastes or other matter not mentioned in Annex I. That Party shall notify such measures to the Organization.

#### ARTICLE V

1. The provisions of Article IV shall not apply when it is necessary to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of *force majeure* caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea, if dumping appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping will be less than would otherwise occur. Such dumping shall be so conducted as to minimize the likelihood of damage to human or marine life and shall be reported forthwith to the Organization.

2. A Contracting Party may issue a special permit as an exception to Article IV(1)(a), in emergencies, posing unacceptable risk relating to human health and admitting no other feasible solution. Before doing so the Party shall consult any other country or countries that are likely to be affected and the Organization which, after consulting other Parties, and international organizations as appropriate, shall, in accordance with Article XIV promptly recommend to the Party the most appropriate procedures to adopt. The Party shall follow these recommendations to the maximum extent feasible consistent with the time within which action must be taken and with the general obligation to avoid damage to the marine environment and shall inform the Organization of the action it takes. The Parties pledge themselves to assist one another in such situations.

3. Any Contracting Party may waive its rights under paragraph (2) at the time of, or subsequent to ratification of, or accession to this Convention.

#### ARTICLE VI

1. Each Contracting Party shall designate an appropriate authority or authorities to:

- (a) issue special permits which shall be required prior to, and for, the dumping of matter listed in Annex II and in the circumstances provided for in Article V(2);
- (b) issue general permits which shall be required prior to, and for, the dumping of all other matter;
- (c) keep records of the nature and quantities of all matter permitted to be dumped and the location, time and method of dumping;
- (d) monitor individually, or in collaboration with other Parties and competent international organizations, the condition of the seas for the purposes of this Convention.

2. The appropriate authority or authorities of a Contracting Party shall issue prior special or general permits in accordance with paragraph (1) in respect of matter intended for dumping:

- (a) loaded in its territory;
- (b) loaded by a vessel or aircraft registered in its territory or flying its flag, when the loading occurs in the territory of a State not party to this Convention.

3. In issuing permits under sub-paragraphs (1)(a) and (b) above, the appropriate authority or authorities shall comply with Annex III, together with such additional criteria, measures and requirements as they may consider relevant.

4. Each Contracting Party, directly or through a Secretariat established under a regional agreement, shall report to the Organization, and where appropriate to other Parties, the information specified in sub-paragraphs (c) and (d) of paragraph (1) above, and the criteria, measures and requirements it adopts in accordance with paragraph (3) above. The procedure to be followed and the nature of such reports shall be agreed by the Parties in consultation.

#### ARTICLE VII

1. Each Contracting Party shall apply the measures required to implement the present Convention to all:

- (a) vessels and aircraft registered in its territory or flying its flag;
- (b) vessels and aircraft loading in its territory or territorial seas matter which is to be dumped;
- (c) vessels and aircraft and fixed or floating platforms under its jurisdiction believed to be engaged in dumping.

2. Each Party shall take in its territory appropriate measures to prevent and punish conduct in contravention of the provisions of this Convention.

3. The Parties agree to co-operate in the development of procedures for the effective application of this Convention particularly on the high seas, including procedures for the reporting of vessels and aircraft observed dumping in contravention of the Convention.

4. This Convention shall not apply to those vessels and aircraft entitled to sovereign immunity under international law. However, each party shall ensure by the adoption of appropriate measures that such vessels and aircraft owned or operated by it act in a manner consistent with the object and purpose of this Convention, and shall inform the Organization accordingly.

5. Nothing in this Convention shall affect the right of each Party to adopt other measures, in accordance with the principles of international law, to prevent dumping at sea.

#### ARTICLE VIII

In order to further the objectives of this Convention, the Contracting Parties with common interests to protect in the marine environment in a given geographical area shall endeavour, taking into account characteristic regional features, to enter into regional agreements consistent with this Convention for the prevention of pollution, especially by dumping. The Contracting Parties to the present Convention shall endeavour to act consistently with the objectives and provisions of such regional agreements, which shall be notified to them by the Organization. Contracting Parties shall seek to co-operate with the Parties to regional agreements in order to develop harmonized procedures to be followed by Contracting Parties to the different conventions concerned. Special attention shall be given to co-operation in the field of monitoring and scientific research.

#### ARTICLE IX

The Contracting Parties shall promote, through collaboration within the Organization and other international bodies, support for those Parties which request it for:

- (a) the training of scientific and technical personnel;
- (b) the supply of necessary equipment and facilities for research and monitoring;
- (c) the disposal and treatment of waste and other measures to prevent or mitigate pollution caused by dumping;

preferably within the countries concerned, so furthering the aims and purposes of this Convention.

#### ARTICLE X

In accordance with the principles of international law regarding State responsibility for damage to the environment of other States or to any other area of the environment, caused by dumping of wastes and other matter of all kinds, the Contracting Parties undertake to develop procedures for the assessment of liability and the settlement of disputes regarding dumping.

#### ARTICLE XI

The Contracting Parties shall at their first consultative meeting consider procedures for the settlement of disputes concerning the interpretation and application of this Convention.

#### ARTICLE XII

The Contracting Parties pledge themselves to promote, within the competent specialized agencies and other international bodies, measures to protect the marine environment against pollution caused by:

- (a) hydrocarbons, including oil, and their wastes;
- (b) other noxious or hazardous matter transported by vessels for purposes other than dumping;
- (c) wastes generated in the course of operation of vessels, aircraft, platforms and other manmade structures at sea;

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**Environment Protection (Sea Dumping) Act 1984**

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- (d) radio-active pollutants from all sources, including vessels;
- (e) agents of chemical and biological warfare;
- (f) wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of sea-bed mineral resources.

The Parties will also promote, within the appropriate international organization, the codification of signals to be used by vessels engaged in dumping.

**ARTICLE XIII**

Nothing in this Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea convened pursuant to Resolution 2750 C (XXV) of the General Assembly of the United Nations nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction. The Contracting Parties agree to consult at a meeting to be convened by the Organization after the Law of the Sea Conference, and in any case not later than 1976, with a view to defining the nature and extent of the right and the responsibility of a coastal State to apply the Convention in a zone adjacent to its coast.

**ARTICLE XIV**

1. The Government of the United Kingdom of Great Britain and Northern Ireland as a depositary shall call a meeting of the Contracting Parties not later than three months after the entry into force of this Convention to decide on organizational matters.

2. The Contracting Parties shall designate a competent Organization existing at the time of that meeting to be responsible for Secretariat duties in relation to this Convention. Any Party to this Convention not being a member of this Organization shall make an appropriate contribution to the expenses incurred by the Organization in performing these duties.

3. The Secretariat duties of the Organization shall include:

- (a) the convening of consultative meetings of the Contracting Parties not less frequently than once every two years and of special meetings of the Parties at any time on the request of two-thirds of the Parties;
- (b) preparing and assisting, in consultation with the Contracting Parties and appropriate International Organizations, in the development and implementation of procedures referred to in sub-paragraph (4)(e) of this Article;
- (c) considering enquiries by, and information from the Contracting Parties, consulting with them and with the appropriate International Organizations, and providing recommendations to the Parties on questions related to, but not specifically covered by the Convention;
- (d) conveying to the Parties concerned all notifications received by the Organization in accordance with Articles IV(3), V(1) and (2), VI(4), XV, XX and XXI.

Prior to the designation of the Organization these functions shall, as necessary, be performed by the depositary, who for this purpose shall be the Government of the United Kingdom of Great Britain and Northern Ireland.

4. Consultative or special meetings of the Contracting Parties shall keep under continuing review the implementation of this Convention and may, *inter alia*:

- (a) review and adopt amendments to this Convention and its Annexes in accordance with Article XV;
- (b) invite the appropriate scientific body or bodies to collaborate with and to advise the Parties or the Organization on any scientific or technical aspect relevant to this Convention, including particularly the content of the Annexes;

- (c) receive and consider reports made pursuant to Article VI(4);
- (d) promote co-operation with and between regional organizations concerned with the prevention of marine pollution.
- (e) develop or adopt, in consultation with appropriate International Organizations, procedures referred to in Article V(2), including basic criteria for determining exceptional and emergency situations, and procedures for consultative advice and the safe disposal of matter in such circumstances, including the designation of appropriate dumping areas, and recommend accordingly;
- (f) consider any additional action that may be required.

5. The Contracting Parties at their first consultative meeting shall establish rules of procedure as necessary.

#### ARTICLE XV

1. (a) At meetings of the Contracting Parties called in accordance with Article XIV amendments to this Convention may be adopted by a two-thirds majority of those present. An amendment shall enter into force for the Parties which have accepted it on the sixtieth day after two-thirds of the Parties shall have deposited an instrument of acceptance of the amendment with the Organization. Thereafter the amendment shall enter into force for any other Party 30 days after that Party deposits its instrument of acceptance of the amendment.

(b) The Organization shall inform all Contracting Parties of any request made for a special meeting under Article XIV and of any amendments adopted at meetings of the Parties and of the date on which each such amendment enters into force for each Party.

2. Amendments to the Annexes will be based on scientific or technical considerations. Amendments to the Annexes approved by a two-thirds majority of those present at a meeting called in accordance with Article XIV shall enter into force for each Contracting Party immediately on notification of its acceptance to the Organization and 100 days after approval by the meeting for all other Parties except for those which before the end of the 100 days make a declaration that they are not able to accept the amendment at that time. Parties should endeavour to signify their acceptance of an amendment to the Organization as soon as possible after approval at a meeting. A Party may at any time substitute an acceptance for a previous declaration of objection and the amendment previously objected to shall thereupon enter into force for that Party.

3. An acceptance or declaration of objection under this Article shall be made by the deposit of an instrument with the Organization. The Organization shall notify all Contracting Parties of the receipt of such instruments.

4. Prior to the designation of the Organization, the Secretarial functions herein attributed to it, shall be performed temporarily by the Government of the United Kingdom of Great Britain and Northern Ireland, as one of the depositaries of this Convention.

#### ARTICLE XVI

This Convention shall be open for signature by any State at London, Mexico City, Moscow and Washington from 29 December 1972 until 31 December 1973.

#### ARTICLE XVII

This Convention shall be subject to ratification. The instruments of ratification shall be deposited with the Governments of Mexico, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

#### ARTICLE XVIII

After 31 December 1973, this Convention shall be open for accession by any State. The instruments of accession shall be deposited with the Governments of Mexico, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

Environment Protection (Sea Dumping) Act 1984

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ARTICLE XIX

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification or accession.

2. For each Contracting party ratifying or acceding to the Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such Party of its instrument of ratification or accession.

ARTICLE XX

The depositaries shall inform Contracting Parties:

- (a) of signatures to this Convention and of the deposit of instruments of ratification, accession or withdrawal, in accordance with Articles XVI, XVII, XVIII and XXI, and
- (b) of the date on which this Convention will enter into force, in accordance with Article XIX.

ARTICLE XXI

Any Contracting Party may withdraw from this Convention by giving six months' notice in writing to a depositary, which shall promptly inform all Parties of such notice.

ARTICLE XXII

The original of this Convention of which the English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Governments of Mexico, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America who shall send certified copies thereof to all States.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments have signed the present Convention.\*

DONE in quadruplicate at London, Mexico City, Moscow and Washington, this twenty-ninth day of December, 1972.

ANNEX I

1. Organohalogen compounds.
2. Mercury and mercury compounds.
3. Cadmium and cadmium compounds.
4. Persistent plastics and other persistent synthetic materials, for example, netting and ropes, which may float or may remain in suspension in the sea in such a manner as to interfere materially with fishing, navigation or other legitimate uses of the sea.
5. Crude oil, fuel oil, heavy diesel oil, and lubricating oils, hydraulic fluids, and any mixtures containing any of these, taken on board for the purpose of dumping.
6. High-level radio-active wastes or other high-level radio-active matter, defined on public health biological or other grounds, by the competent international body in this field, at present the International Atomic Energy Agency, as unsuitable for dumping at sea.
7. Materials in whatever form (e.g. solids, liquids, semi-liquids, gases or in a living state) produced for biological and chemical warfare.

\* Signatures omitted

8. The preceding paragraphs of this Annex do not apply to substances which are rapidly rendered harmless by physical, chemical or biological processes in the sea provided they do not:

- (i) make edible marine organisms unpalatable, or
- (ii) endanger human health or that of domestic animals.

The consultative procedure provided for under Article XIV should be followed by a Party if there is doubt about the harmlessness of the substance.

9. This Annex does not apply to wastes or other materials (e.g. sewage sludges and dredged spoils) containing the matters referred to in paragraphs 1-5 above as trace contaminants. Such wastes shall be subject to the provisions of Annexes II and III as appropriate.

#### ANNEX II

The following substances and materials requiring special care are listed for the purposes of Article VI(1)(a).

A. Wastes containing significant amounts of the matters listed below:

arsenic  
lead  
copper  
zinc

} and their compounds

organosilicon compounds  
cyanides  
fluorides  
pesticides and their by-products not covered in Annex I.

B. In the issue of permits for the dumping of large quantities of acids and alkalis, consideration shall be given to the possible presence in such wastes of the substances listed in paragraph A and to the following additional substances:

beryllium  
chromium  
nickel  
vanadium

} and their compounds

C. Containers, scrap metal and other bulky wastes liable to sink to the sea bottom which may present a serious obstacle to fishing or navigation.

D. Radio-active wastes or other radio-active matter not included in Annex I. In the issue of permits for the dumping of this matter, the Contracting Parties should take full account of the recommendations of the competent international body in this field, at present the International Atomic Energy Agency.

#### ANNEX III

Provisions to be considered in establishing criteria governing the issue of permits for the dumping of matter at sea, taking into account Article IV(2), include:

*A—Characteristics and composition of the matter*

1. Total amount and average composition of matter dumped (e.g. per year).
2. Form, e.g. solid, sludge, liquid, or gaseous.
3. Properties: physical (e.g. solubility and density), chemical and biochemical (e.g. oxygen demand, nutrients) and biological (e.g. presence of viruses, bacteria, yeasts, parasites).

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4. Toxicity.
5. Persistence: physical, chemical and biological.
6. Accumulation and biotransformation in biological materials or sediments.
7. Susceptibility to physical, chemical and biochemical changes and interaction in the aquatic environment with other dissolved organic and inorganic materials.
8. Probability of production of taints or other changes reducing marketability of resources (fish, shellfish, etc.)

*B—Characteristics of dumping site and method of deposit*

1. Location (e.g. co-ordinates of the dumping area, depth and distance from the coast), location in relation to other areas (e.g. amenity areas, spawning, nursery and fishing areas and exploitable resources).
2. Rate of disposal per specific period (e.g. quantity per day, per week, per month).
3. Methods of packaging and containment, if any.
4. Initial dilution achieved by proposed method of release.
5. Dispersal characteristics (e.g. effects of currents, tides and wind on horizontal transport and vertical mixing).
6. Water characteristics (e.g. temperature, pH, salinity, stratification, oxygen indices of pollution-dissolved oxygen (DO), chemical oxygen demand (COD), biochemical oxygen demand (BOD)—nitrogen present in organic and mineral form including ammonia, suspended matter, other nutrients and productivity).
7. Bottom characteristics (e.g. topography, geochemical and geological characteristics and biological productivity).
8. Existence and effects of other dumpings which have been made in the dumping area (e.g. heavy metal background reading and organic carbon content).
9. In issuing a permit for dumping, Contracting Parties should consider whether an adequate scientific basis exists for assessing the consequences of such dumping, as outlined in this Annex, taking into account seasonal variations.

*C—General considerations and conditions*

1. Possible effects on amenities (e.g. presence of floating or stranded material, turbidity, objectionable odour, discolouration and foaming).
2. Possible effects on marine life, fish and shellfish culture, fish stocks and fisheries, seaweed harvesting and culture.
3. Possible effects on other uses of the sea (e.g. impairment of water quality for industrial use, underwater corrosion of structures, interference with ship operations from floating materials, interference with fishing or navigation through deposit of waste or solid objects on the sea floor and protection of areas of special importance for scientific or conservation purposes).
4. The practical availability of alternative land-based methods of treatment, disposal or elimination, or of treatment to render the matter less harmful for dumping at sea.

SCHEDULE 2

Resolution adopted on 12 October 1978

THE THIRD CONSULTATIVE MEETING,

RECALLING Article I of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, which provides that Contracting Parties shall individually and collectively promote the effective control of all sources of pollution of the marine environment,

HAVING NOTED the use of incineration at sea as a means of disposal of wastes containing highly toxic substances and the consequent risks of marine and atmospheric pollution which may result from this process,

DESIRING to prevent such pollution and to minimize the risk of hazards to other vessels or interference with other legitimate uses of the sea which could arise from incineration operations at sea,

RECOGNIZING present methods of incineration at sea as being an interim method of disposal of wastes pending the development of environmentally better solutions, considering at all times the best available technology,

AFFIRMING that the intention of the adoption of mandatory provisions for the control of incineration at sea is not to increase the amounts and kinds of wastes or other matter incinerated at sea for which there are available practical alternative land-based methods of treatment, disposal or elimination,

REAFFIRMING that, in accordance with Article IV(3) of the Convention, Contracting Parties can apply additional regulations for incineration at sea on a national basis,

NOTING that Article VIII of the Convention encourages Contracting Parties, within the framework of regional conventions, to develop further agreements reflecting the conditions of the geographical area concerned,

RECALLING the decision of the Second Consultative Meeting that provisions for the control of incineration at sea should be implemented by Contracting Parties on a mandatory basis in the form of a legal instrument adopted within the framework of the Convention (LDC II/11, Annex II),

HAVING CONSIDERED the proposed amendments to the Annexes of the Convention for the control of incineration at sea contained in the Report of the Ad Hoc Group of Legal Experts on Dumping,

LDC III/12  
ANNEX 3  
Page 2

ADOPTS the following amendments to the Annexes to the Convention in accordance with Articles XIV(4)(a) and XV(2) thereof:

- (a) addition of a paragraph 10 to Annex I;
- (b) addition of a paragraph E to Annex II; and
- (c) addition of an Addendum to Annex I, containing Regulations for the Control of Incineration of Wastes and Other Matter at Sea,

the texts of which are set out in Attachment to this Resolution,

ENTRUSTS the Inter-Governmental Maritime Consultative Organization with the task of ensuring, in collaboration with the Governments of France, Spain, the Union of Soviet Socialist Republics and the United Kingdom, that the texts of the above amendments are drawn up by 1 December 1978 in all official languages of the Convention with the linguistic consistency in each text, which would then become the authentic text of the Annexes to the Convention in the English, French, Russian and Spanish languages,

RESOLVES that for the purposes of Articles XIV(4)(a) and XV(2) of the Convention, 1 December 1978 shall be treated as the date of the adoption of the amendments,

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REQUESTS the Secretary-General of the Organization to inform Contracting Parties of the abovementioned amendments,

REQUESTS the Ad Hoc Group on Incineration at Sea to prepare draft Technical Guidelines for the Control of Incineration of Wastes and Other Matter at Sea with a view to adoption by the Fourth Consultative Meeting,

INVITES Contracting Parties to implement, as an interim measure, the existing Technical Guidelines (LDC II/11, Annex II, with amendments (IAS/9, Annex IV)) and the notification procedure set out in Annex to LDC III/12.

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Page 3

*Attachment*

Amendments to Annexes to the

CONVENTION ON THE PREVENTION OF MARINE POLLUTION  
BY DUMPING OF WASTES AND OTHER MATTER

concerning incineration at sea

*The following paragraph shall be added to Annex I:*

10. Paragraphs 1 and 5 of this Annex do not apply to the disposal of wastes or other matter referred to in these paragraphs by means of incineration at sea. Incineration of such wastes or other matter at sea requires a prior special permit. In the issue of special permits for incineration the Contracting Parties shall apply the Regulations for the Control of Incineration of Wastes and Other Matter at Sea set forth in the Addendum to this Annex (which shall constitute an integral part of this Annex) and take full account of the Technical Guidelines on the Control of Incineration of Wastes and Other Matter at Sea adopted by the Contracting Parties in consultation.

*The following paragraph shall be added to Annex II:*

E. In the issue of special permits for the incineration of substances and materials listed in this Annex, the Contracting Parties shall apply the Regulations for the Control of Incineration of Wastes and Other Matter at Sea set forth in the Addendum to Annex I and take full account of the Technical Guidelines on the Control of Incineration of Wastes and Other Matter at Sea adopted by the Contracting Parties in consultation, to the extent specified in these Regulations and Guidelines.

ADDENDUM

(to Annex I)

REGULATIONS FOR THE CONTROL OF INCINERATION OF  
WASTES AND OTHER MATTER AT SEA

PART I

REGULATION 1

*Definitions*

For the purposes of this Addendum:

(1) "Marine incineration facility" means a vessel, platform, or other man-made structure operating for the purpose of incineration at sea.

(2) "Incineration at sea" means the deliberate combustion of wastes or other matter on marine incineration facilities for the purpose of their thermal destruction. Activities incidental to the normal operation of vessels, platforms or other man-made structures are excluded from the scope of this definition.

#### REGULATION 2

##### *Application*

(1) Part II of these Regulations shall apply to the following wastes or other matter:

- (a) those referred to in paragraph 1 of Annex I;
- (b) pesticides and their by-products not covered in Annex I.

(2) Contracting Parties shall first consider the practical availability of alternative land-based methods of treatment, disposal or elimination, or of treatment to render the wastes or other matter less harmful, before issuing a permit for incineration at sea in accordance with these Regulations. Incineration at sea shall in no way be interpreted as discouraging progress towards environmentally better solutions including the development of new techniques.

(3) Incineration at sea of wastes or other matter referred to in paragraph 10 of Annex I and paragraph E of Annex II, other than those referred to in paragraph (1) of this Regulation, shall be controlled to the satisfaction of the Contracting Party issuing the special permit.

(4) Incineration at sea of wastes or other matter not referred to in paragraphs (1) and (3) of this Regulation shall be subject to a general permit.

(5) In the issue of permits referred to in paragraphs (3) and (4) of this Regulation, the Contracting Parties shall take full account of all applicable provisions of these Regulations and the Technical Guidelines on the Control of Incineration of Waste and Other Matter at Sea for the waste in question.

#### PART II

#### REGULATION 3

##### *Approval and Surveys of the Incineration System*

(1) The incineration system for every proposed marine incineration facility shall be subject to the surveys specified below. In accordance with Article VII(1) of the Convention, the Contracting Party which proposes to issue an incineration permit shall ensure that the surveys of the marine incineration facility to be used have been completed and the incineration system complies with the provisions of these Regulations. If the initial survey is carried out under the direction of a Contracting Party a special permit, which specifies the testing requirements, shall be issued by the Party. The results of each survey shall be recorded in a survey report.

- (a) An initial survey shall be carried out in order to ensure that during the incineration of waste and other matter combustion and destruction efficiencies are in excess of 99.9 per cent.
- (b) As a part of the initial survey the State under whose direction the survey is being carried out shall:
  - (i) approve the siting, type and manner of use of temperature measuring devices;
  - (ii) approve the gas sampling system including probe locations, analytical devices, and the manner of recording;
  - (iii) ensure that approved devices have been installed to automatically shut off the feed of waste to the incinerator if the temperature drops below approved minimum temperatures;
  - (iv) ensure that there are no means of disposing of wastes or other matter from the marine incineration facility except by means of the incinerator during normal operations;
  - (v) approve the devices by which feed rates of waste and fuel are controlled and recorded;

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- (vi) confirm the performance of the incineration system by testing under intensive stack monitoring, including the measurements of O<sub>2</sub>, CO, CO<sub>2</sub>, halogenated organic content, and total hydrocarbon content using wastes typical of those expected to be incinerated.
- (c) The incineration system shall be surveyed at least every two years to ensure that the incinerator continues to comply with these Regulations. The scope of the biennial survey shall be based upon an evaluation of operating data and maintenance records for the previous two years.

(2) Following the satisfactory completion of a survey, a form of approval shall be issued by a Contracting Party if the incineration system is found to be in compliance with these Regulations. A copy of the survey report shall be attached to the form of approval. A form of approval issued by a Contracting Party shall be recognized by other Contracting Parties unless there are clear grounds for believing that the incineration system is not in compliance with these Regulations. A copy of each form of approval and survey report shall be submitted to the Organization.

(3) After any survey has been completed, no significant changes which could affect the performance of the incineration system shall be made without approval of the Contracting Party which has issued the form of approval.

#### REGULATION 4

##### *Wastes Requiring Special Studies*

(1) Where a Contracting Party has doubts as to the thermal destructibility of the wastes or other matter proposed for incineration, pilot scale tests shall be undertaken.

(2) Where a Contracting Party proposes to permit incineration of wastes or other matter over which doubts as to the efficiency of combustion exist, the incineration system shall be subject to the same intensive stack monitoring as required for the initial incineration system survey. Consideration shall be given to the sampling of particulates, taking into account the solid content of the wastes.

(3) The minimum approved flame temperature shall be that specified in Regulation 5 unless the results of tests of the marine incineration facility demonstrate that the required combustion and destruction efficiency can be achieved at a lower temperature.

(4) The results of special studies referred to in paragraphs (1), (2) and (3) of this Regulation shall be recorded and attached to the survey report. A copy shall be sent to the Organization.

#### REGULATION 5

##### *Operational Requirements*

(1) The operation of the incineration system shall be controlled so as to ensure that the incineration of wastes or other matter does not take place at a flame temperature less than 1250 degrees centigrade, except as provided for in Regulation 4.

(2) The combustion efficiency shall be at least  $99.95 \pm 0.05\%$  based on:

$$\text{Combustion efficiency} = \frac{C_{\text{CO}_2} - C_{\text{CO}}}{C_{\text{CO}_2}} \times 100$$

where  $C_{\text{CO}_2}$  = concentration of carbon dioxide in the combustion gases

$C_{\text{CO}}$  = concentration of carbon monoxide in the combustion gases.

(3) There shall be no black smoke nor flame extension above the plane of the stack.

(4) The marine incineration facility shall reply promptly to radio calls at all times during the incineration.

REGULATION 6

*Recording Devices and Records*

(1) Marine incineration facilities shall utilize recording devices or methods as approved under Regulation 3. As a minimum, the following data shall be recorded during each incineration operation and retained for inspection by the Contracting Party who has issued the permit:

- (a) continuous temperature measurements by approved temperature measuring devices;
- (b) date and time during incineration and record of waste being incinerated;
- (c) vessel position by appropriate navigational means;
- (d) feed rates of waste and fuel—for liquid wastes and fuel the flow rate shall be continuously recorded: the latter requirement does not apply to vessels operating on or before 1 January 1979;
- (e) CO and CO<sub>2</sub> concentration in combustion gases;
- (f) vessel's course and speed.

(2) Approval forms issued, copies of survey reports prepared in accordance with Regulation 3 and copies of incineration permits issued for the wastes or other matter to be incinerated on the facility by a Contracting Party shall be kept at the marine incineration facility.

REGULATION 7

*Control over the Nature of Wastes Incinerated*

A permit application for the incineration of wastes or other matter at sea shall include information on the characteristics of wastes or other matter sufficient to comply with the requirements of Regulation 9.

REGULATION 8

*Incineration Sites*

(1) Provisions to be considered in establishing criteria governing the selection of incineration sites shall include, in addition to those listed in Annex III to the Convention, the following:

- (a) the atmospheric dispersal characteristics of the area—including wind speed and direction, atmospheric stability, frequency of inversions and fog, precipitation types and amounts, humidity—in order to determine the potential impact on the surrounding environment of pollutants released from the marine incineration facility, giving particular attention to the possibility of atmospheric transport of pollutants to coastal areas;
- (b) oceanic dispersal characteristics of the area in order to evaluate the potential impact of plume interaction with the water surface;
- (c) availability of navigational aids.

(2) The coordinates of permanently designated incineration zones shall be widely disseminated and communicated to the Organisation.

REGULATION 9

*Notification*

Contracting Parties shall comply with notification procedures adopted by the Parties in consultation.

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SCHEDULE 3

*Resolution adopted on 24 September 1980*

THE FIFTH CONSULTATIVE MEETING,

RECALLING Article I of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, which provides that Contracting Parties shall individually and collectively promote the effective control of all sources of pollution of the marine environment,

NOTING that in accordance with Article XV of the Convention amendments to the Annexes of the Convention shall be based on scientific or technical considerations,

HAVING CONSIDERED the proposed amendments to the Annexes I and II of the Convention and the scientific background material thereto brought forward by the Ad Hoc Scientific Working Group on Dumping,

RECALLING the decision of the Fourth Consultative Meeting that the amendments to the Annexes I and II to the Convention should be implemented by Contracting Parties on a voluntary basis until their formal adoption,

ADOPTS the following amendments to the Annexes to the Convention in accordance with Article XV(2) thereof:

- (a) the amendment of paragraph 5 to Annex I;
- (b) the addition of a paragraph F to Annex II,

the texts of which are set out in Attachment to this Resolution,

ENTRUSTS the Inter-Governmental Maritime Consultative Organization with the task of ensuring, in collaboration with the Governments of France, Spain, the Union of Soviet Socialist Republics and the United Kingdom, that the texts of the above amendments are drawn up by 1 December 1980 in all official languages of the Convention with the linguistic consistency in each text, which would then become the authentic text of the Annexes to the Convention in the English, French, Russian and Spanish languages,

RESOLVES that for the purposes of Articles XIV(4)(a) and XV(2) of the Convention, 1 December 1980 shall be treated as the date of the adoption of the amendments,

REQUESTS the Secretary-General of the Organization to inform Contracting Parties of the abovementioned amendments.

*Attachment*

AMENDMENTS TO ANNEXES TO THE CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER

*Paragraph 5 of Annex I shall be amended as follows:*

"5 Crude oil and its wastes, refined petroleum products, petroleum distillate residues, and any mixtures containing any of these, taken on board for the purposes of dumping."

*The following paragraph shall be added to Annex II:*

"F Substances which, though of a non-toxic nature, may become harmful due to the quantities in which they are dumped, or which are liable to seriously reduce amenities."

APPENDIX

LEGISLATIVE HISTORY

Section 17:	redesignated as s. 17(1) by 74, 1993, s. 3
Section 17(2):	inserted by 74, 1993, s. 3
Section 19A:	inserted by 74, 1993, s. 4
Section 32:	substituted by 74, 1993, s. 5
Section 34(2):	substituted by 74, 1993, s. 6
Section 37(2):	amended by 74, 1993, s. 7