

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 369.

Dumping of Wastes at Sea.

GENERAL ANNOTATION.

ADMINISTRATION.

At the date of its preparation for inclusion, the administration of this Chapter was not vested specifically in any Minister, with the exception of Sections 6 and 7 which were vested in the Minister for Environment and Conservation. It seems, therefore, that under Section 148(2) of the Constitution the political responsibility for this Act was vested in the Prime Minister.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of the Constitution.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 369.

Dumping of Wastes at Sea Act.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 369.

Dumping of Wastes at Sea Act.

Being an Act—

- (a) to provide for the prevention of pollution of the sea by the dumping of waste and other matter which may create hazards to human health, harm living resources and marine life, damage amenities or interfere with other legitimate uses of the sea; and
- (b) to give effect in Papua New Guinea as far as may be, to the International Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972,

and for related purposes.

PART I.—PRELIMINARY.

1. Interpretation.

In this Act, unless the contrary intention appears—

“air cushioned vehicle” means a vehicle designed to be supported when in motion wholly or partly by air expelled from the vehicle and forming a cushion of which the boundaries include the water or other surface below the vehicle;

“commander”, in relation to an aircraft, means the member of the flight crew designated as commander of that aircraft by the operator of it or, failing such a person, the person who is for the time being the pilot in command of the aircraft;

“Convention State”, in relation to the Wastes Convention, means a State declared by the Minister by order in the National Gazette to be a party to the Convention;

“dumping” means—

- (a) any deliberate disposal at sea of substances or articles from vessels, aircraft, marine structures or other man-made structures at sea; and
- (b) any deliberate disposal at sea of vessels, aircraft, marine structures or other man-made structures at sea,

and does not include the disposal at sea of substances or articles incidental to or derived from the normal operations of vessels, aircraft, marine structures or other man-made structures and their equipment, unless the vessel, aircraft or structure in question is constructed or adapted wholly or mainly for the purpose of disposal of substances or articles and the discharge takes place as part of its operation for that purpose;

“enforcement officer” means a person appointed under Section 9;

“Environmental Contaminants Advisory Council” means the Council established under the *Environmental Contaminants Act*¹;

¹The section under which the Council was established, was not in force at the time of this up-dating.

"harbour authority" means a person authorized to operate as a harbour authority in Papua New Guinea and includes the Papua New Guinea Harbours Board established under the *Harbours Board Act*;

"marine structure" means a platform or other man-made structure at sea;

"master" in relation to a ship, means the person for the time being having lawful command or charge of the ship but does not include a pilot;

"the Organisation" means the Organisation designated by Convention States in accordance with Article XIV.2 of the Wastes Convention;

"Papua New Guinea aircraft" means an aircraft registered in Papua New Guinea;

"Papua New Guinea marine structure" means a marine structure owned by or leased to—

(a) a person who is a citizen; or

(b) a corporation that—

(i) is established under and is subject to the laws of the country; and

(ii) has its principal place of business in the country;

"Papua New Guinea ship" means a vessel registered under the *Merchant Shipping Act* or a vessel that is an exempt ship within the meaning of Section 16 of that Act;

"Papua New Guinea waters" means any part of the sea within the seaward limits of the territorial sea of the country;

"permit" means a permit issued under Section 5;

"sea" includes any area submerged at mean high water springs and also includes so far as the tide flows at mean high water springs, an estuary or an arm of the sea and the waters of any channel, creek, bay or river;

"ship" includes every description of vessel or air-cushioned vehicle used or capable of being used in navigation by water whether self-propelled or not but does not include a vessel or air-cushioned vehicle belonging to the Defence Force or to any of the defence forces of any other country;

"substances or articles" includes wastes and materials of any kind, form or description;

"the Wastes Convention" means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other matter concluded at London in 1972, as affected by any amendment other than an amendment not accepted by the State which has been made and come into force under Article XV of the Convention.

"this Act" includes the regulations.

PART II.—CONTROL OF DUMPING INTO THE SEA.

Division 1.—Control of Dumping.

2. Wastes Convention.

Subject to this Act, and to any other law, the Wastes Convention shall have the force of law.

3. Restriction on dumping into the sea.

(1) Subject to this section, and except with the written permission of the prescribed officer and in accordance with the terms of that permission, a person who—

- (a) dumps substances or articles in the territorial sea; or
- (b) dumps substances or articles in the sea outside the territorial sea from a Papua New Guinea ship, Papua New Guinea aircraft, or Papua New Guinea marine structure; or
- (c) loads substances or articles on to a ship, aircraft or marine structure in Papua New Guinea or in the territorial sea for dumping in the sea whether in the territorial sea or not; or
- (d) causes or permits substances or articles to be dumped or loaded in accordance with Paragraph (a), (b) or (c),

is guilty of an offence.

Penalty: A fine not exceeding K50 000.00.

(2) Where a person is charged with an offence under this section, it shall be a defence to prove that—

- (a) the substances or articles were dumped for the purpose of securing the safety of a ship, aircraft or marine structure or of saving life; and
- (b) the person took steps within a reasonable time to inform the prescribed officer that the dumping had taken place and of the locality and circumstances in which it took place and of the nature and quantity of the substances or articles dumped,

unless the court is satisfied that the dumping was not necessary for any of the purposes referred to in Paragraph (a) or (b) and was not a reasonable step to take in the circumstances.

(3) Where a person is charged with an offence under Subsection (1)(b), it shall be a defence to prove that the substances or articles were loaded in a Convention State and that the dumping was authorized by permission issued by the responsible authority in that State.

(4) A placement of substances or articles made by or on behalf of a harbour authority in the execution of its powers to provide harbour facilities and for a purpose other than their disposal does not constitute dumping for the purposes of this Act.

(5) A deposit made by or with the written consent of the appropriate authority for the purpose of providing moorings or securing aids to navigation does not constitute dumping for the purposes of this Act.

Division 2.—Permits, etc.

4. Application for permit.

(1) Any person may apply to the prescribed officer for a permit to dump.

(2) An application under Subsection (1) shall be on the prescribed form.

(3) The prescribed officer may require an applicant to provide such information and allow such sampling, testing and examination of the substances or articles which he desires to dump, as, in the opinion of the prescribed officer is necessary to enable him to decide whether a permit should be granted and, if so, what conditions should be applied to it.

(4) An applicant shall pay to the prescribed officer—

- (a) the costs of any tests that, in the opinion of the prescribed officer are necessary to determine whether the permit should be issued, and the conditions (if any) applicable to the permit; and
- (b) any expense incurred in connexion with any monitoring to determine the effect that dumping may have or has had on the marine environment and the living resources supported by it.

(5) An applicant who, for the purpose of obtaining a permit knowingly or recklessly—

- (a) makes a statement; or
- (b) produces to the prescribed officer, signs or makes use of a document,

that is false or misleading in a material particular, is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

5. Permit.

(1) The prescribed officer may—

- (a) refuse to issue a permit; or
- (b) issue, transfer or vary a permit; or
- (c) revoke a permit.

(2) In determining whether to issue, transfer, vary or revoke a permit, the prescribed officer shall—

- (a) have regard to the need to protect the marine environment and the living resources of the sea from any adverse consequences of the proposed dumping; and
- (b) include in the permit such conditions as appear to him to be necessary for the protection of that environment and of those resources.

(3) Where a condition of a permit requires the sampling, testing or examination of the substances or articles to be dumped, the holder shall allow the sampling, testing or examination and shall pay to the prescribed officer the costs of the sampling, testing or examination.

(4) A permit may be varied or revoked by the prescribed officer where, in his opinion—

- (a) the holder of the permit fails to comply with a condition of the permit; or
- (b) there is a change of circumstances relating to the marine environment or the living resources supported by it.

6. Permits in emergency circumstances.

(1) Where—

- (a) emergency circumstances exist; and
- (b) a substance or article constitutes an unacceptable risk relating to human health; and
- (c) there is no other feasible method for disposal of the substance or article,

the Minister may, subject to Subsection (2)—

- (d) issue a written certificate as to Paragraphs (a), (b) and (c); and
- (e) authorize the prescribed officer to issue a permit.

(2) The certificate referred to in Subsection (1)(a) shall be issued only after consultation by the Minister with—

- (a) any country likely to be affected by the disposal of the substance or article; and
- (b) the Organisation.

7. Representation to minister.

(1) Where the prescribed officer—

- (a) proposes to refuse to issue a permit; or
- (b) proposes to include a condition in the permit; or
- (c) proposes to vary or revoke a permit; or
- (d) requires payment under Section 4(4) exceeding K500.00,

he shall, by written notice to the applicant or permit holder, as the case may be, advise him of the reason for the refusal, condition, variation, revocation or payment.

(2) The applicant or permit holder may, within 28 days of receipt of the notice under Subsection (1), make written representation to the Minister.

(3) On receipt of a representation referred to in Subsection (2), the Minister shall advise the Environmental Contaminants Advisory Council, who shall furnish him with a report on the matter.

(4) On receipt of the report referred to in Subsection (3), the Minister shall make a decision which shall be final.

8. Register of Permits.

(1) The Departmental Head shall cause to be maintained a Register of Permits in the prescribed form.

(2) The Register of Permits shall be available for public inspection, and a copy of an entry in the Register may be obtained on payment of the prescribed fee.

PART III.—ENFORCEMENT.

9. Appointment of enforcement officers.

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

(2) The Minister may, in the instrument appointing a person under this section, specify that the powers and duties of the person are subject to such limitations as are specified in the instrument.

(3) An enforcement officer shall be issued with a certificate of appointment.

10. Powers of enforcement officers.

(1) An enforcement officer may—

- (a) at any reasonable time enter any place liable to inspection under this Act and board any vehicle, ship, aircraft, or marine structure with or without persons and equipment to assist him in his duties; and
- (b) open any container and examine and take samples of any substances or articles; and

- (c) examine equipment and require any person in charge of it to do anything which appears to the enforcement officer to be necessary for facilitating examination; and
- (d) require any person to produce any permit, record or other documents which relate to the dumping of substances or articles in the sea and which are in his custody or possession; and
- (e) require any person on board a ship, aircraft or marine structure to produce any records or other documents which relate to it and which are in his custody or possession; and
- (f) take copies of any document produced under Paragraphs (d) and (e).

(2) For the purpose of boarding a vehicle, ship, aircraft or marine structure, an enforcement officer may require the person in charge—

- (a) to do anything which will facilitate boarding; and
- (b) in the case of a ship—to stop it.

(3) An enforcement officer may require the attendance of the master of a ship, the commander of an aircraft or the person in charge of any marine structure on board that ship, aircraft or structure and may make any examination and inquiry which appears to him to be necessary.

(4) If, as a result of an examination and inquiry under Subsection (3), the enforcement officer has reason to believe that the ship or aircraft has been loaded in contravention of this Act the ship or aircraft may be detained until the enforcement officer issues a certificate that he is satisfied that the ship or aircraft may proceed without contravention of this Act.

(5) On entering or boarding any place or thing liable to inspection under this Act an enforcement officer shall, if requested to do so, produce this certificate of appointment.

(6) For the purpose of this section the places and things liable to inspection are—

- (a) land (including land submerged at high water springs and buildings on land), vehicles and aircraft in the country; and
- (b) ships in ports or at places in the country; and
- (c) Papua New Guinea ships, aircraft and marine structures wherever they may be,

in which an enforcement officer has reasonable cause to believe that any substances or articles intended to be dumped in the sea are, or have been present.

11. Liability of enforcement officers.

An enforcement officer is not liable in any civil or criminal proceedings for anything done in purported exercise of the powers conferred on him by this Act if the court is satisfied that the act was done in good faith and that there were reasonable grounds for so doing.

12. Offences.

(1) A person who—

- (a) without reasonable excuse fails to comply with any requirement of, or to answer any question by, an enforcement officer under this Act; or
- (b) without reasonable excuse prevents or attempts to prevent, any other person from complying with a requirement of an enforcement officer; or

- (c) assaults an enforcement officer while he is exercising any powers conferred on him by, or by virtue of, this Act; or
- (d) hinders or obstructs an enforcement officer in the exercise of his powers,

is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(2) Where a ship or aircraft has been loaded in contravention of this Act and has been detained by an enforcement officer, any person who has knowingly sent, or any master of a ship or commander of an aircraft who has knowingly taken, the ship or aircraft from the port or place of detention is guilty of an offence.

Penalty: A fine not exceeding K2 000.00.

PART IV.—MISCELLANEOUS.

13. Offence by corporation.

Where a corporation does any act or makes any omission that is an offence under this Act, every person who at the time of the act or omission was a director or member of the governing body of the corporation or was concerned in the management of the corporation, and who authorized or knowingly permitted the act or omission, shall, for the purposes of this Act, be deemed to have committed the offence.

14. Evidence.

(1) In any civil or criminal proceedings a written statement purporting to be a report made by an enforcement officer on matters ascertained in the course of exercising his powers under this Act shall be admissible as evidence to the like extent as oral evidence to the like effect by that officer.

(2) The provisions of Subsection (1) are in addition to and do not derogate from the provisions of any other law relating to the reception or admissibility of documentary evidence.

15. Determination where proceedings may be held.

Proceedings for any offence under this Act may be taken and the offence may for all incidental purposes be treated as having been committed in any place in Papua New Guinea.

16. Regulations.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular for prescribing—

- (a) persons to be prescribed officers; and
- (b) the categories of substances and articles for which permits may be issued; and
- (c) the form and manner of application for a permit and transfer of a permit; and
- (d) the manner in which permits may be issued, varied, revoked or transferred and their form and duration; and
- (e) conditions of issue of a permit; and
- (f) fees payable in connexion with the issue or transfer of a permit; and
- (g) the nature and quantity of substances and articles to be dumped; and

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(b) penalties of fines not exceeding K500.00 for offences against the regulations.

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APPENDIX 1.

SOURCE OF THE DUMPING OF WASTES AT SEA ACT.

Part A.—Previous Legislation.

Dumping of Wastes at Sea Act 1979. (No. 12 of 1979).

Part B—Cross References.

Section etc., in Revised Edition.	Previous Reference. ¹
1	1
2	2
3	3
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¹Unless otherwise indicated, references are to the Act as set out in Part A.

