

No. 8 of 2003.

Protection of the Sea (Shipping Levy) Act 2004.

Certified on: 11/11/2003.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Protection of the Sea (Shipping Levy) Act 2004,

Being an Act to impose a levy in respect of certain ships in Papua New Guinea ports with oil on board and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART 1. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears –

“**Authority**” means the National Maritime Safety Authority established by the National Maritime Safety Authority Act 2003;

“**Collector**” means a person appointed as collector under Section 3;

“**foreign-going ship**” means a ship that is engaged in making overseas voyages;

“**length**” in relation to a ship, means –

(a) the distance measured from the fore part of the stem to the aft side of the head of the stern post in a direct line over the fore and aft center line or, in a ship not having a stern post, to the fore side of the rudder stock at the point the rudder stock passes out of the hull; or

(b) the overall length as given on documents of registration or safety certification document of the ship,

and whichever is the greater length shall be the proper length for the purposes of this Act;

- “**levy**” means levy imposed under Section 4;
- “**master**” in relation to a ship, means the person having legal command or charge of the ship but does not include a pilot;
- “**oil**” means any hydrocarbon oil or hydrocarbon liquid fuel, including, crude oil, fuel oil, lubricating oil, heating oil, petrol, aviation fuel and kerosene;
- “**oil in bulk**” means oil stored in a bunker or tank or in both a bunker and tank;
- “**overseas voyage**” means a voyage outside the territorial sea;
- “**owner**” in relation to a ship, includes the charterer and any person having possession of the ship;
- “**person**” means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivision;
- “**pollution**” means oil, oily mixture and any other harmful substances as defined in any convention to which PNG is a party and includes any substance declared to be a pollutant by the Minister and includes any water contaminated by any such substance, and a reference to any pollutant includes reference to mixtures of a pollutant with water or with any such substance;
- “**Port**” means a declared port, a port as defined under the *Harbours Board Act 1963* (Chapter 240) or such other areas, places or structures where a ship may anchor;
- “**quarter**” means a quarterly period of 3 months each commencing on 1 January, 1 April, 1 July or 1 October in a year;
- “**ship**” means any sea-going vessel and any sea-borne craft or any type actually carrying oil in bulk as cargo;
- “**tonnage**” in relation to a ship means the net tonnage of a ship;
- “**this Act**” includes the regulations.

2. APPLICATION.

This Act applies to a ship (including a ship that is laid up) the registered length of which exceeds 15 meters but does not include a ship –

- (a) that is less than 15 metres in length; or
- (b) that belongs to, or is for the time being used or hired to or in the exclusive possession of, and arm of the Defence Force of a country other than Papua New Guinea; or
- (c) that belongs to or is for the time being used or hired to or in the exclusive possession of, the State or an authority of the State and is not engaged in trade; or

- (d) the beneficial interest of which is vested in the State or an authority of the State and is not engaged in trade; or
- (e) that is, in the opinion of a Collector, of traditional build and does not carry fuel, either for consumption or as cargo; or
- (f) that is –
 - (i) registered under the act; and
 - (ii) not carrying fuel, either for consumption or as cargo; or
- (g) that has entered and left port or place in country to –
 - (i) disembark a person for urgent medical treatment; or
 - (ii) obtain urgently required medical treatment for a person on board;
or
 - (iii) seek shelter due to stress of weather or force majeure.

3. COLLECTOR.

The Minister may by notice in the National Gazette appoint a person to be a Collector for the purposes of this Act.

PART 2. – SHIPPING LEVY AND COLLECTION.**4. IMPOSITION OF LEVY.**

(1) Where, at anytime during a year a ship to which this Act applies is in a port, a levy is imposed in respect of the ship for the year.

(2) The rate of levy for a year is such rate, not exceeding K24.00 per metre of length of a ship as is prescribed.

(3) Where, the amount of levy payable in respect of a ship for a year is less than the amount, referred to in Subsection (2) as is prescribed for the year, the levy is the amount so prescribed.

(4) The rate of levy during a year is such rate, not exceeding K30.00 per metre of a ship which engages in international voyage and may elect to pay such rate, not exceeding K10.00 per metre per voyage.

(5) A rate of levy for a year –

- (a) is such rate, as may be approved by the National Executive Council; and
- (b) is payable to the Authority established under the National Maritime Safety Authority Act 2003.

5. EXEMPTION IN RESPECT OF SHIP IN A PORT BY REASON OF AN EMERGENCY, ETC.

Levy is not payable in respect of a ship for a year where, at no time during the year, was the ship in a port except for the purpose, in the course of the voyage:-

- (a) of taking on board water, provisions or fuel to be used by the ship for completing the voyage; or
- (b) of engaging or discharging a member of the crew; or
- (c) of disembarking a passenger or a member of the crew for urgent medical treatment; or
- (d) of sheltering or undergoing repairs.

6. EXEMPTION PERIOD IN RELATION TO A FOREIGN-GOING SHIP.

(1) For the purposes of the Act in relation to a foreign-going ship in respect of a quarter, regard shall not be had to a time when the ship is in a port during the period (if any) that, in accordance with Subsection (2), is the exempt period in relation to the ship for the quarter.

(2) Where a levy is payable in respect of a foreign-going ship for a quarter, the exempt period in relation to the ship for the next succeeding quarter is so much of that succeeding quarter as occurs before the expiration of a period of three months from the earliest time during the first mentioned quarter when the ship is in a port, other than a time by reference to which levy is not payable in respect of a ship for that quarter.

7. TIME FOR PAYMENT OF LEVY.

Levy in respect of a ship for a quarter becomes payable upon the expiration of the quarter.

8. PAYMENTS ON ACCOUNT OF LEVY.

(1) Subject to Subsection (5), there is payable on the first day of a quarter, on account of levy that may become payable for that quarter in respect of a ship, other than a foreign-going ship, an amount equal to the amount of levy that may become so payable.

(2) Subject to Subsection (5), where –

- (a) on any day in a quarter, the levy becomes payable in respect of a foreign-going ship; and
- (b) an amount has not previously become payable under this Act on account of levy that may become payable in respect of the ship for that quarter,

there is payable on that day, on account of levy that may become so payable, an amount equal to the amount of levy that may become so payable.

(3) Where –

- (a) a foreign-going ship, is in a port at any time during a quarter; and
- (b) an amount has not previously become payable under this section on account of levy that may become payable in respect of the ship for that quarter,

a Collector may, by notice served on the master of the ship in such manner as is prescribed, require an amount to be paid on account of levy that may become so payable and subject to Subsection (5), that is payable, within such period as is specified in the notice, on account of levy that may become so payable, an amount equal to the amount of levy that may become so payable.

(4) Where an amount is paid to the Authority under this section on account of levy that may become payable in respect of a ship for a quarter, the amount so paid shall –

- (a) if a levy becomes payable in respect of the ship for the quarter, be deemed to be payment of the levy; or
- (b) if a levy does not become so payable, be repaid to the master or owner of the ship.

(5) An amount is not payable under this section on account of levy in respect of a ship for a quarter if the owner or master of the ship satisfies a Collector that levy is not, and is not likely to become, payable in respect of the ship for that quarter as required under this Act.

9. PERSONS LIABLE TO PAY LEVY AND AMOUNTS ON ACCOUNT OF LEVY.

The owner and master of a ship are jointly and severally liable to pay a levy that is payable in respect of the ship or an amount that, under Section 8, is payable on account of levy that may become payable in respect of the ship.

10. RECOVERY OF LEVY AND AMOUNTS ON ACCOUNT OF LEVY.

(1) Levy that has become payable, or an amount that, under Section 8 is payable on account of levy, is a debt due to the Authority by the person by whom the levy or the amount is payable.

(2) In proceedings to recover levy in respect of a ship for a quarter, it is presumed, unless the contrary is established by the defendant –

- (a) that a registered ship is in a port during the year, the registered length of which is less than 15 metres; and
- (b) that, at no time during the quarter, is the ship in a port, in the course of a voyage, only for a purpose specified in Section 5.

11. RECOVERY OF UNPAID LEVY BY DISTRESS.

(1) Where levy payable in respect of a ship has not been paid, a Collector may, without prejudice to any other remedy for the recovery of the levy, enter upon the ship and distrain goods or equipment belonging to the ship, until the levy is paid.

(2) If payment of the levy is not made before the expiration of the period of three days after the distress, a Collector may, at any time while the levy remains unpaid, sell by public auction the goods or equipment distrained and, out of the proceeds of the sale, may, to the extent that the amount of those proceeds allow, recover the levy and all reasonable expenses incurred by him under this section.

(3) For the purposes of a sale under Subsection (2), the Authority shall be deemed to be the absolute owner of the goods or equipment the subject of the sale.

(4) Where, after deducting from the proceeds of the sale the amount of the levy, and the expenses of a Collector, a surplus remains, a Collector shall, on demand, pay that a surplus to the owner or master of the ship.

(5) A reference in this section to levy payable in respect of a ship shall be read as including a reference to an amount that, under Section 8 is payable on account of levy that may become payable in respect of the ship.

12. DETENTION OF SHIP FOR UNPAID LEVY.

(1) A ship in respect of which levy is payable may be detained by a Collector until the levy is paid.

(2) Where a ship that has been detained by a Collector under Subsection (1) goes to sea without having been released by a Collector, the mater or its owner of the ship is guilty of an offence.

Penalty: A fine not exceeding K50,000.00

(3) A reference in this section to levy payable in respect of a ship shall be read as including a reference to an amount that, under Section 8, is payable on account of levy that may become payable in respect of the ship.

13. REGULATIONS.

The Head of State, acting on advice, may make Regulation 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 the –

- (a) rate of levy in respect of a ship carrying oil in bulk; and
- (b) minimum amount of levy payable in certain circumstances by a ship,

to which this Act applies.

Office of Legislative Counsel, PNG