

No. **33** of 2013

Marine Pollution (Preparedness and Response) Act 2013.

Certified on : **30 MAY 2014**



No. of 2013.

Marine Pollution (Preparedness & Response) Act 2013.

ARRANGEMENT OF SECTIONS.

PART I - PRELIMINARY.

1. Application.
2. Compliance with constitutional requirements.
3. Interpretation -
 - “Authority”
 - “chemical”
 - “Committee”
 - “incident”
 - “Incident Commander”
 - “Incident Command Centre”
 - “Incident Response Team”
 - “Inspector”
 - “International Maritime Organisation”
 - “Intervention Convention”
 - “Intervention Protocol”
 - “Lead Agency”
 - “marine casualty”
 - “MARPOL Convention or MARPOL”
 - “master”
 - “Minister”
 - “National Government”
 - “NATPLAN”
 - “occupier”
 - “offshore installation”
 - “oil”
 - “oil or chemical handling facility”
 - “oily mixture”
 - “OPRC Convention”
 - “OPRC-HNS Protocol”
 - “owner”
 - “person”
 - “place on land”
 - “pollutant”

“port facility”
“Papua New Guinea coastline”
“Papua New Guinea vessel”
“Papua New Guinea waters”
“Provincial Government”
“related interests”
“sea”
“SPREP”
“SPREP Pollution Emergencies Protocol”
“spill”
“vessel”.

4. International Conventions.

PART II. - MARITIME POLLUTION PREPAREDNESS.

5. Risk assessments.
6. National Marine Pollution Contingency Plan.
7. Site-specific contingency plans.
8. Marine pollution response equipment.
9. Training and exercise.
10. Appointment of Incident Commander.
11. National Marine Pollution Committee.
12. Regional cooperation.

PART III. - MARINE POLLUTION RESPONSE.

13. Duty to report incidents.
14. Initial response actions.
15. Incident Commander to coordinate the response.
16. Support of Disaster Committees.
17. Response termination.
18. Cost recovery and compensation.

PART IV. - MARINE CASUALTIES AND POWERS OF INTERVENTION.

19. Powers of intervention.
20. Measures to be safe, reasonable and proportionate.
21. Consultation and notification.
22. Right to compensation.
23. Protection from liability.
24. Offences.

PART V. - MISCELLANEOUS, ADMINISTRATION AND ENFORCEMENT.

25. Administration, enforcement, prosecution and jurisdiction.
26. Appointment of Inspectors.

27. Boarding of vessels etc., by Inspectors.
28. Access to premises.
29. Functions of Inspectors.
30. Powers of arrest of Inspectors.
31. Regulations.
32. Offences and penalties.
33. Recovery of fines by distress.
34. Time limit for prosecution proceedings.



No. of 2013.

AN ACT

entitled

Marine Pollution (Preparedness and Response) Act 2013.

Being an Act -

- (a) to provide for the effective response to and control of spills of oil, chemicals or any other pollutant from vessels or any other sources within Papua New Guinea waters or which pollute or threaten to pollute Papua New Guinea waters, aquatic resources, coastline or related interests; and
- (b) to provide for effective cooperation with neighbouring countries in matters pertaining to marine pollution preparedness, response and control; and
- (c) to incorporate into the law of Papua New Guinea relevant provisions of certain international Conventions relating to marine pollution preparedness, response and control;

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 I. - PRELIMINARY.

1. APPLICATION.

(1) Unless expressly provided otherwise, this Act applies to all spills or possible spills of oil, chemicals or any other pollutant from any or all sources that may pollute or threaten to pollute Papua New Guinea waters, aquatic resources, coastline or related interests.

(2) This Act applies to the State including any vessel or any offshore installation or any port facility or any oil or chemical handling facility owned or partly owned or chartered or otherwise operated by the National Government or any Provincial Governments of Papua New Guinea, except that it does not apply to any vessel or offshore installation of the Papua New Guinea Defence Force in times of war, conflict or emergency only.

Marine Pollution (Preparedness and Response)

(3) This Act does not apply to any warship, naval auxiliary or other vessel owned or operated by the government of a State other than Papua New Guinea and used, for the time being, only on government non-commercial service.

2. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom conferred by Subdivision 111.3.C (*qualified rights*) of the *Constitution*, namely -

- (a) the freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *Constitution*; and
- (c) the right to freedom of information conferred by Section 51 of the *Constitution*; and
- (d) the right to freedom of movement conferred by Section 52 of the *Constitution*; and
- (e) the protection from unjust deprivation of property conferred by Section 53 of the *Constitution*; and
- (f) the right to compensation conferred by Section 58 of the *Constitution*,

is a law made pursuant to Section 38 of the *Constitution* for the purpose of giving effect to the public interest in public order and public welfare.

(2) For the purposes of Section 41(2) of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act relates to a matter of national interest.

(3) For the purposes of Section 41(6) of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act is an Act of Parliament on a matter specified in Sections 42 or 44 of the *Organic Law on Provincial Governments and Local-level Governments*, and prevails over any law made under Sections 42 or 44 to the extent of any inconsistency.

3. 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*;

“chemical” means any substance other than oil which, if introduced into the aquatic environment is likely to create hazards to human health, harm living resources and aquatic life, damage amenities or interfere with other legitimate uses of the sea or other waters and has the same meaning as “Hazardous and Noxious Substances” under the OPRC-HNS Protocol;

“Committee” means the National Marine Pollution Committee established under Section 11;

“incident” means any occurrence or series of occurrences having the same origin, which causes a spill or creates a grave or imminent threat of causing a spill, and

“marine pollution incident” has the same meaning;

“Incident Commander” means the person appointed by the General Manager of the Authority at the time of an incident, who shall have overall authority to -

- (a) manage and co-ordinate all operations; and

Marine Pollution (Preparedness and Response)

(b) direct the use of all resources, necessary to prevent and minimise the human-health, ecological and economic impacts of the incident and to clean-up the pollution until the response is terminated in accordance with Sections 10 and 15 to 17;

“Incident Command Centre” means the centre established at the time of an incident from which the Incident Commander and the Incident Response Team will coordinate the overall response to the incident and such a Centre may be at a suitable venue close to the incident or at the offices of the Authority or at the National Disaster Centre established under the *Disaster Management Act 1984*, or at any other suitable venue, depending on the requirements of the incident being responded to, and in accordance with the relevant contingency plan;

“Incident Response Team” means the members of the National Marine Pollution Committee established under Section 11 or their designated technical representatives who convene at the designated Incident Command Centre at the time of an incident to coordinate the inputs of their respective organisations to the overall response to the incident, under the direction of the Incident Commander and in accordance with the relevant contingency plan;

“Inspector” means a person appointed as an inspector under Section 20(1);

“International Maritime Organisation” means the organisation established by the *International Maritime Organisation Convention 1958*;

“Intervention Convention” means the *International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969*, as affected by any amendment other than an amendment not accepted by Papua New Guinea which has been made and has come into force in accordance with the relevant provisions of the Convention;

“Intervention Protocol” means the *Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil 1973*, as affected by any amendment other than an amendment not accepted by Papua New Guinea which has been made and has come into force in accordance with the relevant provisions of the Protocol;

“lead agency” means the organisation responsible for coordinating all aspects of the response to marine casualties, marine pollution incidents and spills in Papua New Guinea waters;

“marine casualty” means a collision, grounding, sinking or stranding of a vessel or vessels or other incident of navigation, or other occurrence on board a vessel, or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo;

“MARPOL Convention or MARPOL” means the *International Convention for the Prevention of Pollution from Ships 1973*, as amended by the Protocol of 1978 and as affected by any amendment other than an amendment not accepted by Papua New Guinea which has been made and has come into force in accordance with the relevant provisions of the Convention;

“master” means the person in charge of a vessel at any one time;

“Minister” means the Minister responsible for maritime transport;

“National Government” means the Government of Papua New Guinea;

“NATPLAN” means the National Marine Pollution Contingency Plan as referred in Section 6;

Marine Pollution (Preparedness and Response)

- “occupier”, means the occupant of land or premises or building or facility, and if the land or premises or building or facility is unoccupied or the occupier is unknown or cannot be found, includes the owner of the land or premises or building or the owner of any interest in the land or premises or building;
- “offshore installation” means any man-made fixed or floating offshore structure located in Papua New Guinea waters used for any purpose whatsoever, and includes but is not limited to pipelines, rigs and platforms and transfer, storage and loading facilities associated with offshore oil, gas and mineral exploration, extraction, production and transport, but does not include jetties and wharves that are not used for the handling of pollutants;
- “oil” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals which are subject to the provisions of Annex II of MARPOL) and includes the substances listed in Appendix I to Annex I of MARPOL;
- “oil or chemical handling facility” means any place which is used to transport, transfer, handle or store oil or chemicals and which is located as such that any discharge, drainage or leakage of oil or chemicals from the facility has the potential to enter Papua New Guinea waters, and includes oil and chemical storage tanks and pipelines and areas used to store or handle drums and areas used to park, load, unload or service road tankers;
- “oily mixture” means a mixture with any oil content;
- “OPRC Convention” means the *International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990*, as affected by any amendment other than an amendment not accepted by Papua New Guinea which has been made and has come into force in accordance with the relevant provisions of the Convention;
- “OPRC-HNS Protocol” means the *Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances 2000*, which is a Protocol to the OPRC Convention, as affected by any amendment other than an amendment not accepted by Papua New Guinea which has been made and has come into force in accordance with the relevant provisions of the Convention;
- “owner” means -
- (a) in relation to any vessel -
 - (i) the registered owner or owners, if the vessel is a registered vessel;
or
 - (ii) the person owning the vessel, if the vessel is an unregistered vessel;
or
 - (iii) the person or agency registered as the operator of the vessel, if the vessel is owned by the Government,
and includes -
 - (iv) any charterer, manager, or operator of the vessel or any other person for the time being responsible for the navigation or management of the vessel; and

Marine Pollution (Preparedness and Response)

- (v) any agent in Papua New Guinea of the owner, charterer, manager, or operator; and
- (vi) any other person that has an interest in or is in possession of the vessel, including any salvor in possession of the vessel, and any employee or agent of any salvor in possession of the vessel; and
- (b) in relation to any offshore installation -
 - (i) the owner or operator or manager or licensee for the time being of the offshore installation, or any agent or employee, or any person in charge of operations connected with the installation; and
 - (ii) any person having a right or privilege or license to explore the seabed and subsoil and to exploit the natural resources from the seabed or subsoil in connection with which the offshore installation is or has been or is to be used; and
- (c) in relation to any port facility, the registered owner, lessee or operator of the facility or the registered owner or lessee of the land on which the facility is located; and
- (d) in relation to any oil or chemical handling facility, the registered owner, lessee or operator of the facility or the registered owner or lessee of the land on which the facility is located; and
- (e) in relation to any place on land, the registered owner, lessee or occupier of the land;

“person” means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent agencies and parts;

“place on land” means any place on dry land, or on any dry, inter-tidal or submerged reef, or any place connected with dry land or a reef;

“pollutant” includes oil, oily mixtures, oil residues, noxious liquid substances, harmful substances, sewage and garbage as defined by MARPOL, and any water contaminated by any such substance, and any other substance which, added to the sea or any waters, results or is likely to result in such deleterious effects as harm to living resources and aquatic life, hazards to human health, hindrance to aquatic activities, including fishing and other legitimate uses of the sea or any waters, impairment of quality for use of any waters and reduction of amenities, and “pollution” has a corresponding meaning;

“port facility” means any place where vessels regularly moor at a wharf, jetty or other facility for the purposes of loading or unloading passengers or cargo or for refuelling;

“Papua New Guinea coastline” means any land territory of Papua New Guinea that borders any Papua New Guinea waters;

“Papua New Guinea vessel” means a vessel that is -

- (a) registered or required to be registered under the *Merchant Shipping Act 1975* or any law administered by a Provincial Government; or
- (b) owned or partially owned by either:-
 - (i) a citizen of Papua New Guinea; or
 - (ii) a Corporation established under and subject to the laws of Papua New Guinea,and is unregistered;

Marine Pollution (Preparedness and Response)

“Papua New Guinea waters” means -

- (a) the internal waters; and
- (b) the territorial sea; and
- (c) the contiguous zone; and
- (d) the archipelagic waters; and
- (e) the exclusive economic zone;

of Papua New Guinea as defined in the *National Seas Act 1977*;

“Provincial Government” means any of the governments of the Provinces of Papua New Guinea;

“related interests” means the interests of Papua New Guinea directly affected or threatened by a marine casualty, a marine pollution incident or a spill, such as -

- (a) maritime coastal, port or estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned; and
- (b) tourist attractions of the area concerned; and
- (c) the health of the coastal population and the well-being of the area concerned, including conservation of living aquatic resources and of wildlife;

“sea” means all areas of water below highest astronomical tide and includes the ocean and any estuary, tidal area and lagoon;

“SPREP” means the Secretariat of the Pacific Regional Environment Programme;

“SPREP Pollution Emergencies Protocol” means the *Protocol Concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region*;

“spill” in relation to oil, chemicals or other pollutants or effluents containing such pollutants means any release howsoever caused from any source and includes any escape, disposal, discharge, leaking, pumping, emitting or emptying, but does not include -

- (a) any discharge from a land-based source or from an offshore installation that is duly authorised under the *Environment Act 2000*; or
- (b) any discharge from a land-based source that is duly authorised under the *Mining (Ok Tedi Agreement) Act 1976*; or
- (c) any discharge from a land-based source that is duly authorised under the *Mining (Bougainville Copper Agreement) Act 1967*; or
- (d) dumping within the meaning of the London Protocol;

“vessel” means any waterborne vessel and craft of any size and type and includes displacement and non-displacement craft, hydro-foil boats, air-cushion vehicles, submersibles, fixed or floating platforms, floating storage units (FSUs) and floating storage production and offloading units (FSPOs) without regard to the method of or lack of propulsion.

4. INTERNATIONAL CONVENTIONS.

(1) The following International Conventions, including any Protocols, Annexes, Appendices, Addenda and Amendments, other than a Protocol, Annex, Appendix, Addenda or Amendment not accepted by the State, which has been made and has come into force in accordance with the relevant provisions of the Convention, are the International Conventions to which this Act applies and which through this Act have the force of law in Papua New Guinea:

Marine Pollution (Preparedness and Response)

- (a) Intervention Convention; and
 - (b) Intervention Protocol; and
 - (c) OPRC Convention; and
 - (d) OPRC-HNS Protocol; and
 - (e) SPREP Pollution Emergencies Protocol.
- (2) Regulations made under this Act may -
- (a) make provision for any aspect of the application or enforcement of a Convention to which this Act applies; and
 - (b) modify the application of any Convention to which this Act applies to meet the needs and circumstances of Papua New Guinea; and
 - (c) prescribe offences for the breach of any aspect of a Convention to which this Act applies, and any related offences, and impose penalties being fines not exceeding K1,000,000.00, or imprisonment for terms not exceeding five years, or both.
- (3) In the event of any inconsistency between the provisions of any of the Conventions to which this Act applies and the provisions of this Act, this Act shall apply.

PART II. - MARINE POLLUTION PREPAREDNESS.

5. RISK ASSESSMENTS.

- (1) The Authority shall cause to be undertaken a national marine pollution risk assessment within one year after this Act comes into operation, and thereafter at least every five years or whenever there is a major new development that may alter the risk of marine pollution incidents affecting Papua New Guinea waters or coastline, whichever comes first.
- (2) The risk assessments undertaken under Subsection (1) shall, as a minimum -
- (a) identify the main shipping routes through and around Papua New Guinea, including transit routes that do not service Papua New Guinea ports, and characterise the types, quantities and frequencies of marine pollutants carried on each route; and
 - (b) identify the locations and describe marine pollution risks for all offshore installations; and
 - (c) identify the locations and describe marine pollution risks for all ports; and
 - (d) identify and characterise highest risk areas for marine pollution incidents, including shipping accidents, other sea-based sources and land-based sources; and
 - (e) use internationally accepted risk assessment methods including up-to-date data collection, analysis and presentation methods; and
 - (f) upon finalisation, be published by the Authority as a public report.
- (3) The owner and operator of any -
- (a) port facility; or
 - (b) oil or chemical handling facility; or

Marine Pollution (Preparedness and Response)

(c) offshore installation, which poses the risk of marine pollution incidents shall, at their cost, undertake a marine pollution risk assessment for their facility or installation -

(d) within one year after this Act comes into operation; and

(e) after that, at least every five years; and

(f) whenever there is a major new development that may alter the risk of marine pollution incidents from their port facility, oil or chemical handling facility or offshore installation, whichever comes first.

(4) The risk assessments undertaken under Subsection (3) shall, as a Minimum -

(a) use internationally accepted risk assessment methods including up-to-date data collection, analysis and presentation methods; and

(b) be consistent and coordinated with and provide inputs to the national risk assessments carried out under Subsection (1); and

(c) be reported to the Authority and upon finalisation made available as public reports.

(5) The proponent or developer of any proposed new port facility, new oil or chemical handling facility or new offshore installation shall, at their cost, undertake a marine pollution risk assessment for their proposed new facility or installation as part of the planning and environmental impact assessment process for their proposed development under the *Environment Act 2000*, consistent with the risk assessments outlined under Subsections (1) to (4), and the results of the risk assessment shall be reported to the Authority and other interested Government bodies and upon finalization made available as a public report.

(6) The results of the risk assessments carried out under Subsections (1) to (5) shall be used to inform the development of marine pollution contingency plans required under Sections 6 and 7 and the marine pollution response equipment inventories required under Section 8.

(7) Any owner and any operator who fails to comply with Subsections (3) and (4) and any proponent or developer who fails to comply with Subsection (5) each commits an offence and shall be liable, upon conviction, to a fine not exceeding K500,000.00.

6. NATIONAL MARINE POLLUTION CONTINGENCY PLAN.

(1) The Authority, with advice from the National Marine Pollution Committee (Committee) established under Section 11, shall ensure that a National Marine Pollution Contingency Plan (NATPLAN) that is consistent with established international standards for contingency planning is developed, implemented and maintained, and such plan shall -

(a) provide for a coordinated, whole-of-government response to discharges of oil, chemicals or any other pollutant from any source into Papua New Guinea waters; and

(b) provide for coordination and integration with site specific contingency plans as required under Section 7; and

(c) upon finalisation be publicly available; and

(d) be exercised, at least, annually.

Marine Pollution (Preparedness and Response)

(2) Under the NATPLAN the Authority shall be designated as the Lead Agency responsible for coordinating all aspects of the response to marine casualties, marine pollution incidents and spills in Papua New Guinea waters, through the Incident Commander appointed under Section 10 and with the advice and support of the Committee established under Section 11.

7. SITE-SPECIFIC CONTINGENCY PLANS.

(1) All owners and operators of port facilities, oil or chemical handling facilities or offshore installations which pose the risk of marine pollution incidents shall develop, implement and maintain site-specific marine pollution contingency plans for their facilities or installations, appropriate to the level and type of risk of marine pollution incidents from their activities, and consistent with the NATPLAN.

(2) The plans required to be developed under Subsection (1) shall be submitted to the Authority for approval and in approving such plans the Authority shall consider internationally accepted best practice in contingency planning and the advice of the Committee, and shall not unreasonably withhold approval.

(3) The plans required to be developed under Subsection (1) shall be exercised, at least, annually.

(4) Any owner and any operator who fails to comply with Subsections (1) to (3) each commits an offence and shall be liable, upon conviction, to a fine not exceeding K500,000.00.

8. MARINE POLLUTION RESPONSE EQUIPMENT.

(1) The Authority shall arrange for the establishment and maintenance of a national marine pollution response equipment inventory, taking into account the findings of the risk assessments required under Section 5, and comprising equipment owned and maintained by the Authority and equipment owned and maintained by the private-sector as required under Subsections (2) and (3).

(2) All owners and operators of port facilities, oil or chemical handling facilities or offshore installations which pose the risk of marine pollution incidents shall procure, operate and maintain, in a state of constant readiness, a stockpile of marine pollution response equipment at or near their facility or installation, with the type and quantity of equipment being appropriate to the level and type of risk of marine pollution incidents from the facility or installation, and being suitable for local conditions.

(3) In determining equipment needs under Subsection (2), each owner or operator of a port facility, oil or chemical handling facility or offshore installation shall take into account the findings of the risk assessments required under Section 5 and shall liaise with the Authority, through the Committee, to ensure compatibility and inter-operability with the national inventory.

Marine Pollution (Preparedness and Response)

(4) The marine pollution response equipment required under Subsection (2) shall be used primarily for the response to marine pollution incidents at the facility or installation to which the equipment belongs, at the cost of the owner or operator, however such equipment and any supporting personnel and other resources shall also be made available to the national inventory for use in the response to marine pollution incidents from any source anywhere in Papua New Guinea, subject to -

- (a) the administrative arrangements developed under Subsection (6); and
- (b) the owner of the equipment agreeing to such use on a case by case basis, recognizing the need to ensure that the owner's response capability at its own site is not unreasonably compromised; and
- (c) the owner or operator being reimbursed for the reasonable costs of the use, repair or replacement of the equipment and any associated personnel; with such costs being recovered from the polluter if possible or if necessary from the National Marine Pollution Fund established under the ***Marine Pollution (Liability and Cost Recovery) Act 2013***, and provided that such costs are agreed to between the Authority and the owner in advance and in accordance with the administrative arrangements developed under Subsection (6).

(5) As part of the national inventory, marine pollution response equipment owned by the Authority shall be made available to respond to marine pollution incidents from any source anywhere in Papua New Guinea and the Authority shall be reimbursed for the reasonable costs of the use, repair or replacement of the equipment with such costs being recovered from the polluter if possible or if necessary from the National Marine Pollution Fund (POLFUND) established under the ***Marine Pollution (Liability and Cost Recovery) Act 2013*** and consistent with the administrative arrangements developed under Subsection (6).

(6) In order to facilitate the use of equipment, personnel and other resources under Subsections (4) and (5), the Authority and the private sector, with the advice of the Committee, shall jointly develop and agree to the National Administrative Arrangements for the Cooperative Use of the National Marine Pollution Response Resources (Administrative Arrangements), including both private sector and government owned equipment and resources, as well as personnel, consistent with the provisions of this section, this Act and with the ***Marine Pollution (Liability & Cost Recovery) Act 2013*** and such administrative arrangements shall be reviewed by the agreeing parties with advice from the Committee from time to time.

(7) The Authority may require owners or operators of vessels to carry on board and maintain -

- (a) marine pollution response equipment for, as far as practicable, the containment, recovery or dispersal of any pollutant that may be discharged by the vessel into Papua New Guinea waters; and
- (b) the type and quantity of equipment that is sufficient to allow an initial response to the pollution incident, as determined by the Authority in consultation with the owner or operator, taking into consideration limitations of the crew and the practicalities of operations at sea; and

Marine Pollution (Preparedness and Response)

- (c) the type and quantity of equipment that is specified in any Shipboard Oil Pollution Emergency Plan (SOPEP) or Shipboard Marine Pollution Emergency Plan (SMPEP) required of the vessel under the *Marine Pollution (Ships and Installations) Act 2013*.

(8) Any owner and any operator who fails to comply with Subsections (2), (3), (4), (5) or (7) each commits an offence and shall be liable, upon conviction, to a fine not exceeding K500,000.00.

9. TRAINING AND EXERCISE.

(1) The Authority, with the guidance of the Committee, shall develop and implement an annual programme of training and exercises in marine pollution control and clean-up for relevant staff from all government bodies that are members of the Committee and the outcomes of such training and exercises shall be used to update and improve the NATPLAN and related arrangements over time.

(2) The owners and operators of port facilities, oil or chemical handling facilities or offshore installations which pose the risk of marine pollution incidents shall develop and implement an annual programme of training and exercises, in marine pollution control and clean-up for relevant staff from their organisations, that is consistent, coordinated and as far as possible, integrated with the national training and exercise programme established under Subsection (1) and the outcomes of such training and exercises shall be used to update and improve the owners' and operators' site-specific marine pollution contingency plans and related arrangements over time.

(3) Any owner or operator who fails to comply with Subsection (2) commits an offence and shall be liable, upon conviction, to a fine not exceeding K100,000.00

10. APPOINTMENT OF INCIDENT COMMANDER.

(1) As soon as practicable, after the Authority receives a report of an incident, the General Manager of the Authority shall appoint from within the staff of the Authority, the National Government or a Provincial Government, an Incident Commander and Deputy Incident Commander.

(2) The persons appointed as Incident Commander and Deputy Incident Commander shall be appropriately qualified and experienced for the role and shall have received formal training for the role.

(3) The Incident Commander shall, within the framework of the NATPLAN and with the advice and support of the Incident Response Team, assume the powers, roles and responsibilities outlined in Section 15 for the duration only of the response to the incident.

(4) The Deputy Incident Commander shall fulfil the role of Incident Commander when the Incident Commander is absent or when directed to do so by the Incident Commander.

11. NATIONAL MARINE POLLUTION COMMITTEE.

(1) Apart from the Authority, a National Marine Pollution Committee shall be formed, comprising the following persons or their designated representative, as a minimum:

Marine Pollution (Preparedness and Response)

- (a) the head of the department responsible for environmental protection; and
- (b) the head of the department responsible for fisheries and marine resources; and
- (c) the head of the department responsible for disaster management; and
- (d) the head of the department responsible for petroleum and energy; and
- (e) the head of any other relevant Government bodies as may be deemed necessary by the Authority.

(2) Where relevant, representatives from the following sectors, through their national representative bodies, may be invited to be members of the Committee:

- (a) the shipping industry; and
- (b) the oil and mining industry; and
- (c) the fishing industry; and
- (d) a nationally representative environmental non-government organization; and
- (e) any other sector as deemed necessary by the Authority, provided that membership of the Committee remains balanced and relevant to its role under Subsection (4).

(3) The Committee shall be Chaired by the General Manager of the Authority and the Authority shall act as Secretariat to the Committee.

(4) The role of the Committee shall be to provide coordinated advice and support to the Authority and the Incident Commander on the following matters:

- (a) the undertaking of risk assessments under Section 5; and
- (b) the development, approval and maintenance of marine pollution contingency plans required under Sections 6 and 7, including designation of roles and responsibilities of Committee members' organisations; and
- (c) the establishment and maintenance of the national marine pollution response equipment inventory under Section 8; and
- (d) the development and implementation of the national training and exercise programme under Section 9; and
- (e) the fixing of marine pollution levies and administration of the POLFUND under the ***Marine Pollution (Liability and Cost Recovery) Act 2013***; and
- (f) participation of Papua New Guinea in any bilateral, multilateral or regional marine spill contingency plan(s) and related arrangements in place at the time; and
- (g) any other matters related to marine pollution preparedness and response as required by the Authority.

(5) Members of the Committee or their designated technical representatives shall also assume the role of Incident Response Team, under the direction of the Incident Commander, during the actual response to specific marine pollution incidents, including coordinating inputs of each Committee members' organisations to the response and clean-up efforts and the actual composition of the Incident Response Team shall be determined by the requirements of the incident, in accordance with the relevant contingency plan.

Marine Pollution (Preparedness and Response)

(6) The Committee shall convene at least biannually for routine business, and shall provide the members of the Incident Response Team whenever a marine pollution incident occurs.

(7) The Committee may, subject to any written directions of the Authority, regulate its procedure as it thinks fit.

(8) The Chairman shall submit an Annual Report to the Board of the Authority and the Minister outlining the activities of the Committee and summarising the advice given to the Authority during the previous calendar year, and such report shall be tabled by the Minister in Parliament.

12. REGIONAL COOPERATION.

(1) The Authority shall seek to enter into and maintain cooperative arrangements for mutual assistance in the response to marine pollution incidents with all neighbouring countries with which Papua New Guinea shares maritime boundaries, consistent with the SPREP Pollution Emergencies Protocol, the OPRC Convention and the OPRC-HNS Protocol.

(2) Should Papua New Guinea require external assistance from other countries or territories in response to a marine pollution incident, such assistance shall be requested in accordance with the procedures contained in any relevant bilateral or multilateral memorandums of understanding, bilateral or multilateral marine pollution contingency plan(s) and related arrangements in place at the time.

(3) Should other countries or territories request assistance from Papua New Guinea in response to a marine pollution incident, such requests may be considered in accordance with the procedures contained in any relevant bilateral or multilateral memorandums of understanding, bilateral or multilateral marine pollution contingency plan(s) and related arrangements in place at the time.

PART III. - MARINE POLLUTION RESPONSE.

13. DUTY TO REPORT INCIDENTS.

(1) The provisions of Section 55 of the *Marine Pollution (Ships and Installations) Act 2013* relating to the duty to report incidents are extended by this Act to also apply to the owners or operators of oil or chemical handling facilities or any place on land from which a spill occurs and enters Papua New Guinea waters, as relevant to such facilities and places.

(2) Any person who -

(a) fails to reasonably comply with any provision of Subsection (1); or

(b) makes a report containing any information that to his or her knowledge is false or misleading,

commits an offence and is liable, upon conviction, to a fine not exceeding K25,000.00.

Marine Pollution (Preparedness and Response)

14. INITIAL RESPONSE ACTIONS.

(1) Whenever the Authority receives a report of a marine pollution incident, it shall initiate a response in accordance with the NATPLAN and the first actions of the Authority shall be to -

- (a) designate the Incident Commander and Deputy Incident Commander as required under Section 10; and
- (b) designate the Incident Command Centre; and
- (c) mobilise the Incident Response Team to the Incident Command Centre.

(2) The first action of the Incident Response Team shall be to make an assessment of the incident, so as to designate the incident to a response Tier level as follows:

- (a) Tier One, which involves small spills that are within the response capability and resources of an individual port or other facility, the response and clean-up shall be conducted by the owner or operator of that port or other facility under its site-specific contingency plan, with oversight and support from the Authority and Incident Response Team as required; and
- (b) Tier Two which involves medium spills that are within the national capability and resources of the NATPLAN, the response and clean-up shall be controlled directly by the Incident Commander and the Authority under the NATPLAN with support from the Incident Response Team and other parties as required; and
- (c) Tier Three which involves large spills that are of a magnitude and severity that is beyond the response capability and resources of Papua New Guinea and impact or threaten to impact across the jurisdiction(s) of neighbouring country(ies), the response and clean-up is controlled directly by the Incident Commander and the Authority under the NATPLAN with support from the Incident Response Team, as well as from neighbouring countries and other external assistance, in accordance with the procedures contained in any relevant bilateral or multilateral memorandums of understanding, contingency plan(s) and related arrangements in place at the time.

(3) In designating an incident to a Tier level, the Incident Commander shall be prepared to involve the next highest Tier level as it is easier to stand down an alerted system than to escalate a response.

(4) Once the incident has been designated to a Tier level, the Authority, through the Incident Commander and with the support of the Incident Response Team, shall oversee, coordinate and control the response to the spill in accordance with the contingency plan relating to the designated Tier level.

15. INCIDENT COMMANDER TO CO-ORDINATE THE RESPONSE.

(1) During the response to any marine pollution incident in Papua New Guinea waters or which threatens Papua New Guinea waters or coastline, the Incident Commander shall, within the framework of the NATPLAN and with the advice and support of the Incident Response Team -

- (a) manage and co-ordinate all operations; and

Marine Pollution (Preparedness and Response)

(b) direct the use of all resources, necessary to prevent and minimise the human-health, ecological and economic impacts of the incident and to clean-up the pollution until the response is terminated in accordance with Section 17.

(2) For the duration only of the response to a marine pollution incident, the Incident Commander shall coordinate all national assets and resources that are deemed necessary to deal with the incident, and shall have the authority to spend and commit such funds as are reasonable in the circumstances, with the advice of the Incident Response Team and approval of the General Manager of the Authority, up to eighty percent (80%) of the amount contained in the POLFUND established under the ***Marine Pollution (Liability and Cost Recovery) Act 2013***.

(3) In carrying out his or her responsibilities, the Incident Commander shall be supported by the staff and resources of the Authority, as well as by the staff and resources of other organisations that are members of the Incident Response Team.

16. SUPPORT OF DISASTER COMMITTEES.

(1) In the case of a Tier 2 or Tier 3 spill, the Incident Commander may request the support of the National Disaster Committee or a Provincial Disaster Committee established under the ***Disaster Management Act 1984***.

(2) Such support may include the establishment of the Incident Command Centre at the National Disaster Centre or a Provincial Disaster Centre.

(3) In such a case, the Incident Commander and the Authority shall remain in operational control of the technical response to the incident, and the National Disaster Committee or a Provincial Disaster Committee shall provide a supporting role in terms of coordinating the provision of resources, labour and logistics and assisting coordination between Government departments and authorities.

17. RESPONSE TERMINATION.

(1) The Incident Commander, in consultation with the Incident Response Team, shall determine the point when further response and clean-up efforts and expenditure become unreasonable and can no longer be supported on grounds of environmental effectiveness relative to cost, and declare the response terminated.

(2) In making a decision under Subsection (1), the Incident Commander shall consider the advice of scientific and environmental experts on the Incident Response Team as well as any advice provided through external assistance.

(3) Once the response and clean-up is declared terminated, follow-up activities may continue, including -

- (a) natural resource damage assessment and monitoring; and
- (b) environmental restoration and rehabilitation; and

Marine Pollution (Preparedness and Response)

- (c) investigation and enforcement procedures; and
- (d) cost recovery and compensation procedures.

(4) As soon as practicable and not longer than six months following the response termination, the Authority shall, through the Committee, convene an independent, external evaluation and review of the response, which shall be a published report, and the Authority shall ensure that any lessons and findings of the evaluation and review are used to improve and update the NATPLAN and any relevant site-specific contingency plans.

18. COST RECOVERY AND COMPENSATION.

(1) Where possible, all reasonable costs associated with responding to and cleaning-up any spill, including payment of compensation for economic loss and pollution damage resulting directly from the spill, shall be recovered from the polluter in accordance with the ***Marine Pollution (Liability and Cost Recovery) Act 2013*** including provisions relating to limits of liability contained therein.

(2) In the event that the polluter is not or cannot be identified or for other reasons costs and compensation cannot be recovered from the polluter, all reasonable costs associated with responding to and cleaning-up the spill, excluding payment of compensation for economic loss and pollution damage resulting directly from the spill; shall be recovered, to the extent possible, from the POLFUND established under the ***Marine Pollution (Liability and Cost Recovery) Act 2013***.

PART IV. - MARINE CASUALTIES AND POWERS OF INTERVENTION.

19. POWERS OF INTERVENTION.

(1) Without prejudice to any rights or powers of the Government exercisable under international law, and in accordance with the Intervention Convention and the Intervention Protocol, the Government, as represented by the Authority, may take such measures in Papua New Guinea waters and on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to Papua New Guinea waters or coastline or related interests, from pollution or threat of pollution of the sea by oil or chemicals, following upon a marine casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences.

(2) Actions that may be undertaken by the Authority under Subsection (1) include but are not restricted to -

- (a) the issue of directions, in writing, to the master, owner or agent of a vessel to which the marine casualty relates, or to any person in charge of any salvage operation in respect of the vessel and any employee or agent of that person; or
- (b) the issue of directions in writing to the owner, master or any person in charge of conducting operations on any platform, requiring any specified action to be taken or that no specified action be taken with respect to the vessel or its cargo, or to the platform or operations on the platform; or

Marine Pollution (Preparedness and Response)

- (c) the taking of any measures whatsoever with respect to the vessel or its cargo or to the platform or operations thereon whether or not the Authority has issued directions under Paragraphs (a) or (b).

(3) The measures the Authority may direct to be taken or may take itself under Subsection (2)(c) may include -

- (a) the removal, to another place, of the vessel or its cargo; or
- (b) the removal of cargo from the vessel; or
- (c) the salvage of the vessel or part of the vessel or any of its cargo, or both; or
- (d) the sinking or destruction of the vessel or part of the vessel or the destruction of the cargo, or both; or
- (e) the taking over of control of the vessel or part of the vessel.

(4) In order to carry out any of the measures referred to in Subsection (3), the Authority may, after consulting with and gaining agreement from the owners of the vessel, to whose master the instructions are to be given -

- (a) instruct, in writing, the master of any Papua New Guinea vessel, or the master of any other vessel within Papua New Guinea waters, to render assistance to any vessel that is or is likely to be a marine casualty; and
- (b) instruct, in writing, the master of any Papua New Guinea vessel -
 - (i) to take on board any equipment; or
 - (ii) to sail to any place; or
 - (iii) to render assistance to any vessel assisting a marine casualty; or
 - (iv) to assist in any operations for the cleaning up, removal, or dispersal of any oil or pollutant; and
- (c) to obey the instructions of any person authorised by the Authority to exercise control over or responsibility for a marine casualty,

providing that the master of any vessel to whom an instruction is issued under Paragraphs (a), (b) or (c), shall retain ultimate decision making powers in relation to the direct safety of the vessel and persons on-board.

(5) This section does not authorize the taking of measures against a warship or other ship owned or operated by a foreign State and used, for the time being, only on government, non-commercial service.

20. MEASURES TO BE SAFE, REASONABLE AND PROPORTIONATE.

(1) Before taking any measures under Section 19 and during their course, the Authority shall use its best endeavours to avoid any risk to human life, and to afford persons in distress any assistance of which they may need, and in appropriate cases to facilitate the repatriation of ships' crews, and to raise no obstacle to repatriation.

(2) Any measures taken under Section 19 shall be proportionate to the pollution damage actual or threatened to Papua New Guinea waters or coastline, and such measures shall not go beyond what is reasonably necessary to achieve the end mentioned in Section 19 and shall cease as soon as that end has been achieved, and they shall not unnecessarily interfere with the rights and interests of the flag State, third States and of any persons, physical or corporate, concerned.

Marine Pollution (Preparedness and Response)

- (3) In considering whether the measures under Section 19 are proportionate to the damage, account shall be taken of -
- (a) the extent and probability of imminent damage if those measures are not taken; and
 - (b) the likelihood of those measures being effective; and
 - (c) the extent of the damage which may be caused by such measures.

21. CONSULTATION AND NOTIFICATION.

(1) Before taking any measures under Section 19, the Authority shall proceed to consultations with other States affected by the marine casualty, particularly with the flag State or States.

(2) The Authority shall notify, without delay, the proposed measures to any persons, physical or corporate, known to the Authority or made known to it during the consultations, to have interests which can reasonably be expected to be affected by those measures and the Authority shall take into account any views they may submit.

(3) Before any measure is taken, the Authority may proceed to a consultation with independent experts, including others as advised by the International Maritime Organisation.

(4) In cases of extreme urgency requiring measures to be taken immediately, the Authority may take measures rendered necessary by the urgency of the situation, without prior notification or consultation or without continuing consultations already begun.

(5) The Authority shall notify, without delay, the States affected by the marine casualty and the known physical or corporate persons concerned, as well as to the Secretary-General of the International Maritime Organisation, of any measures which have been taken in application of Section 19.

22. RIGHT TO COMPENSATION.

(1) Where any action taken by the Authority or any person in accordance with instructions pursuant to Section 19(2) -

- (a) was in excess of what was reasonably necessary to prevent, eliminate or reduce pollution or the risk of pollution; or
- (b) was such that the good of the action or measure taken was disproportionately less than the expense incurred or the loss or the damage suffered as a result of that action or measure,

then a person who has incurred expense or loss or damage as a result of taking that action or measure may recover compensation from the Government.

(2) Where a claim is brought against the Government for compensation under Subsection (1), the National Court of Justice, in determining whether Subsection (1)(a) or (1)(b) should apply, shall take into account -

- (a) the extent and probability of imminent pollution damage if the measures had not been taken; and

Marine Pollution (Preparedness and Response)

- (b) the likelihood of the measures taken being effective; and
- (c) the extent of the damage which has been caused by the measures taken.

(3) Where any measures have been taken pursuant to Section 19 on the high seas and there is a dispute between the Government and the owner of the vessel or Government of the State where the vessel is registered or the Government of the State having any related interests in respect of the following:

- (a) whether such measures were necessary to prevent, reduce or eliminate grave and imminent danger to Papua New Guinea waters or coastline or related interests from pollution or the threat of pollution by oil, chemicals or other pollutants; or
- (b) whether the measures taken were in excess of what was reasonably necessary to prevent, eliminate or reduce pollution or the risk of pollution; or
- (c) whether compensation should be paid in accordance with Subsection (1); or
- (d) the amount of such compensation,

then, if settlement by negotiation between the parties has not been possible and if the parties do not otherwise agree, the matter shall be submitted, upon the request of any of the parties, to conciliation, and if that does not succeed, then to arbitration according to the procedures set out in the Annex to the Intervention Convention.

23. PROTECTION FROM LIABILITY.

Where -

- (a) the Authority or any person duly authorised by the Authority has taken any measures pursuant to Section 19(2); or
- (b) any person has taken any action or refrained from taking any action in accordance with instructions issued pursuant to Section 19(2),

then, subject to Section 19 the Authority or that person, as the case may be, shall not incur any civil liability in respect of any act or omission.

24. OFFENCES.

(1) Any person who -

- (a) fails to comply with any instructions issued by the Authority or by any person duly authorised by the Authority pursuant to Section 19; or
- (b) wilfully obstructs a person acting in compliance with any instructions issued by the Authority or by any person duly authorised by the Authority pursuant to Section 19; or
- (c) wilfully obstructs the Authority or any person acting on behalf of the Authority in carrying out any of the powers conferred on the Authority by Section 19,

commits an offence and is liable, upon conviction, to a fine not exceeding K40,000.00.

(3) In any proceedings for an offence under this section it is a defence for a defendant to prove on the balance of probabilities that -

- (a) the failure to comply with any instructions issued under Section 19; or
- (b) the wilful obstruction of -

Marine Pollution (Preparedness and Response)

(i) any person acting in compliance with such instruction duly issued; or
(ii) the Authority or any person acting on behalf of the Authority,
resulted from the need to save life at sea.

(4) In any proceedings for an offence under this section, it is also a defence to prove, on the balance of probabilities, that the person charged with the offence used all due diligence to comply with any instructions issued by the Authority or any person duly authorised by the Authority pursuant to Section 19.

PART V. - MISCELLANEOUS, ADMINISTRATION AND ENFORCEMENT.

25. ADMINISTRATION, ENFORCEMENT, PROSECUTION AND JURISDICTION.

(1) The Authority has primary responsibility for the administration and enforcement of this Act, and any person appointed as an Inspector under this Act in accordance with Section 26 may undertake an investigation in relation to an alleged offence under this Act, under the supervision of the Authority.

(2) The General Manager of the Authority or his or her delegate, may, after consultation with the Public Prosecutor, institute and conduct prosecutions for offences under this Act.

(3) An offence against this Act shall be prosecuted -

- (a) in the District Court where the offence provides for a maximum monetary penalty of K50,000, in the case of a person other than a Corporation; or
- (b) in the National Court in any other case.

26. APPOINTMENT OF INSPECTORS.

(1) The General Manager of the Authority may, by notice in the National Gazette, appoint any officer of the Authority, the National Fisheries Authority, the Department of Environment and Conservation, the Papua New Guinea Ports Corporation or their equivalents at the time, or any other officer of the National Government or of a Provincial Government, as an Inspector under this Act.

(2) The Authority shall ensure that all persons that are appointed as Inspectors receive proper and regular training in order to assist them to carry out their duties and functions in a competent and responsible manner.

(3) Inspectors shall be issued with an identity card by the Authority in a form approved by the Authority.

(4) Where a person in possession of an identity card issued to him or her under subsection (3) ceases to be an Inspector, he or she shall forthwith return the identity card to the Authority.

(5) Any person who fails to comply with Subsection (4) commits an offence and is liable, upon conviction, to a fine not exceeding K1,000.00

Marine Pollution (Preparedness and Response)

27. BOARDING OF VESSELS ETC., BY INSPECTORS.

(1) Where there are reasonable grounds to believe that a vessel has violated any provision(s) of this Act, or that there is in or on that vessel, any matter or thing that may afford evidence as to the commission of an offence against this Act and the vessel is -

- (a) voluntarily within a Papua New Guinea port or terminal; or
- (b) within the territorial sea of Papua New Guinea; or
- (c) a Papua New Guinea vessel anywhere,

an Inspector may, with such assistance as he or she thinks necessary, board that vessel for the purposes of exercising the functions of an Inspector in accordance with Section 29, and may for that purpose, stop and detain that vessel.

(2) Where there are reasonable grounds to believe that a vessel has violated any provision(s) of this Act -

- (a) while in the exclusive economic zone of Papua New Guinea; and
- (b) the vessel is within Papua New Guinea waters,

the Authority or an Inspector may require the vessel to give information regarding -

- (i) its identity and port of registry; and
- (ii) its last and next port of call; and
- (iii) any other relevant information required to establish whether a violation of this Act has occurred.

(3) Where there are reasonable grounds to believe that a vessel has violated any provision(s) of this Act while in the exclusive economic zone of Papua New Guinea, resulting in a substantial discharge causing or threatening significant pollution of the marine environment and the vessel -

- (a) is within Papua New Guinea waters; and
- (b) has refused to give information as outlined under Subsection (2) or the

information supplied appears to be at variance with the evident factual situation, an Inspector may, with such assistance as he or she thinks necessary, board that vessel for the purposes of exercising the functions of an Inspector in accordance with Section 29.

(4) Where there is evidence that a vessel has violated any provision(s) of this Act while in the exclusive economic zone of Papua New Guinea resulting in a discharge causing major damage or threat of major damage to the coastline or resources or related interests of Papua New Guinea and the vessel is within Papua New Guinea waters, an Inspector may, with such assistance as he or she thinks necessary, board that vessel for the purposes of exercising the functions of an Inspector under Section 29, and may for that purpose, stop and detain that vessel.

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

Marine Pollution (Preparedness and Response)

(6) Subject to Subsections (1) to (4), where an Inspector believes on reasonable grounds that a vessel to which this section applies is in Papua New Guinea waters and has been used or otherwise involved in the commission of an offence against this Act, the Inspector may bring, or require the person in charge of the vessel to bring the vessel to the nearest port in Papua New Guinea to which it is safe and practicable to bring the vessel.

(7) An Inspector may, for the purposes of this Act, require the person in charge of a vessel to which this section applies, to give information concerning the vessel and its crew and any other person on board the vessel.

(8) Where an Inspector boards a vessel to which this section applies, or makes a requirement of a person under this section, the Inspector shall produce his or her identity card for inspection by that person and the person in charge of that vessel and, if the Inspector fails to do so, he or she is not authorised to remain, or to require any person assisting him or her to remain, on board that vessel or to detain that vessel, or to make any requirement of a person.

(9) A person who, without reasonable excuse, fails to comply with a requirement made of him or her by an Inspector under this section commits an offence and is liable, upon conviction, to a fine not exceeding K20,000.00.

28. ACCESS TO PREMISES.

(1) An Inspector may, with the consent of the occupier of any premises, including an offshore installation, an oil or chemical handling facility, a port facility or any other premises, enter the premises for the purpose of exercising the functions of an Inspector under Section 29.

(2) Where an Inspector has reason to believe that there is on premises any matter or thing that may afford evidence as to the commission of an offence against this Act, the Inspector may make application to a magistrate for a warrant authorising the Inspector to enter the premises for the purpose of exercising the functions of an Inspector under Section 29.

(3) If, on an application under Subsection (2), the magistrate is satisfied, by information on oath or affirmation that -

(a) there is reasonable ground for believing that there is on the premises to which the application relates any matter or thing that may afford evidence as to the commission of an offence against this Act; and

(b) the issue of the warrant is reasonably required for the purposes of this Act, the magistrate may grant a warrant authorising the Inspector, with such assistance as the Inspector 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 under Section 29.

(4) Where an Inspector has entered any premises in pursuance of Subsection (1) or in pursuance of a warrant issued under Subsection (3), he or she may exercise the functions of an Inspector under Section 29.

Marine Pollution (Preparedness and Response)

29. FUNCTIONS OF INSPECTORS.

(1) The functions of an Inspector who boards a vessel under Section 27 or enters premises under Section 28 are as follows:-

- (a) to assess compliance with this Act; and
- (b) 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; and
- (c) to search for, inspect, takes extracts from and make copies of any document that relates to the requirements of this Act; and
- (d) to observe the undertaking of operations and activities relating to this Act, including the response to actual marine pollution incidents and the carrying out of training and exercises.

(2) For the purposes of carrying out his or her functions under Subsection (1), an inspector may cause to be opened by any necessary means, any hold or compartment, or any container or other receptacle on a vessel or offshore installation or on any premises, should the crew or personnel in charge of the vessel or offshore installation or premises refuse to open such compartment, or container or other receptacle upon the reasonable request of the inspector.

30. POWERS OF ARREST OF INSPECTORS.

(1) An Inspector may, without warrant, arrest any person, if the Inspector believes on reasonable grounds that the person is committing or has committed an offence against this Act when the penalty for such offence includes imprisonment.

(2) Where an Inspector arrests a person under Subsection (1), the Inspector shall produce his or her identity card for inspection by that person.

(3) Where a person is arrested under Subsection (1), an Inspector shall forthwith bring the person, or cause him or her to be brought, before a court or other proper authority to be dealt with in accordance with law, except -

- (a) in the case where the person arrested may be the master of a vessel or person in charge of an offshore installation or a person in charge of any premises; or
- (b) any other person whose immediate removal might pose a threat to the safe operation of the vessel or offshore installation or other premises,

in which case, such persons shall be permitted to carry out any such tasks that are critical to the safe operation of the vessel or offshore installation or premises until such time that they can be satisfactorily relieved.

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

31. REGULATIONS.

The Head of State, acting with and in accordance with the advice of the Authority, provided through the Minister, may make Regulations providing for such matters as are necessary for giving full effect to the provisions of this Act and for its due administration.

Marine Pollution (Preparedness and Response)

32. OFFENCES AND PENALTIES.

(1) Every person who commits an offence against this Act or any regulations made under the Act for which no penalty is provided elsewhere, is liable upon conviction -

- (a) in the case of a corporation, to a fine not exceeding K1,000,000.00; and
- (b) in the case of an individual, to a fine not exceeding K250,000.00 or imprisonment for a term not exceeding two years.

(2) Where an offence against this Act is a continuing one and no penalty is provided elsewhere for the continuance of the offence, every person who commits that offence is, in addition to any other liability, liable upon conviction, to a fine not exceeding K1,000.00 for every day during which the offence continues.

33. RECOVERY OF FINES BY DISTRESS.

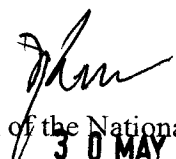
Where a Court orders a person convicted of any offence against this Act to pay any fine or other costs and that person is the owner or master or person-in-charge of a vessel or oil or chemical handling facility or an offshore installation to which this Act applies, and the fine or other costs are not paid within the time and in the manner specified by the Order of the Court, the Court may, in addition to any other power it may have to compel payment, and despite any other Act, direct the amount remaining unpaid to be levied by distress or by the sale of any vessel, or oil or chemical handling facility or offshore installation or premises or of any other equipment relating to the offence, as the case requires.

34. TIME LIMIT FOR PROSECUTION PROCEEDINGS.


- (1) A proceeding for prosecution for an offence against this Act must start:
- (a) within two years after the commission of the offence; or
 - (b) within two years after the offence comes to the complainant's knowledge, but within three years after the commission of the offence.

(2) A statement, in a complaint for an offence against this Act, that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of when the matter came to the complainant's knowledge.

I hereby certify that the above is a fair print of the *Marine Pollution (Preparedness and Response) Act 2013* which has been made by the National Parliament.


Clerk of the National Parliament.
30 MAY 2014

I hereby certify that the *Marine Pollution (Preparedness and Response) Act 2013* was made by the National Parliament on 27th March, 2013.


Speaker of the National Parliament.