



<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
INDEPENDENT STATE OF PAPUA NEW GUINEA	
	
<b><i>Marine Pollution (Preparedness &amp; Response) Bill</i></b>	
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<b>Proposed Text</b> <b>(Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
INDEPENDENT STATE OF PAPUA NEW GUINEA	Standard
	Standard
<p><b>A BILL</b></p> <p><b>for an</b></p> <p><b>ACT</b></p> <p><b>entitled</b></p> <p><b><i>Marine Pollution (Preparedness &amp; Response) Act</i></b></p> <p><b><i>[insert yr]</i></b></p>	Drafter
<p>Being an Act:</p> <p>(a) to provide for the effective response to and control of marine pollution incidents involving oil, chemicals or any other pollutant from vessels and any other sources within Papua New Guinea waters or which may threaten Papua New Guinea waters or coastline; and</p> <p>(b) to provide for effective cooperation with neighbouring countries in matters pertaining to marine pollution preparedness, response and control; and</p> <p>(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</p> <p>(d) to make ancillary and related provisions.</p> <p>MADE by the National Parliament to come into operation in accordance</p>	Drafter

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with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the Advice of the Minister.	
<b>Part I - Preliminary</b>	Standard
<b>1. Short title</b>	Drafter
(1) This Act may be cited as the <i>Marine Pollution (Preparedness &amp; Response) Act</i> .	
<b>2. Application</b>	Drafter
(1) Unless expressly provided otherwise, this Act applies to all marine pollution incidents and potential incidents involving the discharge or possible discharge of oil, chemicals or any other pollutant from any and all sources that may pollute or threaten to pollute Papua New Guinea waters or coastline.	
<b>3. Compliance with constitutional requirements</b>	Drafter
(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision 111.3.C (qualified rights) of the <i>Constitution</i> , namely: <ul style="list-style-type: none"> <li>(a) the freedom from arbitrary search and entry conferred by Section 44 of the <i>Constitution</i>;</li> <li>(b) the right to privacy conferred by Section 49 of the <i>Constitution</i>;</li> <li>(c) the right to freedom of movement conferred by Section 52 of the <i>Constitution</i>;</li> <li>(d) the right to compensation conferred by Section 58 of the <i>Constitution</i>;</li> <li>(e) the protection from unjust deprivation of property conferred by Section 53 of the <i>Constitution</i>; and</li> <li>(f) the right to freedom of information conferred by Section 51 of the <i>Constitution</i>;</li> </ul>	

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<p>is a law made pursuant to Section 38 of the Constitution; made for the purpose of giving effect to the public interest in public order and public welfare.</p> <p>(2) For the purposes of Section 41(2) of the <i>Organic Law on Provincial Governments and Local-level Governments</i>, it is declared that this Act relates to a matter of national interest.</p> <p>(3) For the purposes of Section 41(6) of the <i>Organic Law on Provincial Governments and Local-level Governments</i>, it is declared that this Act is an Act of Parliament on a matter specified in Section 42 or 44 of the <i>Organic Law on Provincial Governments and Local-level Governments</i>, and prevails over any law made under Section 42 or 44 to the extent of any inconsistency.</p>	
<p><b>4. Interpretation</b></p> <p>In this Act, unless the contrary intention appears;</p>	Drafter
<p><b>“Authority”</b> means the National Maritime Safety Authority established by the <i>National Maritime Safety Authority Act</i>;</p>	Drafter
<p><b>“chemical”</b> means any substance other than oil which, if introduced into the marine environment is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea; having the same meaning as <b>“Hazardous and Noxious Substances”</b> under the OPRC-HNS Protocol;</p>	OPRC-HNS Protocol (definition of HNS)
<p><b>“Committee”</b> means the National Marine Pollution Committee established under Section 12;</p>	Drafter
<p><b>“discharge”</b> means in relation to oil, chemicals or other pollutants or effluents containing such pollutants, any release into Papua New Guinea waters howsoever caused from any source what-so-ever and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying, but does not include dumping within the meaning of the London Protocol; and “spill” has a similar meaning;</p>	SPREP/SPC Model (adapted) = the SPREP/SPC Regional Model Marine Pollution Act developed in 1999 and updated in 2003, here- in-after referred to as simply ‘SPREP/SPC Model’
<p><b>"Government"</b> means the Government of Papua New Guinea;</p>	Drafter

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" <b>incident</b> " means any occurrence, or series of occurrences having the same origin, which causes a discharge or creates a grave or imminent threat of causing a discharge, and " <b>marine pollution incident</b> " has the same meaning;	SPREP/SPC Model
<p><b>"Incident Commander"</b> means the person appointed by the General Manager of the Authority at the time of an incident, who shall have overall authority to:</p> <p style="margin-left: 40px;">(a) manage and co-ordinate all operations; and</p> <p style="margin-left: 40px;">(b) direct the use of all resources;</p> <p>necessary to prevent and minimize 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 11 and 16 to 18;</p>	Drafter
<b>"Incident Command Centre"</b> 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 Centre may be at a suitable venue close to the incident, at the offices of the Authority, or at the National Disaster Centre established under the <i>National Disaster Management Act</i> , or at any other suitable venue, depending on the requirements of the incident being responded to, and in accordance with the relevant contingency plan;	Drafter
<b>"Incident Response Team"</b> means the members of the National Marine Pollution Committee established under Section 12, 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 organizations to the overall response to the incident, under the direction of the Incident Commander and in accordance with the relevant contingency plan;	Drafter
<p><b>"inspector"</b> means:</p> <p style="margin-left: 40px;">(a) a person appointed as an inspector under Subsection 28(1); or</p> <p style="margin-left: 40px;">(b) a member of the Royal Papua New Guinea</p>	Aus EP(SD)Act

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Constabulary, who is an inspector by force of Subsection 28(2);	
<b>“Intervention Convention”</b> means the <i>International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969</i> 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;	SPREP/SPC Model
<b>“International Maritime Organization”</b> means the organisation established by the <i>International Maritime Organization Convention, 1958</i> whose task is to develop and administer the international regulatory regime for maritime safety and prevention and control of pollution from ships;	Drafter
<b>“Intervention Protocol”</b> means the <i>Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other than Oil, 1973</i> ; 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;	Drafter
<b>“Lead Agency”</b> means the organization responsible for coordinating all aspects of the response to marine pollution incidents in Papua New Guinea waters;	Drafter
<b>"marine casualty"</b> 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;	Adapted from Intervention Convention
<b>“Maritime Zones of Papua New Guinea”</b> means:  (a) the internal waters; (b) the territorial sea; (c) the contiguous zone; and (d) the exclusive economic zone;  of Papua New Guinea as defined in the <i>Maritime Zones Act</i> [NB if this Bill passed before <i>Maritime Zones Bill</i> this will have to be changed to <i>National Seas Act</i> ;	Drafter

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<p><b>“MARPOL Convention or MARPOL”</b> means the <i>International Convention for the Prevention of Pollution from Ships 1973</i>; 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;</p>	Drafter
<p><b>“master”</b> means the person in charge of a vessel at any one time;</p>	SPREP/SPC Model
<p><b>"Minister"</b> means the Minister responsible for maritime transport;</p>	SPREP/SPC Model
<p><b>“NATPLAN”</b> means the National Marine Pollution Contingency Plan as referred in Section 7;</p>	SPREP/SPC Model
<p><b>"occupier"</b>, 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;</p>	SPREP/SPC Model
<p><b>“offshore installation”</b> means any man-made fixed or floating structure located in, on or over 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;</p>	Drafter (expansion on 'platform' from SPREP/SPC Model)
<p><b>“oil”</b> 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, without limiting the generality of the foregoing, includes the substances listed in Appendix I to Annex I of MARPOL;</p>	MARPOL Annex I
<p><b>“oil or chemical handling facility”</b> means any place which is used to transport, transfer, handle and/or store oil or chemicals and which is located 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 but is not limited</p>	Drafter

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to 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;	
<b>“oily mixture”</b> means a mixture with any oil content;	MARPOL Annex I
<b>"OPRC Convention"</b> means the <i>International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990</i> ; 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;	Drafter
<b>“OPRC-HNS Protocol”</b> means the <i>Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000</i> ; 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;	Drafter
<b>“owner”</b> means:	
<p style="margin-left: 40px;">(a) in relation to any vessel:</p> <p style="margin-left: 80px;">(i) the registered owner or owners, if the vessel is a registered vessel;</p> <p style="margin-left: 80px;">(ii) the person owning the vessel, if the vessel is an unregistered vessel;</p> <p style="margin-left: 80px;">(iii) the person or agency registered as the operator of the vessel, if the vessel is owned by the Government;</p> <p style="margin-left: 40px;">and includes:</p> <p style="margin-left: 80px;">(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;</p> <p style="margin-left: 80px;">(v) any agent in Papua New Guinea of the owner,</p>	SPREP/SPC Model

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<p>charterer, manager, or operator; and</p> <p>(vi) any other person interested in or 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;</p>	
<p>(b) in relation to any offshore installation:</p> <p>(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 therewith; and</p> <p>(ii) any person having a right or privilege or license to explore the seabed and subsoil and to exploit the natural resources thereof in connection with which the offshore installation is or has been or is to be used;</p>	SPREP/SPC Model
<p>(c) in relation to any oil or chemical handling facility means the registered owner, lessee or operator of the facility or the registered owner or lessee of the land on which the facility is located;</p> <p>(d) in relation to any place on land means the registered owner, lessee or occupier of the land.</p>	
<p><b>"person"</b> 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;</p>	SPREP/SPC Model
<p><b>"place on land"</b> 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;</p>	SPREP/SPC Model
<p><b>"pollutant"</b> includes oil and oily mixtures, noxious liquid substances, harmful packaged substances, sewage and garbage as defined by MARPOL and any water contaminated by any such substance, and any other substance which added to any waters has the effect of contaminating those waters so as to make them unclean, noxious or impure or detrimental to the</p>	SPREP/SPC Model

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health, safety or welfare of any person, or poisonous or harmful to marine life;	
<b>“port facility”</b> means any place where vessels regularly moor at a wharf, jetty or other facility for the purposes of loading or unloading passengers and/or cargo or for refuelling	Drafter
<b>“Papua New Guinea”</b> means the Independent State of Papua New Guinea;	SPREP/SPC Model
<b>"Papua New Guinea vessel"</b> means a vessel owned in Papua New Guinea or a vessel registered or required to be registered under the <i>Merchant Shipping Act</i> , or any other vessel based in Papua New Guinea and operating under the authority of the Government;	SPREP/SPC Model
<b>"Papua New Guinea waters"</b> has the same meaning as Maritime Zones of Papua New Guinea;	Drafter
<b>“related interests”</b> means the interests of Papua New Guinea directly affected or threatened by a marine casualty, such as:  (a) maritime coastal, port or estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;  (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 marine resources and of wildlife.	Intervention Convention
<b>"sea"</b> means all areas of water below highest astronomical tide and includes the ocean and any estuary, tidal area and lagoon;	SPREP/SPC Model
<b>“SPREP”</b> means the Secretariat of the Pacific Regional Environment Programme;	SPREP/SPC Model
<b>“SPREP Pollution Emergencies Protocol”</b> means the <i>Protocol Concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region</i> ; and	SPREP/SPC Model

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<p>“<b>vessel</b>” means any water-bourne vessel and craft of any size and type whatsoever 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.</p>	<p>Adapted from SPREP/SPC Model</p>
<p><b>5. International Conventions</b></p> <p>(1) The following International Conventions, including any Protocols, Annexes, Appendices, Addenda and Amendments, other than a Protocol, Annex, Appendice, 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:</p> <ul style="list-style-type: none"> <li>(a) Intervention Convention;</li> <li>(b) Intervention Protocol;</li> <li>(c) OPRC Convention;</li> <li>(d) OPRC-HNS Protocol; and</li> <li>(e) SPREP Pollution Emergencies Protocol.</li> </ul> <p>(2) Regulations made under this Act may:</p> <ul style="list-style-type: none"> <li>(a) make provision for any aspect of the application or enforcement of a Convention to which this Act applies;</li> <li>(b) modify the application of any Convention to which this Act applies to meet the needs and circumstances of Papua New Guinea; and</li> <li>(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 <b>K1,000,000</b>, or imprisonment for terms not exceeding <b>five</b> years, or both.</li> </ul> <p>(3) In the event of any inconsistency between the provisions of any of</p>	<p>Adapted from Samoa Marine Pollution Prevention Bill 2007</p>

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the Conventions to which this Act applies and the provisions of this Act, this Act shall apply.	
<b>Part II - Marine pollution preparedness</b>	
<p><b>6. Risk assessments</b></p> <p>(1) The Authority shall cause to be undertaken 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, a national marine pollution risk assessment.</p> <p>(2) The risk assessments undertaken under Subsection (1) shall, as a minimum:</p> <ul style="list-style-type: none"> <li>(a) identify the main shipping routes through and around Papua New Guinea, including transit routes that do not service Papua New Guinea ports, and characterize the types, quantities and frequencies of marine pollutants carried on each route;</li> <li>(b) identify the locations and describe marine pollution risks for all offshore installations;</li> <li>(c) identify the locations and describe marine pollution risks for all ports;</li> <li>(d) identify and characterize highest risk areas for marine pollution incidents, including shipping accidents, other sea-based sources and land-based sources;</li> <li>(e) use internationally accepted risk assessment methods including up-to-date data collection, analysis and presentation methods; and</li> <li>(f) upon finalization be published by the Authority as a public report.</li> </ul> <p>(3) All owners and operators of:</p>	<p style="text-align: center;">Drafter.</p> <p style="text-align: center;">Risk assessment requirements included as the foundation for marine pollution preparedness</p>

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
<p>(a) port facilities;</p> <p>(b) oil or chemical handling facilities; and</p> <p>(c) offshore installations;</p> <p>which pose the risk of marine pollution incidents shall, at their cost, undertake a marine pollution risk assessment for their facility or installation:</p> <p>(a) within one year after this Act comes into operation; and</p> <p>(b) thereafter at least every five years; or</p> <p>(c) 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;</p> <p>whichever comes first.</p> <p>(4) The risk assessments undertaken under Subsection (3) shall, as a minimum:</p> <p>(a) use internationally accepted risk assessment methods including up-to-date data collection, analysis and presentation methods;</p> <p>(b) be consistent and coordinated with and provide inputs to the national risk assessments carried out under Subsection (1); and</p> <p>(c) be reported to the Authority and upon finalization made available as public reports.</p> <p>(5) The proponent or developer of any proposed new port facility, oil or chemical handling facility or 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; 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.</p>	

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<p>(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 7 and 8 and the marine pollution response equipment inventories required under Section 9.</p> <p>(7) Any owner and any operator who fails to comply with Subsection (3) and (4); and any proponent or developer who fails to comply with Subsection (5); each commit an offence and each shall be liable upon conviction to a fine not exceeding <b>K500,000</b>.</p>	
<p><b>7. National contingency plan</b></p> <p>(1) The Authority with advice from the National Marine Pollution Committee (Committee) established under Section 12, shall ensure that a National Marine Pollution Contingency Plan (NATPLAN) that is consistent with established international standards for contingency planning, is developed, implemented, maintained and exercised at least annually; and such plan shall:</p> <p style="padding-left: 40px;">(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</p> <p style="padding-left: 40px;">(b) provide for coordination and integration with site specific contingency plans as required under Section 8.</p> <p>(2) Under the NATPLAN the Authority shall be designated as the Lead Agency responsible for coordinating all aspects of the response to marine pollution incidents in Papua New Guinea waters, through the Incident Commander appointed under Section 11 and with the advice and support of the Committee established under Section 12.</p>	<p>Adapted from SPREP/SPC Model</p>
<p><b>8. Site-specific contingency plans</b></p> <p>(1) All owners and operators of port facilities, oil or chemical handling facilities and offshore installations which pose the risk of marine pollution incidents shall develop, implement, maintain and exercise at least annually, 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.</p> <p>(2) The plans required to be developed under Subsection (1) shall be submitted to the Authority for approval.</p>	<p>SPREP/SPC Model (adapted / improved)</p>

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<p>(3) Any owner and any operator who fails to comply with Subsections (1) and (2); including failure to maintain and exercise their contingency plans at least annually; each commit an offence and shall each be liable upon conviction to a fine not exceeding <b>K500,000</b>.</p>	
<p><b>9. Marine pollution response equipment</b></p> <p>(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 6 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).</p> <p>(2) All owners and operators of port facilities, oil or chemical handling facilities and 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.</p> <p>(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 6 and shall liaise with the Authority, through the Committee, to ensure compatibility and inter-operability with the national inventory.</p> <p>(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 must 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; in which case the owner or operator shall be reimbursed for the reasonable costs of the use, repair and/or replacement of the equipment; with such costs being recovered from the polluter if possible or if necessary from the National Marine Pollution Fund established under the <i>Marine Pollution (Liability &amp; Cost Recovery) Act</i>.</p>	<p>Drafter</p>

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(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 and/or replacement of the equipment; with such costs being recovered from the polluter if possible or if necessary from the National Marine Pollution Fund established under the <i>Marine Pollution (Liability &amp; Cost Recovery) Act</i> .	
(6) The Authority may require owners or operators of vessels to carry on board and maintain marine pollution response equipment for, as far as practicable, the containment, recovery and/or dispersal of any pollutant that may be discharged by the vessel into Papua New Guinea waters. The type and quantity of such equipment shall be 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. The type and quantity of such equipment shall be specified in any shipboard marine pollution emergency plan required of the vessel under the <i>Marine Pollution (Ships &amp; Installations) Act</i> .	SPREP/SPC Model
(7) Any owner and any operator who fails to comply with Subsections (2), (3), (4) or (6); including failure to maintain marine pollution response equipment in a state of constant readiness; each commit an offence and each shall be liable upon conviction to a fine not exceeding <b>K500,000</b> .	Drafter
<b>10. Training and exercises</b>  (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 organizations 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 and 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	Drafter

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
<p>and clean-up for relevant staff from their organizations; consistent with the national training and exercise programme established under Subsection (1); and the outcomes of this 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.</p> <p>(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 <b>K100,000</b>.</p>	
<p><b>11. Appointment of Incident Commander</b></p> <p>(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 or Government, an Incident Commander and Deputy Incident Commander.</p> <p>(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.</p> <p>(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 16 for the duration only of the response to the incident.</p> <p>(4) The Deputy Incident Commander shall full-fill the role of Incident Commander when the Incident Commander is absent or when directed to do so by the Incident Commander.</p>	<p>SPREP/SPC Model (adapted)</p>
<p><b>12. National Marine Pollution Committee</b></p> <p>(1) A National Marine Pollution Committee (Committee) shall be formed which, in addition to the Authority, shall comprise the following persons or their designated representative, as a minimum:</p> <p style="padding-left: 40px;">(a) the head of the department responsible for environmental protection;</p> <p style="padding-left: 40px;">(b) the head of the department responsible for fisheries/marine resources;</p>	<p>SPREP/SPC Model (adapted)</p>

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
<p>(c) the head of the department responsible for disaster management;</p> <p>(d) the head of the department responsible for petroleum and energy;</p> <p>(e) the head of the department responsible for finance; and</p> <p>(f) the head of any other relevant Government bodies as may be deemed necessary by the Committee.</p> <p>(2) In addition, representatives from the following stakeholder groups shall be invited to be members of the Committee:</p> <p style="padding-left: 40px;">(a) the shipping industry;</p> <p style="padding-left: 40px;">(b) the oil industry;</p> <p style="padding-left: 40px;">(c) the fishing industry; and</p> <p style="padding-left: 40px;">(d) any other sector as deemed necessary by the Committee.</p> <p>(3) The Committee shall be Chaired by the General Manager of the Authority and the Authority shall act as Secretariat to the Committee.</p> <p>(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:</p> <p style="padding-left: 40px;">(a) the undertaking of risk assessments under Section 6;</p> <p style="padding-left: 40px;">(b) the development and maintenance of marine pollution contingency plans required under Sections 7 and 8; including designation of roles and responsibilities of Committee members' organizations;</p> <p style="padding-left: 40px;">(c) the establishment and maintenance of the national marine pollution response equipment inventory under Section 9;</p> <p style="padding-left: 40px;">(d) the development and implementation of the national training and exercise programme under Section 10;</p>	

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
<p>(e) the fixing of marine pollution levies and administration of the National Marine Pollution Fund under the <i>Marine Pollution (Liability &amp; Cost Recovery) Act</i>;</p> <p>(f) participation of Papua New Guinea in any bilateral and/or multilateral/regional marine spill contingency plan(s) and related arrangements in place at the time; and</p> <p>(g) any other matters related to marine pollution as required by the Authority.</p> <p>(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' organizations to the response and clean-up efforts. The actual composition of the Incident Response Team shall be determined by the requirements of the incident, in accordance with the relevant contingency plan.</p> <p>(6) The Committee shall convene at least biannually for routine business, as well as provide the Incident Response Team whenever a marine pollution incident occurs.</p> <p>(7) The Committee may, subject to any written directions of the Authority, regulate its procedure as it thinks fit.</p> <p>(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.</p>	
<p><b>13. Regional cooperation</b></p> <p>(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.</p> <p>(2) Should Papua New Guinea require external assistance from other countries or territories in response to a marine pollution incident, such</p>	<p>SPREP/SPC Model</p>

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
<p>assistance shall be requested in accordance with the procedures contained in any relevant bilateral and/or multilateral memorandums of understanding, bilateral and/or multilateral marine pollution contingency plan(s) and related arrangements in place at the time.</p> <p>(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 and/or multilateral memorandums of understanding, bilateral and/or multilateral marine pollution contingency plan(s) and related arrangements in place at the time.</p>	
<b>Part III - Marine pollution response</b>	
<p><b>14. Duty to report discharges</b></p> <p>(1) If any oil, chemical or other pollutant is discharged into Papua New Guinea waters from a vessel, offshore installation, oil or chemical handling facility or a place on land; the owner, master or person in charge of the vessel or offshore installation, the owner or operator of the offshore installation or the owner or occupier of the place on land shall immediately and by the quickest available means report the incident to the Authority; in accordance with the Pollution Report (POLREP) format contained in Schedule 1.</p> <p>(2) Any member of the public or any other person who observes or becomes aware of a marine pollution incident shall immediately and by the quickest available means report the incident to the Authority providing as much information as possible.</p> <p>(3) Every person who:</p> <p style="padding-left: 40px;">(a) fails to reasonably comply with any provision of Subsection (1); or</p> <p style="padding-left: 40px;">(b) makes a report containing any information that to his or her knowledge is false or misleading;</p> <p>commits an offence and is liable upon conviction to a fine not exceeding <b>K25,000</b>.</p> <p>(4) Every person who makes a report under Subsection (2) containing</p>	<p style="text-align: center; color: blue;">Adapted from SPREP/SPC Model</p>

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
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.	
<p><b>15. Initial response actions</b></p> <p>(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:</p> <ul style="list-style-type: none"> <li>(a) designate the Incident Commander and Deputy Incident Commander as required under Section 11;</li> <li>(b) designate the Incident Command Centre; and</li> <li>(c) mobilise the Incident Response Team to the Incident Command Centre.</li> </ul> <p>(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:</p> <ul style="list-style-type: none"> <li>(a) Tier One: <ul style="list-style-type: none"> <li>(i) small spills that are within the response capability and resources of an individual port or other facility; and whereunder;</li> <li>(ii) 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;</li> </ul> </li> <li>(b) Tier Two: <ul style="list-style-type: none"> <li>(i) medium spills that are within the national capability and resources of the NATPLAN; and whereunder</li> <li>(ii) 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;</li> </ul> </li> </ul>	<p style="text-align: center;">Drafter          (derived from SPREP          PACPLAN and          consistent with          international standards)</p>

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
<p>(c) Tier Three:</p> <ul style="list-style-type: none"> <li>(i) large spills that are of a magnitude and/or severity that is beyond the response capability and resources of Papua New Guinea, and/or</li> <li>(ii) that impact or threaten to impact across the jurisdiction(s) of neighbouring country(s); and whereunder</li> <li>(iii) 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 and/or multilateral memorandums of understanding, contingency plan(s) and related arrangements in place at the time.</li> </ul> <p>(5) 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.</p> <p>(6) 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.</p>	
<p><b>16. Incident Commander to coordinate the response</b></p> <p>(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:</p> <ul style="list-style-type: none"> <li>(a) manage and co-ordinate all operations; and</li> <li>(b) direct the use of all resources;</li> </ul> <p>necessary to prevent and minimize the human-health, ecological and</p>	<p style="text-align: right;">Adapted from SPREP/SPC Model</p>

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
<p>economic impacts of the incident and to clean-up the pollution until the response is terminated in accordance with Section 18.</p> <p>(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 National Marine Pollution Fund established under the <i>Marine Pollution (Liability &amp; Cost Recovery) Act</i>.</p> <p>(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 of the organizations of the other members of the Incident Response Team.</p>	
<p><b>17. Support of National Disaster Committee</b></p> <p>(1) In the case of a major Tier 2 or Tier 3 spill the Incident Commander may request the support of the National Disaster Committee under the <i>Disaster Management Act</i>.</p> <p>(2) Such support may include the establishment of the Incident Command Centre at the National Disaster Centre.</p> <p>(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 shall provide a supporting role in terms of coordinating the provision of resources, labour and logistics and assisting coordination between Government departments and authorities.</p>	Drafter
<p><b>18. Response termination</b></p> <p>(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.</p> <p>(2) In making a decision under Subsection (1) the Incident Commander shall consider the advice of scientific and environmental experts on</p>	Drafter (as per best practice)

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
<p>the Incident Response Team as well as any advice provided through external assistance.</p> <p>(3) Once the response and clean-up is declared terminated, follow-up activities may continue, including;:</p> <ul style="list-style-type: none"> <li>(a) natural resource damage assessment and monitoring;</li> <li>(b) environmental restoration and rehabilitation;</li> <li>(c) investigation and enforcement procedures; and</li> <li>(d) cost recovery and compensation procedures.</li> </ul> <p>(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 finding of the evaluation and review are used to improve and update the NATPLAN and any relevant site-specific contingency plans.</p>	
<p><b>19. Cost recovery and compensation</b></p> <p>(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 <i>Marine Pollution (Liability &amp; Cost Recovery) Act</i>, including provisions relating to limits on liability contained therein.</p> <p>(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 National Marine Pollution Fund established under the <i>Marine Pollution (Liability &amp; Cost Recovery) Act</i>.</p>	Drafter
<b>Part IV - Marine casualties &amp; powers of intervention</b>	

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
<p><b>20. Duty to report casualties</b></p> <p>(1) If any vessel becomes or is involved in a marine casualty which pollutes or threatens to potentially pollute Papua New Guinea waters or coastline; including on the high seas but in proximity to Papua New Guinea waters, or if a Papua New Guinea vessel becomes or is involved in a marine casualty in any waters, then the owner or master or person in charge shall immediately and by the quickest available means report the incident to the Authority, providing:</p> <ul style="list-style-type: none"> <li>(a) full details of the vessel and damage sustained;</li> <li>(b) the types, quantity and condition of the cargo carried;</li> <li>(c) a complete list of all pollutants carried, including the types, quantity and condition;</li> <li>(d) if a discharge has occurred, the details contained in Schedule 1;</li> <li>(e) the identity and full contact details of the person making the report.</li> </ul> <p>(2) Any owner or master or person in charge of a vessel to which Subsection (1) relates who:</p> <ul style="list-style-type: none"> <li>(a) fails to reasonably comply with any provision of Subsection (1); or</li> <li>(b) makes a report containing any information that to his or her knowledge is false or misleading;</li> </ul> <p>commits an offence and is liable upon conviction to a fine not exceeding <b>K250,000</b> or a term of imprisonment not exceeding <b>two</b> years.</p>	<p>SPREP/SPC Model</p>
<p><b>21. Powers of intervention</b></p> <p>(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</p>	<p>All of Section 21 adapted from Aus PS(PoI) Act and Intervention Protocol</p>

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
<p>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.</p> <p>(2) Actions that may be undertaken by the Authority under Subsection (1) include but are not restricted to:</p> <p style="padding-left: 40px;">(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 issue of direction, 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 thereon; or</p> <p style="padding-left: 40px;">(b) 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 instructions under paragraph (a).</p> <p>(3) The measures the Authority may direct to be taken or may take itself under paragraph (b) of Subsection (2) may include:</p> <p style="padding-left: 40px;">(a) the removal to another place of the vessel or its cargo;</p> <p style="padding-left: 40px;">(b) the removal of cargo from the vessel;</p> <p style="padding-left: 40px;">(c) the salvage of the vessel or part of the vessel or any of its cargo, or both;</p> <p style="padding-left: 40px;">(d) the sinking or destruction of the vessel or part of the vessel or the destruction of the cargo, or both;</p> <p style="padding-left: 40px;">(e) the taking over of control of the vessel or part of the vessel.</p> <p>(4) In order to carry out any of the measures referred to in Subsection (2), the Authority may, after consulting with the owners of the vessel to whose master the instructions are to be given:</p> <p style="padding-left: 40px;">(a) instruct, in writing, the master of any Papua New Guinea</p>	

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
<p>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</p> <p>(b) instruct, in writing, the master of any Papua New Guinea vessel to take on board any equipment, to sail to any place, to render assistance to any vessel assisting a marine casualty or to assist in any operations for the cleaning up, removal, or dispersal of any oil or pollutant, and to obey the instructions of any person authorised by the Authority to exercise control over or responsibility for a marine casualty.</p> <p>(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.</p>	
<p><b>22. Measures to be safe, reasonable and proportionate</b></p> <p>(1) Before taking any measures under Section 21 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 stand in need, and in appropriate cases to facilitate the repatriation of ships' crews, and to raise no obstacle thereto.</p> <p>(2) Any measures taken under Section 21 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 21 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.</p> <p>(3) In considering whether the measures under Section 21 are proportionate to the damage, account shall be taken of:</p> <p style="padding-left: 40px;">(a) the extent and probability of imminent damage if those measures are not taken; and</p> <p style="padding-left: 40px;">(b) the likelihood of those measures being effective; and</p> <p style="padding-left: 40px;">(c) the extent of the damage which may be caused by such</p>	<p>Intervention Convention</p>

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
measures.	
<p><b>23. Consultation and notification</b></p> <p>(1) Before taking any measures under Section 21, the Authority shall proceed to consultations with other States affected by the marine casualty, particularly with the flag State or States.</p> <p>(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.</p> <p>(3) Before any measure is taken, the Authority may proceed to a consultation with independent experts, including as advised by the International Maritime Organization.</p> <p>(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.</p> <p>(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 Organization, of any measures which have been taken in application of Section 21.</p>	<p>Intervention Convention</p>
<p><b>24. Right to compensation</b></p> <p>(1) Where any action taken by any person in accordance with instructions pursuant to paragraph (a) of Subsection 21 (2), or any measure taken by the Authority under paragraph (b) of Subsection 21 (2):</p> <p style="padding-left: 40px;">(a) was in excess of that reasonably necessary to prevent, eliminate or reduce pollution or the risk of pollution; or</p> <p style="padding-left: 40px;">(b) was such that the good of the action or measure taken did or</p>	<p>SPREP/SPC Model (from Intervention Convention)</p>

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
<p style="text-align: center;">was likely to do was disproportionately less than the expense incurred or the loss or the damage suffered as a result of that action or measure;</p> <p>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.</p> <p>(2) Where a claim is brought against the Government for compensation under Subsection (1), the Court, in determining whether paragraph (a) or (b) of that Subsection apply, shall take into account:</p> <ul style="list-style-type: none"> <li>(a) the extent and probability of imminent pollution damage if the measures had not been taken; and</li> <li>(b) the likelihood of the measures taken being effective; and</li> <li>(c) the extent of the damage which has been caused by the measures taken.</li> </ul> <p>(3) Where any measures have been taken pursuant to Section 21 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:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) whether the measures taken were in excess of that reasonably necessary to prevent, eliminate or reduce pollution or the risk of pollution; or</li> <li>(c) whether compensation should be paid in accordance with Subsection (1); or</li> <li>(d) the amount of such compensation;</li> </ul> <p>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</p>	

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
procedures set out in the Annex to the Intervention Convention.	
<p><b>25. Protection from liability</b></p> <p>Where:</p> <ul style="list-style-type: none"> <li>(a) the Authority or any person duly authorised by the Authority has taken any measures pursuant to paragraph (b) of Subsection 21 (2); or</li> <li>(b) any person has taken any action or refrained from taking any action in accordance with instructions issued pursuant to paragraph (a) of Subsection 21 (2);</li> </ul> <p>then, subject to Section 21 the Authority or that person, as the case may be, shall not incur any civil liability in respect thereof.</p>	<p>SPREP/SPC Model (from Intervention Convention)</p>
<p><b>26. Offences</b></p> <p>(1) Any person commits an offence who:</p> <ul style="list-style-type: none"> <li>(a) fails to comply with any instructions issued by the Authority pursuant to Section 21 or by any person duly authorised by the Authority; or</li> <li>(b) wilfully obstructs a person acting in compliance with any instructions issued by the Authority pursuant to Section 21 of this Act or by any person duly authorised by the Authority; or</li> <li>(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 21.</li> </ul> <p>(2) Any person who commits an offence under this Section is liable upon conviction to a fine not exceeding K40,000.</p> <p>(3) In any proceedings for an offence under this Section it shall be a defence for a defendant to prove on the balance of probabilities that:</p> <ul style="list-style-type: none"> <li>(a) the failure to comply with any instructions issued under Section 21 of this Act; or</li> <li>(b) the wilful obstruction of:</li> </ul>	<p>SPREP/SPC Model</p>

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
<p>(i) any person acting in compliance with such instruction duly issued; or</p> <p>(ii) the Authority or any person acting on behalf of the Authority;</p> <p>resulted from the need to save life at sea.</p> <p>(4) In any proceedings for an offence under this Section, it shall also be 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 pursuant to Section 21 or by any person duly authorised by the Authority.</p>	
<b>Part V – Miscellaneous, administration &amp; enforcement</b>	
<p><b>27. Administration and enforcement</b></p> <p>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 28 may undertake an investigation in relation to an alleged offence under this Act, under the supervision of the Authority.</p>	Drafter
<p><b>28. Appointment of inspectors</b></p> <p>(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 or their equivalents at the time or any other Government officer as an inspector under this Act.</p> <p>(2) Members of the Royal Papua New Guinea Constabulary are inspectors by force of this Subsection.</p> <p>(3) 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.</p> <p>(4) Inspectors other than a member of the Constabulary will be issued</p>	Adapted from Aus EP(SD) Act

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
<p>with an identity card by the Authority in a form approved by the Authority.</p> <p>(5) Where a person in possession of an identity card issued to him or her under Subsection (4) ceases to be an inspector, he or she shall forthwith return the identity card to the Authority.</p> <p>(6) Any person who fails to comply with Subsection (5) commits an offence and is liable upon conviction to a fine not exceeding <b>K1,000</b>.</p>	
<p><b>29. Boarding of vessels etc by inspectors</b></p> <p>(1) An inspector may, with such assistance as he thinks necessary, board any vessel or offshore installation in Papua New Guinea waters or any Papua New Guinea vessel or offshore installation:</p> <p style="padding-left: 40px;">(a) for the purposes of exercising the functions of an inspector in accordance with Section 31; or</p> <p style="padding-left: 40px;">(b) if the inspector believes on reasonable grounds that there is in or on that vessel or offshore installation, any matter or thing that may afford evidence as to the commission of an offence against this Act;</p> <p>and may for that purpose, stop and detain that vessel or stop the operation of the offshore installation.</p> <p>(2) An inspector may require any person on board a vessel or offshore installation 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.</p> <p>(3) Where an inspector believes on reasonable grounds that a vessel to which this Section applies and that is in Papua New Guinea waters 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.</p> <p>(4) An inspector may, for the purposes of this Act, require the person in charge of a vessel or offshore installation to which this Section applies to give information concerning the vessel or platform and</p>	<p>Adapted from Aus EP(SD) Act</p>

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
<p>its crew and any other person on board the vessel or platform.</p> <p>(5) Where an inspector boards a vessel or offshore installation to which this Section applies, or makes a requirement of a person under this Section, the inspector shall:</p> <p style="padding-left: 40px;">(a) in the case of a member of the Constabulary - produce, for inspection by the person in charge of that vessel, aircraft or platform, official identification as a member of the Constabulary; or</p> <p style="padding-left: 40px;">(b) in any other case - produce his or her identity card for inspection by that person;</p> <p>and, if the inspector fails to do so, he or she is not authorized to remain, or to require any person assisting him or her to remain, on board that vessel or offshore installation or to detain that vessel, or to make any requirement of a person.</p> <p>(6) A person who, without reasonable excuse, fails to comply with a requirement made of him or her by an inspector under this Section is guilty of an offence punishable on conviction by a fine not exceeding <b>K20,000</b>.</p>	
<p><b>30. Access to premises</b></p> <p>(1) An inspector may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the functions of an inspector in accordance with Section 31.</p> <p>(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 authorizing the inspector to enter the premises for the purpose of exercising the functions of an inspector in accordance with Section 31.</p> <p>(3) If, on an application under Subsection (2), the magistrate is satisfied, by information on oath or affirmation:</p> <p style="padding-left: 40px;">(a) that 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</p>	<p>Adapted from EP(SD) Act</p>

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
<p style="text-align: center;">(b) that the issue of the warrant is reasonably required for the purposes of this Act;</p> <p>the magistrate may grant a warrant authorizing 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 in accordance with Section 31.</p> <p>(4) Where an inspector has entered any premises in pursuance of Subsection (1) or in pursuance of a warrant granted under Subsection (3), he or she may exercise the functions of an inspector in accordance with Section 31.</p>	
<p><b>31. Functions of inspectors</b></p> <p>(1) The functions of an inspector who boards a vessel or offshore installation under Section 29 or enters premises under Section 30 are as follows:</p> <p style="margin-left: 40px;">(a) to assess compliance with this Act;</p> <p style="margin-left: 40px;">(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;</p> <p style="margin-left: 40px;">(c) to search for, inspect, takes extracts from and make copies of any document that relates to the requirements of this Act; and/or</p> <p style="margin-left: 40px;">(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.</p> <p>(2) For the purposes of carrying out his functions under Subsection (1), an inspector may break open any hold or compartment, or any container or other receptacle, on a vessel or platform or on any premises.</p>	<p>Adapted from Aus EP(SD) Act</p>
<p><b>32. Powers of arrest of inspectors</b></p>	<p>Adapted from Aus EP(SD) Act</p>

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
<p>(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.</p> <p>(2) Where an inspector arrests a person under Subsection (1), the inspector shall:</p> <p style="padding-left: 40px;">(a) in the case of a member of the Constabulary - produce, for inspection by the person being arrested, official identification as a member of the Constabulary; or</p> <p style="padding-left: 40px;">(b) in any other case - produce his or her identity card for inspection by that person;</p> <p>(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 magistrate or other proper authority to be dealt with in accordance with law.</p> <p>(4) Nothing in this Section prevents the arrest of a person in accordance with any other law.</p>	
<p><b>33. Regulations</b></p> <p>The Head of State 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.</p>	<p>SPREP/SPC            SPREP/SPC Model            (simplified)</p>
<p><b>34. Offences and penalties</b></p> <p>(1) Every person who commits an offence against this Act or any regulations made thereunder for which no penalty is provided elsewhere, shall be liable upon conviction:</p> <p style="padding-left: 40px;">(a) in the case of a corporation to a fine not exceeding <b>K1,000,000</b> or a term of imprisonment not exceeding <b>five</b> years; and</p> <p style="padding-left: 40px;">(b) in the case of an individual to a fine not exceeding <b>K250,000</b> or a term of imprisonment not exceeding <b>two</b> years.</p> <p>(2) Where an offence against this Act is a continuing one and no</p>	<p>SPREP/SPC            SPREP/SPC Model</p>

<b>Proposed Text (Draft only - subject to consultation)</b>	<b>Source/ Drafter's Notes</b>
penalty is provided elsewhere for the continuance thereof, every person who commits that offence shall, in addition to any other liability, be liable upon conviction to a fine not exceeding <b>K1,000</b> for every day during which the offence continues.	
<p><b>35. Recovery of fines by distress</b></p> <p>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 conviction or in the Order of the Court, the Court may, in addition to any other power it may have to compel payment, and notwithstanding 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.</p>	SPREP/SPC Model
<p><b>36. Time limit for prosecution proceedings</b></p> <p>(1) A proceeding for prosecution for an offence against this Act must start:</p> <p style="padding-left: 40px;">(a) Within two years after the commission of the offence; or</p> <p style="padding-left: 40px;">(b) Within two years after the offence comes to the complainant's knowledge, but within three years after the commission of the offence.</p> <p>(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.</p>	Qld TOMP Act

**Schedule 1: Standard Pollution Report (POLREP)**

Pollution Reports made to the Authority in accordance with Section 14 shall report:

- (1) the time of the discharge;
- (2) the position of the discharge, including latitude and longitude, if possible;
- (3) the event to which the discharge is directly attributable;
- (4) the precise source of the discharge;
- (5) the weather and sea conditions at the time of the discharge and at the time when the report was made;
- (6) where oil has been discharged, the quantity and description of each type of oil that was discharged;
- (7) the quantity and description of each type of oil remaining on board (in the case of a vessel) or in storage (in the case of sources other than vessels);
- (8) where a pollutant other than oil has been discharged, the quantity and description of each type of pollutant discharged (including their correct technical names, IMDG Code Classification and UN number, if applicable);
- (9) the quantity and description of each type of pollutant other than oil remaining on board (in the case of a vessel) or in storage (in the case of sources other than vessels);
- (10) where garbage or sewage has been discharged, the quantity, description and concentration that was discharged;
- (11) where relevant the types, quantity and condition of the rest of the cargo carried;
- (12) the existence of any slick and the direction and speed of its movement;
- (13) the measures that have been taken :
  - (a) to stop or reduce the discharge;
  - (b) to contain the pollutant and prevent it's spread;
  - (c) to remove the pollutant from the sea or to disperse it; and
  - (d) to minimise damage or the possibility of damage resulting from the discharge; and
- (14) the identity and full contact details of the person making the report.