

INDEPENDENT STATE OF PAPUA NEW GUINEA



***Marine Pollution (Liability & Cost Recovery) Bill***

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INDEPENDENT STATE OF PAPUA NEW GUINEA



**A BILL  
for an  
ACT  
entitled**

***Marine Pollution (Liability & Cost Recovery) Act [Insert Yr]***

Being an Act:

- (a) to provide for the establishment and operation of a National Marine Pollution Fund (POLFUND); and
- (b) to provide for liability, insurance, the recovery of costs and the payment of compensation relating to pollution damage in, on or to Papua New Guinea waters, coastline and related interests from vessels and oil or chemical handling facilities; and
- (c) to incorporate into the law of Papua New Guinea relevant provisions of certain international Conventions relating to marine pollution liability, cost recovery and compensation; and
- (d) to repeal the *Protection of the Sea (Shipping Levy) Act*; and
- (e) to make ancillary and related provisions.

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. Short title

This Act may be cited as the *Marine Pollution (Liability & Cost Recovery) Act*

### 2. Application

- (1) This Act applies to the State including any vessel and any oil or chemical handling facility owned or partly owned or chartered or otherwise operated by the National Government or any Provincial Government of Papua New Guinea, except that it does not apply to vessels of the Papua New Guinea Defence Force in times of war, conflict or emergency only.
- (2) Subject to Sections 26 and 38, 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.

### 3. Compliance with constitutional requirements

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

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.

- (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 Section 42 or 44 of the *Organic Law on Provincial Governments and Local-level Governments*, and prevails over any law made under Section 42 or 44 to the extent of any inconsistency.

#### 4. Interpretation

In this Act, unless the contrary intention appears:

**"92 Civil Liability Convention"** means the *Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 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 92 CLC Convention;

**"92 Fund"** means the fund established under the 92 Fund Convention;

**"92 Fund Convention"** means the *Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971*; 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 92 Fund Convention;

**"Authority"** means the National Maritime Safety Authority established by the *National Maritime Safety Authority Act*;

**"bunker"** means any compartment or space onboard a vessel used to store bunker oil, as defined in Part IV;

**"Bunkers Convention"** means the *International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001*; 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;

**"chemical"** 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 or other waters;

“**gross tonnage**” and “**tonnage**” mean gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 of the *International Convention on Tonnage Measurement of Ships, 1969*;

“**handle**” in relation to oil or chemicals means to import into or export from Papua New Guinea or to move from one place to another within Papua New Guinea, and “**handling**” and “**handled**” have corresponding meanings;

“**IMDG Code**” means the *International Maritime Dangerous Goods Code* published by the International Maritime Organization from time to time;

“**incident**” means any occurrence, or series of occurrences having the same origin, which causes “pollution damage” as defined in Parts III, IV and VI of this Act as applicable, or creates a grave and imminent threat of causing such damage, and “**marine pollution incident**” has the same meaning;

“**Inspector**” means a person appointed as an Inspector under Subsection 64(1);

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

“**MARPOL Convention**” 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;

“**oil**” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products and, without limiting the generality of the foregoing, includes the substances listed in Appendix I of Annex I of the MARPOL Convention;

“**oil or chemical handling facility**” means any place on land, any terminal or any offshore installation or platform which is used to handle

and/or store more than 5,000 tonnes of oil or chemicals per quarter (three month period); and is located such that any discharge, spillage, leakage or run-off of oil or chemicals from the facility may possibly enter Papua New Guinea waters;

**“Papua New Guinea”** means the Independent State of Papua New Guinea;

**“Papua New Guinea territory”** and **“territory of Papua New Guinea”** mean all areas under the sovereign jurisdiction of Papua New Guinea, including the territorial sea;

**"Papua New Guinea vessel"** means a vessel that is:

- (a) registered or required to be registered under the *Merchant Shipping Act*, 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;

and “Papua New Guinea tanker” has a corresponding meaning in relation to a tanker;

**"Papua New Guinea waters"** means:

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

of Papua New Guinea as defined in the *Maritime Zones Act* [NB if this Bill is passed before the *Maritime Zones Bill* this reference will have to be changed to *National Seas Act*];

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

**“POLFUND”** means the National Marine Pollution Fund established under Part II;

**“preventive measures”** mean any reasonable measures taken by any person after a pollution incident has occurred to prevent or minimise pollution damage;

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

**“State of the ship’s registry”** means in relation to registered ships the State of registration of the ship, and in relation to unregistered ships the State whose flag the ship is flying or is entitled to fly; and **“State of tanker’s registry”** has an equivalent meaning;

**“subsistence fisherman”** means any person who engages in fishing for the primary purpose of providing food for domestic consumption and does not include any person who sells, offers for sale or barter any fish caught;

**“Supplementary Fund”** means the fund established under the Supplementary Fund Protocol;

**“Supplementary Fund Protocol”** means the Protocol of 2003 to the 92 Fund Convention;

**“vessel”** means any waterborne 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 production storage and offloading units (FPSOs) without regard to the method of or lack of propulsion.

## **5. 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 Papua New Guinea, 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:

(a) Bunkers Convention;

(b) 92 Civil Liability Convention;

- (c) 92 Fund Convention; and
  - (d) Supplementary Fund Protocol.
- (2) Regulations made under this Act may:
- (a) add to or delete from the list of Conventions listed in Subsection (1), and any Convention added to the list may be implemented, enforced or otherwise applied in Papua New Guinea in accordance with this Act and any regulations made under this Act;
  - (b) make provision for any aspect of the application or enforcement of a Convention to which this Act applies;
  - (c) modify the application of any Convention to which this Act applies to meet the needs and circumstances of Papua New Guinea; and
  - (d) 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, 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 - National Marine Pollution Fund (POLFUND)**

### **6. Interpretation**

In this Part:

**“Contributing Vessel”** means any vessel that is able to carry more than 10 tonnes of oil either as fuel or cargo or which is carrying more than 10 tonnes of chemicals and which in either case enters a port or terminal in Papua New Guinea;

### **7. POLFUND established**

- (1) There is established a fund to be known as the National Marine Pollution Fund (POLFUND), financed by Marine Pollution Levies on Contributing Vessels in accordance with Sections 10 to 13.

- (2) The POLFUND shall be administered by the Authority and expenditure from the POLFUND shall be governed in accordance with Sections 8 and 9.
- (3) The levies payable under Section 10 and any other money payable to the POLFUND shall be paid into the fund.
- (4) All moneys payable to the POLFUND shall be paid to an interest-bearing account established for that purpose by the Authority.
- (5) All income of the POLFUND shall form part of the fund.
- (6) Part VIII of the *Public Finances (Management) Act* applies in relation to the POLFUND and the accounts of the POLFUND shall be audited in accordance with Part III of the *Audit Act*.

## **8. Application of POLFUND monies**

- (1) Subject to the provisions of this Act and the *Marine Pollution (Preparedness & Response) Act* the Authority shall apply the POLFUND monies for the following purposes only:
  - (a) the maintenance and implementation of the National Marine Pollution Contingency Plan (NATPLAN) and related activities under the *Marine Pollution (Preparedness & Response) Act*; including:
    - (i) the undertaking of national marine pollution risk assessments;
    - (ii) the purchase and maintenance of national marine pollution response equipment;
    - (iii) the delivery of national marine pollution response training and exercises;
    - (iv) the purchase or hire of any other thing or service, including plant, equipment and services, in relation to this section or as otherwise required to make preparations for, or to implement, or assist in implementing, responses to marine pollution incidents;
  - (b) to cover to the extent possible within the limits of the POLFUND costs incurred by the Authority or the National Government or any Provincial Government in responding to marine pollution incidents, and only when:
    - (i) such costs are reasonable and justifiable in relation to the incident responded to;

- (ii) such costs cannot be recovered from the polluter or from other sources; and
    - (iii) full documentary proof of the expenditure is available to the Authority;
  - (c) to reimburse to the extent possible within the limits of the POLFUND, costs incurred by non-Government (private-sector) parties when their equipment and/or personnel is made available to respond to marine pollution incidents that do not relate to their facility, and only when:
    - (i) such costs are reasonable and justifiable in relation to the incident that was responded to;
    - (ii) the cost of the use of their equipment is approved by the Authority in advance;
    - (iii) such costs cannot be recovered from the polluter or from other sources; and
    - (iv) full documentary proof of the expenditure is available to the Authority.
- (2) The re-imburement of costs incurred by non-Government (private-sector) parties from the POLFUND under subparagraph (c) of Subsection (1) shall be undertaken in accordance with administrative arrangements concluded between the Authority and such non-Government (private-sector) parties under the *Marine Pollution (Preparedness & Response) Act*.
- (3) POLFUND monies shall not be used for any purpose other than those outlined in Subsection (1), and especially shall not be used for:
  - (a)
    - (i) the undertaking of site-specific marine pollution risk assessments,
    - (ii) the development, maintenance and implementation of site-specific marine pollution contingency plans, and
    - (iii) the undertaking of training and exercises,

by the private-sector, as required by the *Marine Pollution (Preparedness & Response) Act*; the costs of which shall be met directly by the relevant private-sector parties;

- (b) the procurement and maintenance of marine pollution response equipment by the private-sector as required by the *Marine Pollution (Preparedness & Response) Act*; the costs of which shall be met directly by the relevant private-sector parties;
- (c) the response to marine pollution incidents from private-sector facilities and any subsequent restoration of the environment; when such costs can be met directly by the owner or operator of the facility without recourse to the POLFUND; and
- (d) the payment of compensation for pollution damage, which shall be recovered from the polluter wherever possible and if applicable the relevant international funds in accordance with Parts III, IV and VI as applicable.

## **9. Approval of expenditure from the POLFUND**

- (1) The Authority shall prepare an annual budget of income and expenditure for the POLFUND in consultation with the National Marine Pollution Committee (the Committee) established under the *Marine Pollution (Preparedness & Response) Act*, for approval by the Board of the Authority (the Board), and such budget shall include adequate reserves for the Authority's initial response to an unexpected significant pollution incident including initial assessment, surveillance, containment and recovery operations.
- (2) The General Manager of the Authority or his or her or equivalent at the time is authorised to expend monies from the POLFUND as follows:
  - (a) when the individual expenditure is provided for in the annual budget as approved by the Board;
  - (b) when the individual expenditure is not provided for in the annual budget as approved by the Board and it is equal to or less than K100,000;
  - (c) when the individual expenditure is not provided for in the annual budget as approved by the Board and is more than K100,000 if separate approval is received from the Board for that expenditure;

except that in the event of a marine pollution incident, the Incident Commander appointed under the *Marine Pollution (Preparedness & Response) Act* has the authority to spend and commit such funds as are reasonable and justifiable in the circumstances up to eighty percent (80%) of the amount contained in the POLFUND, for the initial containment and recovery of the pollutant.

## **10. Marine Pollution Levies**

- (1) Subject to Subsection (2) and Sections 11 to 16, regulation(s) made under this Act may prescribe Marine Pollution Levies on the owners of Contributing Vessels for the purpose of funding the POLFUND.
- (2) The Levy on Contributing Vessels shall be either:
  - (a) a flat annual rate, or
  - (b) a specified rate in respect of each entry of a Contributing Vessel into a port or terminal in Papua New Guinea.

## **11. Levy rates and maximum POLFUND level**

- (1) In setting the Marine Pollution Levies under Section 10, the Authority shall, in consultation with the Committee, periodically and not less than triennially determine the desired financial reserve of the POLFUND that is required to finance the budgets established under Subsection 9(1).
- (2) Levy rates shall be prescribed so as to achieve and maintain the desired financial reserve only, and no more.
- (3) When the desired financial reserve of the POLFUND determined under Subsection (1) has been collected, the Marine Pollution Levy may be reduced or suspended.
- (4) If the POLFUND is depleted by expenditures made under Section 8 the Marine Pollution Levy may be increased or reinstated, as required in order to replenish the POLFUND to the desired financial reserve determined under Subsection (1).

## **12. Incurring of Levies**

- (1) Where any Marine Pollution Levy is imposed in respect of a Contributing Vessel, the liability to pay that Levy shall arise:
  - (a) where the levy is assessed on an annual basis, on the first entry of that vessel into a port or terminal in Papua New Guinea during the period for which the levy is assessed; and
  - (b) in any other case, on the entry of that vessel into a port or terminal in Papua New Guinea.

- (2) The owners of Contributing Vessels shall be jointly and severally liable for the payment of the Levies.
- (3) A Marine Pollution Levy shall not apply to a Contributing Vessel if its entry into a port or terminal is:
  - (a) solely for the purpose of saving or preventing danger to human life, or obtaining medical treatment for any person; or
  - (b) solely because of weather conditions or any other circumstances that the owner or master of the vessel could not have foreseen or prevented.

### **13. Payment of Levies**

- (1) Marine Pollution Levies shall be paid to the Authority.
- (2) All Levies so received shall be paid into the POLFUND.
- (4) The Authority shall issue an official receipt to any person who pays any Marine Pollution Levy upon payment of such Levy.

### **14. Vessels not entitled to put to sea until Levies paid**

- (1) Where any Marine Pollution Levy is payable in respect of a Contributing Vessel, the vessel shall not be entitled to leave port or put to sea until payment is made.
- (2) Any person in respect of whom any decision is taken under this section may appeal against the decision in a Court of competent jurisdiction in Papua New Guinea.

### **15. Offences**

- (1) Any person who contravenes or fails to comply with any obligation or requirement imposed on him or her by Sections 8 to 14 commits an offence and is liable upon conviction:
  - (a) in the case of an individual, to a fine not exceeding **K25,000**;
  - (b) in any other case, to a fine not exceeding **K150,000**.

## 16. Recovery of Levies

If any person who is liable to pay a Marine Pollution Levy fails to do so, the amount of the Levy may be recovered from that person as a debt.

## Part III - Pollution damage from oil carried by tankers

### 17. Purpose and application of this Part

- (1) The purpose of this Part is to provide for liability, insurance, the recovery of costs and the payment of compensation relating to pollution damage from oil carried by tankers; through the implementation of the 92 Civil Liability Convention, the 92 Fund Convention and the Supplementary Fund Protocol.
- (2) This Part applies exclusively:
  - (a) to pollution damage caused by tankers:
    - (i) in the territory, including the internal waters and territorial sea, of Papua New Guinea;
    - (ii) in the exclusive economic zone of Papua New Guinea; and
  - (b) to preventive measures, wherever taken, to prevent or minimize such damage.

### 18. Interpretation

In this Part:

“**oil**” means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a tanker as cargo or in the bunkers of such a tanker;

“**owner**” means the person or persons registered as the owner of the tanker or, in the absence of registration, the person or persons owning the tanker. However in the case of a tanker owned by a State and operated by a company which in that State is registered as the tanker’s operator, “owner” shall mean such company;

“**pollution damage**” means:

- (a) loss or damage caused outside the tanker by contamination resulting from the escape or discharge of oil from the tanker, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;
- (b) the costs of preventive measures and further loss or damage caused by preventive measures;

“**tanker**” has the same meaning as “ship” in the 92 Civil Liability Convention and means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a vessel capable of carrying oil and other cargoes shall be regarded as a tanker only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

#### **19. Liability for pollution damage**

- (1) Except as provided in Subsections (2) and (3), the owner of a tanker at the time of an incident, or, where the incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for any pollution damage caused by the tanker as a result of the incident.
- (2) No liability for pollution damage shall attach to the owner if he or she proves that the damage:
  - (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
  - (b) was wholly caused by an act or omission done with intent to cause damage by a third party; or
  - (c) was wholly caused by the negligence or other wrongful act of any Government or other party responsible for the maintenance of lights or other navigational aids in the exercise of that function.
- (3) If the owner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his or her liability to such person.

- (4) Subject to Subsection (5), no claim for compensation for pollution damage under this Part may be made against:
- (a) the servants or agents of the owner or the members of the crew;
  - (b) the pilot or any other person who, without being a member of the crew, performs services for the tanker;
  - (c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the tanker;
  - (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
  - (e) any person taking preventive measures;
  - (f) all servants or agents of persons mentioned in paragraphs (c), (d) and (e) of this subsection;
- unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.
- (5) Nothing in this Part shall prejudice any right of recourse of the owner against third parties.
- (6) When an incident involving two or more tankers results in pollution damage, the owners of all the tankers concerned, unless exonerated under Subsections (2) to (4), shall be jointly and severally liable for all such damage which is not reasonably separable.

## **20. Actions for compensation**

- (1) Where an incident has caused pollution damage in the territory of Papua New Guinea, including the internal waters and/or the territorial sea, or in the exclusive economic zone of Papua New Guinea, or when preventive measures have been taken, anywhere, to prevent or minimise such damage, actions for compensation against the tanker owner, insurer or other person providing security for the tanker owner's liability may be brought by any person who has suffered such pollution damage, in the National Court of Justice of Papua New Guinea, in accordance with this Part and Part VII.
- (2) Reasonable notice of any such action shall be given to the defendant.

- (3) In a case where compensation sought for pollution damage under Subsection (1) exceeds the limits of liability specified in Section 21, actions for compensation may be brought by any person who has suffered such pollution damage against the 92 Fund, in the National Court of Justice of Papua New Guinea, in accordance with Sections 28 and 29 and Part VII.
- (4) In a case where compensation sought for pollution damage under Subsection (3) exceeds the limits available under the 92 Fund; actions for compensation may be brought by any person who has suffered such pollution damage against the Supplementary Fund, in the National Court of Justice of Papua New Guinea, in accordance with Sections 28 and 29 and Part VII.
- (5) No claim for compensation for pollution damage shall be made against the tanker owner or the 92 Fund or Supplementary Fund otherwise than in accordance with this Part and Part VII.

## **21. Limitation of liability**

- (1) The owner of a tanker shall be entitled to limit his or her liability under this Part in respect of any one incident to an aggregate amount calculated as follows:
  - (a) 4,510,000 units of account for a tanker not exceeding 5,000 units of tonnage;
  - (b) for a tanker with a tonnage in excess thereof, for each additional unit of tonnage, 631 units of account in addition to the amount mentioned in subparagraph (a);provided, however, that this aggregate amount shall not in any event exceed 89,770,000 units of account.
- (2) The "unit of account" in Subsection (1) means the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Subsection (1) shall be converted into Papua New Guinea currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund referred to in Subsection (4). The value of the Papua New Guinea currency, in terms of the Special Drawing Right shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. In the case where Section 25 applies and proceedings are initiated in the competent court of another State, in accordance with Section 25, the provisions of this subsection shall apply to the currency of that State.
- (3) The owner shall not be entitled to limit his or her liability under this Part if it is proved that the pollution damage resulted from his or her personal act or

omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

- (4) For the purpose of availing him or herself of the benefit of the limitation provided for in Subsection (1), the owner shall constitute a fund for the total sum representing the limit of his or her liability, with the National Court of Justice of Papua New Guinea, in which action is brought under Section 20. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee in an amount considered adequate by the Court. In the case where Section 25 applies and proceedings are initiated in the competent court of another State, the fund referred to in this subsection may be constituted in the competent court of that State, providing such State is a party to the 92 Civil Liability Convention, in accordance with Section 25.
- (5) The fund shall be distributed among the claimants in proportion to the amounts of their established claims.
- (6) If before the fund is distributed the owner or any of his or her servants or agents or any person providing him insurance or other financial security has, as a result of the incident in question, paid compensation for pollution damage, such person shall, up to the amount he or she has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Part.
- (7) The right of subrogation provided for in Subsection (6) may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for pollution damage that he or she may have paid.
- (8) Where the owner or any other person establishes that he or she may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which such person would have enjoyed a right of subrogation under Subsections (6) or (7), had the compensation been paid before the fund was distributed, the Court may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his or her claim against the fund.
- (9) Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimise pollution damage shall rank equally with other claims against the fund.
- (10) For the purpose of this section the tanker's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 of the International Convention on Tonnage Measurement of Ships 1969.
- (11) The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this section on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be

constituted even if, under the provisions of Subsection (3), the owner is not entitled to limit his or her liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

## **22. Rights of owner upon constitution of fund**

- (1) Where the owner, after an incident, has constituted a fund in accordance with Section 21 and is entitled to limit his or her liability:
  - (a) no person having a claim for pollution damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim;
  - (b) the Court shall order the release of any tanker or other property belonging to the owner which has been arrested in respect of a claim for marine pollution damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.
- (2) The foregoing, however, shall only apply if the claimant has access to the Court administering the fund and the fund is actually available in respect of his or her claim.

## **23. Requirement for oil pollution insurance and carriage of valid Certificate**

- (1) The owner of any Papua New Guinea tanker carrying more than 200 tons of oil in bulk as cargo and the owner of any foreign tanker which calls at a Papua New Guinea port or terminal or which operates in Papua New Guinea waters and carrying more than 2,000 tons of oil in bulk as cargo, shall maintain insurance or other financial security, such as the guarantee of a bank or a certificate delivered by an international compensation fund, in the sums fixed by applying the limits of liability prescribed in Section 21(1).
- (2) An International Oil Pollution Insurance Certificate for Tankers, attesting that insurance or other financial security is in force in accordance with the provisions of this Part shall be issued by the Authority to and carried by any Papua New Guinea tanker carrying more than 200 tons of oil in bulk as cargo, after the Authority has determined that the requirements of Subsection (1) have been complied with.
- (3) An International Oil Pollution Insurance Certificate for Tankers, attesting that insurance or other financial security is in force in accordance with the provisions of this Part shall be carried by any foreign tanker carrying more than 2,000 tons of oil in bulk as cargo, which calls at a Papua New Guinea port or terminal or which operates in Papua New Guinea waters.

- (4) With respect to a foreign tanker that is registered in a State that is a party to the 92 Civil Liability Convention, the Certificate required under Subsection (3) shall be issued or certified by the appropriate authority of the State of the tanker's registry, and with respect to a foreign tanker that is registered in a State that is not a party to the 92 Civil Liability Convention, it may be issued or certified by the appropriate authority of any State that is a party to the 92 Civil Liability Convention, provided that such authority has determined that the requirements of Subsection (1) have been complied with.
- (5) The Certificate required under Subsections (2) and (3) shall be in the form prescribed for Papua New Guinea tankers, and in accordance with the Annex to the 92 Civil Liability Convention for all other tankers, and shall contain the following particulars:
  - (a) name of tanker and port of registration;
  - (b) name and principal place of business of owner;
  - (c) type of security;
  - (d) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;
  - (e) period of validity of Certificate which shall not be longer than the period of validity of the insurance or other security.
- (6) The Certificate shall be in the official language or languages of the issuing State. If the language used is not English, the text shall include a translation into English.
- (7) The Certificate shall be carried on board the tanker and a copy shall be deposited with the authorities that keep the record of the tanker's registry or, if the tanker is registered in a State that is not a party to the 92 Civil Liability Convention, with the relevant authorities of the State issuing or certifying the Certificate.
- (8) An insurance or other financial security shall not satisfy the requirements of this section if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under Subsection (2), before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in Subsections (2) and (4), unless the Certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this section.

- (9) The State of the tanker's registry shall, subject to the provisions of this section, determine the conditions of issue and validity of the Certificate.
- (10) Any sums provided by insurance or by other financial security maintained in accordance with Subsection (1) shall be available exclusively for the satisfaction of claims under this Part.
- (11) If any Papua New Guinea tanker carrying more than 200 tons of oil in bulk as cargo does not have insurance or other security to the extent specified in Subsection (1), and does not carry a valid Certificate as required under this section; or otherwise does not comply with the provisions of this section, such tanker shall be prohibited from going to sea; and
- (a) the owner of the tanker; and
  - (b) the master of the tanker;

each commit an offence and shall each be liable upon conviction to a fine not exceeding K1,000,000 or a term of imprisonment not exceeding five years.

- (12) If any tanker wherever registered carrying more than 2,000 tons of oil in bulk as cargo does not have insurance or other security to the extent specified in Subsection (1), and does not carry a valid Certificate as required under this section; or otherwise does not comply with the provisions of this section, such tanker shall be prohibited from going to sea; and
- (a) the owner of the tanker; and
  - (b) the master of the tanker;

each commit an offence and shall each be liable upon conviction to a fine not exceeding K1,000,000 or a term of imprisonment not exceeding five years.

- (13) If insurance or other financial security is not maintained in respect of a tanker owned by the government of a State that is a party to the 92 Civil Liability Convention, the provisions of this section relating thereto shall not be applicable to such tanker, but the tanker shall carry a certificate issued by the appropriate authorities of the State of the tanker's registry stating that the tanker is owned by the government of that State and that the tanker's liability is covered within the limits prescribed by Section 21(1). Such a certificate shall follow as closely as practicable the model prescribed by Subsection (5).

## **24. Right to compensation extinguished**

Rights to compensation under this Part shall be extinguished unless an action is brought within three years from the date when the pollution damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the pollution damage. Where this incident consists of a series of occurrences, the six years' period shall run from the date of the first such occurrence.

## **25. Jurisdiction of courts where pollution damage occurs in more than one State**

- (1) Where an incident has caused pollution damage in the territory, including the internal waters and territorial sea, or the exclusive economic zone of Papua New Guinea, as well as in the territory, including the internal waters and territorial sea, or the exclusive economic zone, of another State or States, or preventive measures have been taken to prevent or minimize pollution damage in such territory, or exclusive economic zone, actions for compensation may only be brought in the National Court of Justice of Papua New Guinea or in the competent court of another affected State, providing that such other State is a party to the 92 Civil Liability Convention .
- (2) Reasonable notice of any such action shall be given to the defendant.
- (3) After the fund has been constituted in accordance with Section 21 the court of the State in which the fund is constituted shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.

## **26. Exemptions**

- (1) The provisions of this Part shall not apply to warships or tankers owned or operated by the government of a State and used, for the time being, only on government non-commercial service.
- (2) A State that is party to the 92 Civil Liability Convention may decide to apply that Convention to its warships or other ships described in Subsection (1), in which case this Part shall apply to such ships, according to the terms and conditions of such State's application of that Convention to its warships or other ships described in Subsection (1).
- (3) With respect to tankers owned by the government of a State that is a party to the 92 Civil Liability Convention and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in Section 25 and shall waive all defences based on its status as a sovereign State.

## **27. Recognition of the 92 Fund and Supplementary Fund**

- (1) The 92 Fund has the following aims:
  - (a) to provide compensation for pollution damage to the extent that the compensation available through the 92 Civil Liability Convention is inadequate; and
  - (b) to give effect to the related purposes set out in the 92 Fund Convention.
- (2) The Supplementary Fund has the following aims:
  - (a) to provide compensation for pollution damage to the extent that the compensation available through by 92 Civil Liability Convention and the 92 Fund is inadequate; and
  - (b) to give effect to the related purposes set out in the Supplementary Fund Protocol.
- (3) Through force of this section the 92 Fund and the Supplementary Fund are recognised as legal persons capable under the laws of Papua New Guinea of assuming rights and obligations and of being a party in legal proceedings before the National Court of Justice of Papua New Guinea.
- (4) The Director of the 92 Fund and the Supplementary Fund shall be their legal representative.

## **28. Application of the 92 Fund and Supplementary Fund**

For the purposes of this Act the 92 Fund and Supplementary Fund shall apply exclusively:

- (a) to pollution damage caused by tankers:
  - (i) in the territory, including the internal waters and territorial sea, of Papua New Guinea;
  - (ii) in the exclusive economic zone of Papua New Guinea; and
- (b) to preventive measures, wherever taken, to prevent or minimize such damage.

## **29. Payment of compensation by the 92 Fund and Supplementary Fund**

- (1) For the purpose of fulfilling its functions under paragraph (a) of Subsection 27(1), the 92 Fund shall pay compensation, subject to the provisions of the 92 Fund Convention and of this Act, to any eligible person suffering pollution damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of 92 Civil Liability Convention and this Part.
- (2) For the purpose of fulfilling its function under paragraph (a) of Subsection 27(2), the Supplementary Fund shall pay compensation, subject to the provisions of the Supplementary Fund Protocol and this Act, to any eligible person suffering pollution damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of the 92 Civil Liability Convention and the 92 Fund Convention and this Part.

## **Part IV - Pollution damage from bunker oil carried by ships**

### **30. Purpose and application of this Part**

- (1) The purpose of this Part is to provide for liability, insurance, the recovery of costs and the payment of compensation relating to pollution damage from bunker oil carried by ships; through the implementation of the Bunkers Convention.
- (2) This Part applies exclusively:
  - (a) to pollution damage caused by ships, other than as provided for in Part III:
    - (i) in the territory, including the internal waters and territorial sea, of Papua New Guinea;
    - (ii) in the exclusive economic zone of Papua New Guinea; and
  - (b) to preventive measures, wherever taken, to prevent or minimize such damage.

### **31. Interpretation**

In this Part:

**"bunker oil"** means any hydrocarbon mineral oil including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil, as defined in the Bunkers Convention;

**“pollution damage”** means:

- (a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and
- (b) the costs or preventive measures and further loss or damage caused by preventive measures;

**“ship”** means any seagoing vessel and seaborne craft, of any type whatsoever;

**“shipowner”** means the owner, including the registered owner, bareboat charterer, manager and operator of the ship; and

**“registered owner”** means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship’s operator, “registered owner” shall mean such company.

### **32. Liability for pollution damage**

- (1) Except as provided in Subsections (3) and (4), the shipowner at the time of an incident shall be liable for pollution damage caused by any bunker oil on board or originating from the ship, provided that if an incident consists of a series of occurrences having the same origin, the liability shall attach to the shipowner at the time of the first such occurrence.
- (2) Where more than one person is liable in accordance with Subsection (1), their liability shall be joint and several.
- (3) No liability for pollution damage shall attach to the shipowner if the shipowner proves that:
  - (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional inevitable and irresistible character; or
  - (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or

- (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other party responsible for the maintenance of lights or other navigational aids in the exercise of that function.
- (4) If the shipowner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the shipowner may be exonerated wholly or partially from liability to such person.
- (5) Nothing in this Part shall prejudice any right of recourse of the shipowner which exists independently of this Part.

### **33. Actions for compensation**

- (1) Where an incident has caused pollution damage in the territory of Papua New Guinea, including the internal waters and/or territorial sea, or in the exclusive economic zone of Papua New Guinea, or when preventive measures have been taken, anywhere, to prevent or minimise such damage, actions for compensation against the shipowner, insurer or other person providing security for the shipowner's liability may be brought only in the National Court of Justice of Papua New Guinea, in accordance with this Part.
- (2) Reasonable notice of any such action shall be given to the defendant.
- (3) No claim for compensation for pollution damage shall be made against the shipowner otherwise than in accordance with this Part and Part VII.

### **34. Limitation of liability**

Nothing in this Part shall affect the right of the shipowner and the person or persons providing insurance or other financial security to limit liability under the *Convention on Limitation of Liability for Maritime Claims, 1976*, as amended.

### **35. Requirement for oil pollution insurance and carriage of valid Certificate**

- (1) The registered owner of any Papua New Guinea ship having a gross tonnage of 400 and above, and the registered owner of any foreign ship having a gross tonnage greater than 1,000 which calls at a Papua New Guinea port or terminal or which operates in Papua New Guinea waters, shall maintain insurance or other financial security, such as the guarantee of a bank or a similar financial institution, to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability calculated in accordance with the *Convention on Limitation of Liability for Maritime Claims, 1976*, as amended.

- (2) An International Oil Pollution Insurance Certificate for Bunkers, attesting that insurance or other financial security is in force in accordance with the provisions of this section, shall be issued by the Authority to and carried by each Papua New Guinea ship having a gross tonnage of 400 and above, after the Authority has determined that the requirements of Subsection (1) have been complied with.
- (3) An International Oil Pollution Insurance Certificate for Bunkers, attesting that insurance or other financial security is in force in accordance with the provisions of this section shall be carried by any foreign ship having a gross tonnage greater than 1,000 which calls at a Papua New Guinea port or terminal or which operates in Papua New Guinea waters.
- (4) With respect to a foreign ship that is registered in a State that is a party to the Bunkers Convention, the Certificate required under Subsection (3) shall be issued or certified by the appropriate authority or authorized institution or organization of the State of the ship's registry, and with respect to a foreign ship that is registered in a State that is not a party to the Bunkers Convention, it may be issued or certified by the appropriate authority or authorized institution or organization of any State that is a party to the Bunkers Convention, provided that such authority or authorized institution or organization has determined that the requirements of Subsection (1) have been complied with.
- (5) The Certificate required under Subsections (2) and (3) shall be in the form prescribed for Papua New Guinea vessels, and in accordance with the Annex to the Bunkers Convention for all other vessels, and shall contain the following particulars:
  - (a) name of ship, distinctive number or letters and port of registration;
  - (b) name and principal place of business of the registered owner;
  - (c) ship's IMO number;
  - (d) type and duration of security;
  - (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;
  - (f) period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security.

- (6) The Certificate shall be in the official language or languages of the issuing State. If the language used is not English, the text shall include a translation into English.
- (7) The Certificate shall be carried on board the ship and a copy shall be deposited with the authorities that keep the record of the ship's registry or, if the ship is registered in a State that is not a party to the Bunkers Convention, with the relevant authorities of the State issuing or certifying the Certificate.
- (8) An insurance or other financial security shall not satisfy the requirements of this section if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the Certificate referred to in Subsections (2) and (3), before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in Subsections (2) and (4), unless the Certificate has been surrendered to these authorities or a new Certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this section.
- (9) The State of the ship's registry shall, subject to the provisions of this section, determine the conditions of issue and validity of the Certificate.
- (10) Any sums provided by insurance or by other financial security maintained in accordance with Subsection (1) shall be available exclusively for the satisfaction of claims under this Part.
- (11) If any Papua New Guinea ship of gross tonnage 400 and above does not have insurance or other security to the extent specified in Subsection (1) and does not carry a valid Certificate as required under this section; or otherwise does not comply with the provisions of this section, such ship shall be prohibited from going to sea; and
  - (a) the owner of the ship, and
  - (b) the master of the ship;each commit an offence and shall each be liable upon conviction to a fine not exceeding K1,000,000 or a term of imprisonment not exceeding five years.
- (12) If any ship of gross tonnage greater than 1,000 wherever registered does not have insurance or other security to the extent specified in Subsection (1) and does not carry a valid certificate as required under this section; or otherwise does not comply with the provisions of this section, such ship shall be prohibited from going to sea; and
  - (a) the owner of the ship; and

(b) the master of the ship;

each commit an offence and shall each be liable upon conviction to a fine not exceeding K1,000,000 or a term of imprisonment not exceeding five years.

- (13) If insurance or other financial security is not maintained in respect of a ship owned by the government of a State that is a party to the Bunkers Convention, the provisions of this section relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authority of the State of the ship's registry stating that the ship is owned by the government of that State and that the ship's liability is covered within the limits prescribed by Subsection (1). Such a certificate shall follow as closely as practicable the model prescribed by Subsection (5).

### **36. Right to compensation extinguished**

Rights to compensation under this Part shall be extinguished unless an action is brought within three years from the date when the pollution damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the pollution damage. Where this incident consists of a series of occurrences, the six years' period shall run from the date of the first such occurrence.

### **37. Jurisdiction of courts where pollution damage occurs in more than one State**

- (1) Where an incident has caused pollution damage in the territory, including the territorial sea, or the exclusive economic zone of Papua New Guinea, as well as in the territory, including the territorial sea, or the exclusive economic zone, of another State or States, or preventive measures have been taken to prevent or minimize pollution damage in such territory, including the territorial sea, or exclusive economic zone, actions for compensation may only be brought in the National Court of Justice of Papua New Guinea or in the relevant court of another affected State, providing that such other State is a party to the Bunkers Convention.
- (2) Reasonable notice of any such action shall be given to the defendant.

### **38. Exemptions**

- (1) This Part shall not apply to pollution damage as defined in Part III and the 92 Civil Liability Convention, whether or not compensation is payable in respect of it under that Part and Convention.

- (2) Except as provided in Subsection (3), the provisions of this Part shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on government non-commercial service.
- (3) A State that is Party to the Bunkers Convention may decide to apply that Convention to its warships or other ships described in Subsection (2), in which case this Part shall apply to such ships, according to the terms and conditions of such State's application of that Convention to its warships or other ships described in Subsection (2).
- (4) With respect to ships owned by a State that is a Party to the Bunkers Convention and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in Section 37 and shall waive all defences based on its status as a sovereign State.

## **Part V – Requirement for other insurance**

### **39. Requirement for other insurance**

- (1) Every Papua New Guinea vessel of 24 metres or more in length shall have an insurance policy that, to the limits prescribed, is sufficient to pay for:
  - (a) the removal of the vessel if the vessel is wrecked; and
  - (b) any clean-up costs that may be incurred as a result of the vessel becoming a wreck.
- (2) This Part shall not apply to pollution damage as defined in Parts III and IV.
- (3) A current and valid National Wreck Removal Insurance Certificate attesting that insurance is in force in accordance with the provisions of this section shall be issued by the Authority in the form prescribed and shall be carried by each vessel to which this section applies.
- (4) If a vessel to which this section applies does not comply with Subsection (1) the owner of the vessel commits an offence and shall be liable upon conviction to a fine not exceeding K500,000 or a term of imprisonment not exceeding two years.
- (5) If a vessel to which this section applies does not comply with Subsection (3) the vessel shall be prohibited from going to sea.
- (6) The Authority may exempt a vessel from the application of this section if it is satisfied upon reasonable grounds that, for the particular type of vessel, an

insurance policy mentioned in Subsection (1) could not reasonably be obtained or kept in force.

- (7) This Part shall enter into force six months from the date that this Act is enacted.

## **Part VI - Pollution damage from oil or chemical handling facilities**

### **40. Purpose and application of this Part**

- (1) The purpose of this Part is to provide for liability, insurance, the recovery of costs and the payment of compensation relating to pollution damage from oil or chemical handling facilities.
- (2) This Part applies:
- (a) to pollution damage caused by oil or chemical handling facilities:
    - (i) in the territory, including the internal waters and territorial sea, of Papua New Guinea;
    - (ii) in the exclusive economic zone of Papua New Guinea; and
  - (b) to preventive measures, wherever taken, to prevent or minimize such damage.

### **41. Interpretation**

In this Part:

**“pollution damage”** means:

- (a) loss or damage caused by contamination resulting from the escape or discharge of oil or chemicals from oil or chemical handling facilities, other than discharges that are duly authorised under the *Environment Act*, the *Mining (Ok Tedi Agreement) Act* and the *Mining (Bougainville Copper Agreement) Act*, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and
- (b) the costs or preventive measures and further loss or damage caused by preventive measures;

“owner” means the registered owner, lessee or operator of the oil or chemical handling facility; and includes the owner or operator or manager or licensee for the time being of the facility, or any person in charge of operations connected therewith;

#### **42. Liability for pollution damage**

- (1) Except as provided in Subsections (3) and (4), the owner at the time of an incident shall be liable for pollution damage caused by any oil or chemical(s) originating from the oil or chemical handling facility, provided that if an incident consists of a series of occurrences having the same origin, the liability shall attach to the owner at the time of the first of such occurrences.
- (2) Where more than one person is liable in accordance with Subsection (1), their liability shall be joint and several.
- (3) No liability for pollution damage shall attach to the owner if the owner proves that:
  - (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional inevitable and irresistible character; or
  - (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party.
- (4) If the owner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from liability to such person.
- (5) Nothing in this Part shall prejudice any right of recourse of the owner which exists independently of this Part.

#### **43. Actions for compensation**

- (1) Where an incident has caused pollution damage in the territory of Papua New Guinea, including the internal waters and/or territorial sea, or in the exclusive economic zone of Papua New Guinea, or when preventive measures have been taken, anywhere, to prevent or minimise such damage, actions for compensation against the owner, insurer or other person providing security for the owner's liability may be brought only in the National Court of Justice of Papua New Guinea, in accordance with this Part and Part VII.

- (2) Reasonable notice of any such action shall be given to the defendant.
- (3) No claim for compensation for pollution damage shall be made against the owner otherwise than in accordance with this Part and Part VII.

#### **44. Limitation of liability**

- (1) The owner of an oil or chemical handling facility shall be entitled to limit his or her liability under this Part in respect of any one incident to an aggregate amount calculated as follows:
  - (a) 4,510,000 units of account for a oil or chemical handling facility with a total aggregate storage capacity not exceeding 5,000 tons;
  - (b) for an oil or chemical handling facility with a total aggregate storage capacity in excess thereof, for each additional ton of storage capacity, 631 units of account in addition to the amount mentioned in subparagraph (a);
  - (c) provided, however, that this aggregate amount shall not in any event exceed 89,770,000 units of account.
- (2) The "unit of account" in Subsection (1) means the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Subsection (1) shall be converted into Papua New Guinea currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund referred to in Subsection 43(4) of Part IV. The value of the Papua New Guinea currency, in terms of the Special Drawing Right shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions.
- (3) The owner shall not be entitled to limit his or her liability under this Part if it is proved that the pollution damage resulted from his or her personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.
- (4) For the purpose of availing himself of the benefit of the limitation provided for in Subsection (1), the owner shall constitute a fund for the total sum representing the limit of his or her liability, with the National Court of Justice of Papua New Guinea, in which action is brought under Section 43. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee in an amount considered adequate by the Court.
- (5) The fund shall be distributed among the claimants in proportion to the amounts of their established claims.

- (6) If before the fund is distributed the owner or any of his or her servants or agents or any person providing him or her insurance or other financial security has, as a result of the incident in question, paid compensation for pollution damage, such person shall, up to the amount he or she has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Part.
- (7) The right of subrogation provided for in Subsection (6) may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for pollution damage that he or she may have paid.
- (8) Where the owner or any other person establishes that he may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which such person would have enjoyed a right of subrogation under Subsections (6) or (7), had the compensation been paid before the fund was distributed, the Court may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his or her claim against the fund.
- (9) Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimise pollution damage shall rank equally with other claims against the fund.
- (10) The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this section on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of Subsection (3), the owner is not entitled to limit his or her liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

#### **45. Requirement for marine pollution insurance and holding of valid Certificate**

- (1) The owner of any oil or chemical handling facility located on or in Papua New Guinea territory, including the internal waters or territorial sea, or located within Papua New Guinea's exclusive economic zone, shall maintain insurance or other financial security, such as the guarantee of a bank or a similar financial institution, to cover the liability of the owner for pollution damage in an amount equal to the limits of liability under Section 44.
- (2) A National Marine Pollution Insurance Certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Part shall be issued by the Authority to and held on-site at each oil or chemical handling facility to which this Part applies, after the Authority has determined that the requirements of Subsection (1) have been complied with.
- (3) The Certificate required under Subsection (2) shall be in the form prescribed and shall contain the following particulars:

- (a) name and location of the oil or chemical handling facility;
  - (b) name and principal place of business of the owner;
  - (c) type and duration of security;
  - (d) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
  - (e) period of validity of the Certificate which shall not be longer than the period of validity of the insurance or other security.
- (4) The Certificate shall be in English.
- (5) The Certificate shall be kept on-site at the oil or chemical handling facility and a copy shall be deposited with the Authority.
- (6) An insurance or other financial security shall not satisfy the requirements of this section if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under Subsections (2) and (3), before three months have elapsed from the date on which notice of its termination is given to the Authority, unless the Certificate has been surrendered to the Authority or a new Certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this section.
- (7) The Authority shall, subject to the provisions of this section, determine the conditions of issue and validity of the Certificate.
- (8) Any sums provided by insurance or by other financial security maintained in accordance with Subsection (1) shall be available exclusively for the satisfaction of claims under this Part.
- (9) If any oil or chemical handling facility to which this Act applies does not have insurance or other security to the extent specified in Subsection (1) and does not have a valid Certificate as required under this section; or otherwise does not comply with the provisions of this section, such facility shall be prohibited from operating; and
- (a) the owner of the facility, and
  - (b) the operator of the facility; and
  - (c) the person in charge of the facility;

each commit an offence and shall each be liable upon conviction to a fine not exceeding K1,000,000 or a term of imprisonment not exceeding five years.

#### **46. Right to compensation extinguished**

Rights to compensation under this Part shall be extinguished unless an action is brought within three years from the date when the pollution damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the pollution damage. Where this incident consists of a series of occurrences, the six year period shall run from the date of the first such occurrence.

### **Part VII - Claims for compensation under Parts III, IV and VI**

#### **47. Compensation claimable**

- (1) An action for compensation under Parts III, IV or VI may only be made for the following costs:
  - (a) clean-up and preventive measures;
    - (i) the cost of reasonable clean-up measures and other measures taken to prevent or minimise pollution damage in Papua New Guinea territory, including internal waters and the territorial sea, or exclusive economic zone, wherever these measures are taken, including measures taken on the High Seas under the *Marine Pollution (Preparedness & Response) Act* to prevent or reduce pollution damage in Papua New Guinea territory, including the territorial sea, or exclusive economic zone;
    - (ii) the cost of preventive measures taken even if no discharge of pollutant occurs, provided that there was a grave and imminent threat of pollution damage;
    - (iii) the reasonable costs associated with the capture, cleaning and rehabilitation of wildlife affected by a pollutant, in particular birds, mammals and reptiles;
  - (b) property damage - the reasonable costs of cleaning, repairing or replacing property that has been contaminated by a pollutant;

- (c) consequential loss - the loss of earnings suffered by the owners of property contaminated by a pollutant as a result of an incident, including but not limited to;
  - (i) a fisherman's loss of income as a result of his or her gear becoming contaminated by a pollutant, which prevents him from fishing until his or her gear is either cleaned or replaced; and
  - (ii) a fish-farm's loss of income as a result of stock, gear or facilities becoming contaminated by a pollutant;
- (d) pure economic loss - the loss of earnings caused by pollution suffered by persons whose property has not been contaminated, including but not limited to,
  - (i) a fisherman whose gear has not been contaminated but who may nevertheless be prevented from fishing because the area of the sea where he or she normally fishes is polluted and he or she cannot fish elsewhere;
  - (ii) a fisherman or a fish-farmer who loses income due to reduced ability to sell product due to market concerns about pollution in the area;
  - (iii) the owners of hotels or restaurants located close to a contaminated beach who may suffer losses because business falls during the period of the pollution;
  - (iv) a person who takes reasonable measures, such as marketing campaigns, which are intended to prevent or reduce economic losses by countering the negative effects which can result from a major pollution incident.;
- (e) Reduced subsistence capacity suffered by a subsistence fisherman who's ability to feed himself or herself and their dependants through their normal subsistence fishing practices is affected, either directly or indirectly by pollution damage;
- (f) environmental damage - the costs of reasonable reinstatement measures aimed at accelerating natural recovery of environmental damage, including but not limited to the costs of post-incident studies provided that they relate to damage which falls within the definition of pollution damage under the relevant Parts, including studies to establish the nature and extent of environmental damage caused by an incident and to determine whether or not reinstatement measures are necessary and feasible.

- (g) use of advisers - reasonable costs of work carried out by advisers in connection with claims falling within the scope of this Act, and the question of whether such costs will be compensated shall be assessed in connection with the examination of the particular claim for compensation, and account is taken of the necessity for the claimant to use an adviser, the usefulness and quality of the work carried out by the adviser, the time reasonably needed and the normal rate in the country concerned for work of that kind.

#### **48. Admissibility of claims**

Any claims for compensation made under Parts III, IV or VI may only be admissible providing they comply in all aspects with this Act and providing that any expense, loss or damage claimed:

- (a) has actually been incurred;
- (b) relates to measures that are considered reasonable and justifiable;
- (c) are limited to the extent that can be considered as having been caused directly by the incident;
- (d) constitute a quantifiable economic loss suffered by the claimant; and
- (e) are supported by appropriate documents or other evidence.

#### **49. Submission of claims**

Any claims for compensation made under Parts III, IV or VI should be submitted in accordance with the general principles and guidelines contained in the Claims Manual published by the International Oil Pollution Compensation Funds from time to time and any relevant guidelines published by the Authority from time to time.

### **Part VIII - Contributions to International Funds**

#### **50. Purpose and application of this Part**

- (1) The purpose of this Part is to provide for the collection and payment of contributions to the 92 Fund.

- (2) This Part applies to any person who imports more than 150,000 tons of contributing oil into Papua New Guinea per calendar year after carriage by sea.

## **51. Interpretation**

In this Part:

**“contributing oil”** means crude oil and fuel oil as defined in sub-paragraphs (a) and (b) below:

**“crude oil”** means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed (sometimes referred to as “topped crudes”) or to which certain distillate fractions have been added (sometimes referred to as “spiked” or “reconstituted” crudes).

**“fuel oil”** means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the “American Society for Testing and Materials’ Specification for Number Four Fuel Oil (Designation D 396-69)”, or heavier.

## **52. Liability to contribute to the 92 Fund.**

- (1) Article 10 of the 92 Fund Convention in so far as it relates to ports and terminals in Papua New Guinea, has the force of law as part of the law of Papua New Guinea.
- (2) For the purposes of this Part a contribution required to be paid because of this Part is payable to the 92 Fund as agent of the Authority.

## **53. Amount of contributions**

Paragraphs 2 and 3 of Article 12 of the 92 Fund Convention in so far as it relates to Papua New Guinea, has the force of law as part of the law of Papua New Guinea.

## **54. When contributions are due and payable**

Contributions required to be paid by a person because of this Part are due and payable on the day ascertained under paragraph 4 of Article 12 of the 92 Fund Convention.

## **55. Late payment penalty**

- (1) If:
  - (a) any annual contribution payable by a person because of this Part remains unpaid after the time when it became due for payment; and
  - (b) the Internal Regulations of the 92 Fund have fixed, or provided for a method of determining, one or more annual interest rates (IR rates) in accordance with paragraph 1 of Article 13 of the 92 Fund Convention;

the person is liable to pay, by way of penalty, an amount (late payment penalty). Late payment penalty is calculated at the annual percentage rate equal to whichever of the IR rates is applicable to the person's circumstances, on the amount unpaid, computed from that time.
- (2) Late payment penalty is payable to the 92 Fund on behalf of the Authority.

## **56. 92 Fund to be paid amounts equal to amounts of contributions**

- (1) Amounts received, or purporting to be received, under Section 52 or 55 must be paid to the Authority.
- (2) If an amount is paid to the Authority under Subsection (1), the Authority must pay to the 92 Fund an amount equal to that amount.
- (3) A payment of an amount to the 92 Fund under Subsection (2) is subject to the condition that, if the Authority becomes liable to refund the whole or part of that amount, the 92 Fund must pay to the Authority an amount equivalent to the amount that the Authority is liable to refund.

## **57. Recovery of contributions and late payment penalty**

- (1) The following amounts may be recovered by the 92 Fund, on behalf of the Authority, as debts due to the Authority:
  - (a) contributions that are required to be paid because of this Part and that are due and payable;
  - (b) late payment penalty that is due and payable.
- (2) For the purposes of an action or proceeding under Subsection (1), liability to costs is to be determined as if the 92 Fund were a party to the action or proceeding and the Authority were not a party.

- (3) The 92 Fund is not entitled to recover from the Authority any costs or other expenses it incurs in recovering an amount referred to in Subsection (1).

#### **58. Regulations relating to recovery of contributions etc.**

- (1) The regulations may make provision for and in relation to the following:
  - (a) the methods by which contributions required to be paid because of this Part may be paid;
  - (b) the methods by which late payment penalties may be paid;
  - (c) refunds of, or of overpayments of, contributions.
- (2) Without limiting paragraphs (1)(a) and (b), regulations made for the purposes of those paragraphs may make provision for and in relation to the making of payments using electronic funds transfer systems.

#### **59. Authority to inform 92 Fund**

- (1) Article 15 of the 92 Fund Convention, in so far as it relates to Papua New Guinea, has the force of law as part of the law of Papua New Guinea.
- (2) For the purposes of paragraphs 1 and 2 of Article 15 of the 92 Fund Convention having the force of law, an obligation imposed on Papua New Guinea is taken to be imposed on the Authority.
- (3) The Authority may inform the 92 Fund of such additional matters relating to contributions as the Authority considers appropriate.

#### **60. Record-keeping and returns etc.**

- (1) The regulations may make provision for and in relation to requiring a person:
  - (a) to keep and retain records, where the records are relevant to ascertaining the person's liability to make contributions required to be paid because of this Part; and
  - (b) to give information and returns to the Authority, where the information or returns are relevant to ascertaining a person's liability to make contributions required to be paid because of this Part; and
  - (c) to:

- (i) produce documents to the Authority; or
- (ii) make copies of documents and give the copies to the Authority;

where the documents are relevant to ascertaining a person's liability to make contributions required to be paid because of this Part.

- (2) The regulations may provide that information or returns given to the Authority in accordance with a requirement covered by paragraph (1)(b) must be verified by statutory declaration.
- (3) A person is entitled to be paid by the Authority reasonable compensation for making copies in the course of complying with a requirement covered by subparagraph (1)(c)(ii).
- (4) A person is not excused from giving information or a return or producing a document or a copy of a document under regulations made for the purposes of this Part on the ground that the information or return or the production of the document or copy might tend to incriminate the person or expose the person to a penalty.
- (5) However:
  - (a) giving the information or return or producing the document or copy; or
  - (b) any information, return, document or thing obtained as a direct or indirect consequence of giving the information or return or producing the document or copy;

is not admissible in evidence against the person in:

- (c) criminal proceedings other than proceedings under, or arising out of, Section 61 or 62; or
- (d) proceedings for recovery of an amount of late payment penalty.

## **61. Failure to give information or returns**

- (1) A person commits an offence if:
  - (a) the person is required under regulations made for the purposes of this Part to give any information or return to the Authority; and
  - (b) the person engages in conduct; and

- (c) the person's conduct contravenes the requirement.
- (2) Penalty: K50,000.
- (3) Strict liability applies to paragraph (1)(a).
- (4) In this section engage in conduct means:
  - (a) do an act; or
  - (b) omit to perform an act.

## **62. False information or returns**

- (1) A person must not, in purported compliance with regulations made for the purposes of this Part, intentionally give information or a return that, to the person's knowledge, is false or misleading in a material particular.
- (2) Penalty: K80,000

## **Part IX – Miscellaneous, administration & enforcement**

### **63. 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 64 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.

#### **64. 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 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 Minister.
- (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**.

#### **65. Boarding of vessels etc by Inspectors**

- (1) Where there are clear grounds for believing that any vessel has violated any provisions of this Act, an Inspector may, with such assistance as he or she thinks necessary, board that vessel in a Papua New Guinea port or terminal or in Papua New Guinea waters or if the vessel is a Papua New Guinea vessel, anywhere:
  - (a) for the purposes of exercising the functions of an Inspector in accordance with Section 67; or
  - (b) if the Inspector believes on reasonable grounds 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 may for that purpose, stop and detain that vessel.
- (2) 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.
- (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.

- (4) 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 or on the premises.
- (5) 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 authorized 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.
- (6) A person who, without reasonable excuse, fails to comply with a requirement made of him by an Inspector under this section is guilty of an offence punishable on conviction by a fine not exceeding K20,000.

#### **66. Access to premises including oil or chemical handling facilities**

- (1) An Inspector may, with the consent of the occupier of any premises, including any oil or chemical handling facility, enter the premises for the purpose of exercising the functions of an Inspector in accordance with Section 67.
- (2) Where an Inspector believes on reasonable grounds that there is on a 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 67.
- (3) If, on an application under Subsection (2), the magistrate is satisfied, by information on oath or affirmation:
  - (a) that there are clear reasonable grounds to believe 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) that the issue of the warrant is reasonably required for the purposes of this Act;

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 67.

- (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 67.

## **67. Functions of Inspectors**

- (1) The functions of an Inspector who boards a vessel under Section 65 or enters premises including an oil or chemical handling facility under Section 66 are as follows:
  - (a) to assess compliance with this Act;
  - (b) to take samples and 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, take extracts from and make copies of any document that relates to the requirements of this Act.
- (2) For the purposes of carrying out his or her functions under Subsection (1), an Inspector may break open any hold or compartment, or any container or other receptacle, on a vessel or on any premises.

## **68. 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 that 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 the National Court or other proper authority to be dealt with in accordance with law, except in the case where the person arrested may be the master of a vessel or person in charge of a oil or chemical handling facility or any other person whose immediate removal might pose a threat to the safe operation of the vessel or oil or chemical handling facility, in which case such person shall be permitted to carry out any such tasks that are critical to the safe operation of the vessel or oil or chemical handling facility, 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.

## **69. 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.

## **70. Offences and penalties**

- (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:
  - (a) in the case of a corporation to a fine not exceeding K1,000,000; and
  - (b) in the case of an individual to a fine not exceeding K250,000 or a term of imprisonment not exceeding two years.
- (2) Where an offence against this Act is a continuing one and no 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 K2,000 for every day during which the offence continues.

## **71. 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 operator of a vessel or oil or chemical handling facility 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 of any other equipment relating to the offence, as the case requires.

## **72. 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.

### **73. Acts repealed**

The *Protection of the Sea (Shipping Levy) Act 2003* is repealed and any funds held by the Authority that have been collected under that Act are paid into and become part of the POLFUND established under Section 7.