

INDEPENDENT STATE OF PAPUA NEW GUINEA



***Marine Pollution (Ballast Water Control) Bill***  
***[insert yr]***

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INDEPENDENT STATE OF PAPUA NEW GUINEA



**A BILL  
for an  
ACT  
entitled**

***Marine Pollution (Ballast Water Control) Bill***  
***[insert yr]***

Being an Act -

- (a) to prevent, reduce and control the introduction of Harmful Aquatic Organisms and Pathogens to Papua New Guinea waters via ships' Ballast Water and sediments; and
- (b) to incorporate into the law of Papua New Guinea relevant provisions of the *International Convention for the Control and Management of Ships' Ballast Water and Sediments*; and
- (c) 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 (Ballast Water Control) Act*.

### **2. Purpose and application**

(1) The purpose of this Act is:

- (a) to prevent, reduce and control the introduction of Harmful Aquatic Organisms and Pathogens to Papua New Guinea waters via ships' Ballast Water and sediments; and
- (b) to give effect to the BWM Convention.

(2) Unless expressly provided otherwise, this Act applies to:

(a) any Papua New Guinea vessel:

- (i) which takes on Ballast Water in Papua New Guinea waters and discharges such Ballast Water outside of Papua New Guinea Waters; or
- (ii) which takes on Ballast Water outside of Papua New Guinea waters and discharges such Ballast Water outside of Papua New Guinea Waters; and

(b) any vessel which discharges Ballast Water into Papua New Guinea waters, when such Ballast Water is taken on to the vessel outside of Papua New Guinea waters.

(3) This Act applies to the State including any vessel 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 any vessel of the Papua New Guinea Defence Force in times of war, conflict or emergency only.

(4) This Act does not apply to:

- (a) 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;

- (b) ships not designed or constructed to carry Ballast Water; and
  - (c) permanent Ballast Water in sealed tanks on ships, that is not subject to discharge.
- (5) Notwithstanding Subparagraph 2(a), Regulations made under this Act may provide for the application of any provisions of this Act to any vessels which take on, transfer and discharge Ballast Water solely in Papua New Guinea waters if the Authority determines that the discharge of Ballast Water from such ships would impair or damage the environment, human health, property or resources of Papua New Guinea or any other State.

### **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:

“**Active Substance**” means a substance or organism, including a virus or a fungus, that has a general or specific action on or against Harmful Aquatic Organisms and Pathogens;

“**Anniversary date**” means the day and the month of each year corresponding to the date of expiry of the Certificate;

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

“**Approved Surveyor**” means an individual approved by the Authority to undertake surveys of ships under Section 23.

“**Ballast Water**” means water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship.

“**Ballast Water Capacity**” means the total volumetric capacity of any tanks, spaces or compartments on a ship used for carrying, loading or discharging Ballast Water, including any multi-use tank, space or compartment designed to allow carriage of Ballast Water.

“**Ballast Water Management**” means mechanical, physical, chemical, and biological processes, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of Harmful Aquatic Organisms and Pathogens within Ballast Water and Sediments.

“**BWM Convention**” means the *International Convention for the Control and Management of Ships’ Ballast Water and Sediments*.

“**Certificate**” means the International Ballast Water Management Certificate.

“**Committee**” means the Marine Environment Protection Committee of the International Maritime Organization.

“**Company**” means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code.

**“Constructed”** in respect of a ship means a stage of construction where:

- (a) the keel is laid; or
- (b) construction identifiable with the specific ship begins; or
- (c) assembly of the ship has commenced comprising at least 50 tonnes or 1 percent of the estimated mass of all structural material, whichever is less; or
- (d) the ship undergoes a major conversion.

**“Contributing vessel”** in relation to Section 13 means a vessel which discharges Ballast Water into Papua New Guinea waters, when such Ballast Water is taken on to the vessel outside of Papua New Guinea waters;

**“From the nearest land”** means from the baseline from which the territorial sea of the territory in question is established in accordance with international law except that, for the purposes of the BWM Convention, “from the nearest land” off the north-eastern coast of Australia shall mean from a line drawn from a point on the coast of Australia in:

latitude 11°00′ S, longitude 142°08′ E  
to a point in latitude 10°35′ S, longitude 141°55′ E  
thence to a point latitude 10°00′ S, longitude 142°00′ E  
thence to a point latitude 9°10′ S, longitude 143°52′ E  
thence to a point latitude 9°00′ S, longitude 144°30′ E  
thence to a point latitude 10°41′ S, longitude 145°00′ E  
thence to a point latitude 13°00′ S, longitude 145°00′ E  
thence to a point latitude 15°00′ S, longitude 146°00′ E  
thence to a point latitude 17°30′ S, longitude 147°00′ E  
thence to a point latitude 21°00′ S, longitude 152°55′ E  
thence to a point latitude 24°30′ S, longitude 154°00′ E  
thence to a point on the coast of Australia  
in latitude 24°42′ S, longitude 153°15′ E.

**“Gross tonnage”** means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the *International Convention on Tonnage Measurement of Ships, 1969* or any successor Convention.

**“Harmful Aquatic Organisms and Pathogens”** means aquatic organisms or pathogens which, if introduced into the sea including estuaries, or into fresh water courses, may create hazards to the environment, human health, property or resources, impair biological diversity or interfere with other legitimate uses of such areas.

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

“**Major conversion**” means a conversion of a ship:

- (a) which changes its Ballast Water carrying capacity by 15 percent or greater; or
- (b) which changes the ship type; or
- (c) which, in the opinion of the Authority, is projected to prolong its life by ten years or more; or
- (d) which results in modifications to its Ballast Water system other than component replacement-in-kind. Conversion of a ship to meet the provisions of Section 20 shall not be deemed to constitute a major conversion for the purposes of this Part.

“**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;

“**owner**” in relation to any vessel means:

- (a) the registered owner of the vessel if the vessel is registered in Papua New Guinea under the *Merchant Shipping Act* or under any law administered by a Provincial Government;
- (b) the registered owner of the vessel if the vessel is registered in a place outside of Papua New Guinea;
- (c) the person owning the vessel, if the vessel is an unregistered vessel;
- (d) the person or agency registered as the operator of the vessel, if the vessel is owned by the Government;

and includes:

- (e) any charterer, manager, or operator of the vessel or any other person for the time being responsible for the navigation or management of the vessel;

(f) any agent in Papua New Guinea of the owner, charterer, manager, or operator; and

any other person that has an interest in or is in possession of the vessel, including any salvor in possession of the vessel, and any employee or agent of any salvor in possession of the vessel;

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

**"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;

**"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 *Maritime Zones Bill* this will have to be changed to *National Seas Act*];

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

**“Recognized Organization”** means an organization approved by the Authority to undertake surveys and certifications of ships under Section 23.

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

“**Ship**” means a vessel of any type whatsoever operating in the aquatic environment and includes submersibles, floating craft, floating platforms, Floating Storage Units (FSUs) and Floating Production, Storage and Offloading Units (FPSOs).

“**vessel**” has the same meaning as “**ship**”.

## 5. International Conventions

- (1) The BWM Convention, 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; is the International Convention to which this Act applies and which through this Act is to have the force of law in Papua New Guinea:
- (2) Regulations made under this Act may:
  - (a) add to or delete any Conventions specified in Subsection (1), and any Convention added 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 provision 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.
- (4) The breach of any obligation or duty arising under a Convention to which this Act applies shall constitute an offence under Section 35.
- (5) 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, the Act shall apply.

## Part II - General Provisions

### 6. Discharge of Ballast Water

- (1) Except where expressly provided otherwise, the discharge of Ballast Water from any vessel to which this Act applies shall only be conducted through Ballast Water Management in accordance with the provisions of this Act.
- (2) If any Ballast Water is discharged from any vessel in contravention of Subsection (1):
  - (a) the owner of the vessel; and
  - (b) the master of the vessel; and
  - (c) any other member of the vessel's crew whose act caused or contributed to the discharge, unless the member was complying with an instruction from the master or someone authorised by the master to give the instruction;

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.

### 7. Exceptions

The requirements of Section 16 shall not apply to:

- (a) the uptake or discharge of Ballast Water and Sediments necessary for the purpose of ensuring the safety of a ship in emergency situations or saving human life; or
- (b) the accidental discharge or ingress of Ballast Water and Sediments resulting from damage to a ship or its equipment:
  - (i) provided that all reasonable precautions have been taken before and after the occurrence of the damage or discovery of the damage or discharge for the purpose of preventing or minimizing the discharge; and
  - (ii) unless the owner, Company or officer in charge wilfully or recklessly caused damage; or
- (c) the uptake and discharge of Ballast Water and Sediments when being used for the purpose of avoiding or minimizing pollution incidents from the ship; or

- (d) the uptake and subsequent discharge on the high seas of the same Ballast Water and Sediments; or
- (e) the discharge of Ballast Water and Sediments from a ship at the same location where the whole of that Ballast Water and those Sediments originated and provided that no mixing with unmanaged Ballast Water and Sediments from other areas has occurred. If mixing has occurred, the Ballast Water taken from other areas is subject to Ballast Water Management in accordance with this Act.

## **8. Exemptions**

- (1) The Authority may grant exemptions to any requirements to apply Section 16 in addition to those exemptions contained elsewhere in this Act, but only when they are:
  - (a) granted to a ship or ships on a voyage or voyages between specified ports or locations or to a ship which operates exclusively between specified ports or locations;
  - (b) effective for a period of no more than five years subject to intermediate review;
  - (c) granted to ships that do not mix Ballast Water or Sediments other than between the ports or locations specified in Subparagraph 1(a); and
  - (d) granted based on the Guidelines on risk assessment developed by the International Maritime Organization.
- (2) Exemptions granted pursuant to Subsection (1) shall not be effective until after communication to the International Maritime Organization and circulation of relevant information to the Parties to the BWM Convention.
- (3) Any exemptions granted under this section shall not impair or damage the environment, human health, property or resources of adjacent or other States. Any State that the Authority determines may be adversely affected shall be consulted, with a view to resolving any identified concerns.
- (4) Any exemptions granted under this section shall be recorded in the Ballast Water record book.

## **9. Equivalent compliance**

Equivalent compliance with this Act for pleasure craft used solely for recreation or competition or craft used primarily for search and rescue, less than 50 metres in length overall, and with a maximum Ballast Water capacity of 8 cubic metres, shall be determined by the Authority taking into account Guidelines developed by the International Maritime Organization.

## **10. Sediment reception facilities**

- (1) The owner of any port, terminal or ship maintenance facility in Papua New Guinea where cleaning or repair of ballast tanks occurs, shall provide or ensure the provision of adequate facilities for the reception of Sediments, taking into account the Guidelines developed by the International Maritime Organization, and the person who provides any such sediment reception facilities may levy a monetary charge on users of the sediment reception facilities in order to recover the costs of providing and operating such facilities.
- (2) Sediment reception facilities referred to in Subsection (1) shall operate without causing undue delay to ships and shall provide for the safe disposal of such Sediments, so as not to impair or damage the environment, human health, property or resources of Papua New Guinea or of any other State.
- (3) If any user of any port, terminal or ship maintenance facility to which this section applies reasonably believes that any facility required to be provided under Subsection (1) is inadequate it shall notify the Authority and the Authority shall report all such cases to the International Maritime Organization.
- (4) The owner of any port, terminal or ship maintenance facility to which this section applies, that fails to comply with this section, commits an offence and shall be liable upon conviction to a fine not exceeding **K500,000**.

## **11. Port surveys and monitoring**

- (1) The Authority with the support of other relevant organizations such as:
  - (a) the Ports Corporation of Papua New Guinea;
  - (b) the National Fisheries Authority;
  - (c) the National Quarantine and Inspection Authority; and
  - (d) the Department of Environment and Conservation;

or their equivalents at the time, shall arrange for the regular marine biological survey and monitoring of the major ports of Papua New Guinea, to establish baseline biodiversity and detect as far as possible any Harmful Aquatic Organisms and Pathogens that may be introduced to port waters.

- (2) Such surveys and monitoring shall:
  - (a) focus on port areas that are assessed to be of high risk of biological introductions;
  - (b) be conducted according to methods and guidelines published by the Authority from time to time;
  - (c) be used to support the issue of warnings and alerts under Section 12; and
  - (d) be funded from the Ballast Water Management Levy collected under Section 13.

## **12. Communication, warnings and alerts**

- (1) The Authority shall issue Notices to Mariners informing of areas within Papua New Guinea waters where ships should not take on Ballast Water due to known conditions. The Authority shall include in such notices:
  - (a) the precise coordinates of the area or areas;
  - (b) where possible, the location of any alternative area or areas for the uptake of Ballast Water;
  - (c) where ships need to take on Ballast Water in the area, any arrangements made for alternative supplies; and
  - (d) the time period such warning is likely to be in effect.
- (2) Warnings issued under Subsection (1) may be for areas:
  - (a) known to contain outbreaks, infestations, or populations of Harmful Aquatic Organisms and Pathogens (for example toxic algal blooms), which are likely to be of relevance to Ballast Water uptake or discharge, including as identified by port surveys and monitoring under Section 11;
  - (b) near sewage outfalls; or
  - (c) where tidal flushing is poor or times during which a tidal stream is known to be more turbid.

- (3) Notices to Mariners issued under Subsection (1) shall also be submitted to the International Maritime Organization and any potentially affected coastal States.
- (4) The Authority shall notify mariners, the International Maritime Organization and any potentially affected coastal States when a given warning is no longer applicable.

### **13. Ballast Water Management Levy**

- (1) Regulations made under this Act may prescribe a Ballast Water Management Levy (the Levy) on the owners of contributing vessels.
- (2) The purpose of the Levy shall be solely and exclusively to fund the activities of the Authority and the National Government that are undertaken in the administration and implementation of this Act and any Regulations made under this Act.
- (3) The prescribed rate of the Levy shall be established and reviewed regularly by the Authority in consultation with the owners of contributing vessels.
- (4) The Levy 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.
- (5) Where a 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.
- (6) The owners of contributing vessels shall be jointly and severally liable for the payment of the Levy.
- (7) The Levy shall not apply to a contributing vessel in respect of its entry into a port or terminal:
  - (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.
- (8) The Levy shall be paid to the Authority and the Authority shall issue an official receipt to any person who pays the Levy upon payment of such Levy.
- (9) Where any 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.
- (10) 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.
- (11) Any person who contravenes or fails to comply with any obligation or requirement imposed on him by this section commits an offence and is liable upon conviction:
  - (a) in the case of an individual, to a fine not exceeding **K25,000**; and
  - (b) in any other case, to a fine not exceeding **K150,000**.

### **Part III - Management and control requirements for ships**

#### **14. Ballast Water Management plan**

- (1) Each ship to which this Act applies shall have on board and implement a Ballast Water Management plan. Such a plan shall be approved by the Authority in the case of a Papua New Vessel and by the flag state administration in the case of any other vessel, taking into account Guidelines developed by the International Maritime Organization.
- (2) The Ballast Water Management plan shall be specific to each ship and shall:
  - (a) detail safety procedures for the ship and the crew associated with Ballast Water Management as required by the BWM Convention;
  - (b) provide a detailed description of the actions to be taken to implement the Ballast Water Management requirements and supplemental Ballast Water Management practices as set forth in the BWM Convention;
  - (c) detail the procedures for the disposal of Sediments:
    - (i) at sea; and

- (ii) to shore;
  - (d) include the procedures for coordinating shipboard Ballast Water Management that involves discharge to the sea with the authorities of the State into whose waters such discharge will take place;
  - (e) designate the officer on board in charge of ensuring that the plan is properly implemented;
  - (f) contain the reporting requirements for ships provided for under the BWM Convention; and
  - (g) be written in the working language of the ship. If the language used is not English, French or Spanish, a translation into one of these languages shall be included.
- (3) If any vessel or offshore installation to which this section applies fails to comply with any provision of this section:
- (a) the owner of the vessel; and
  - (b) the master of the vessel;

each commit an offence and are each liable upon conviction to a fine not exceeding K10,000.

## **15. Ballast Water record book**

- (1) Each ship to which this Act applies shall have on board a Ballast Water record book that may be an electronic record system, or that may be integrated into another record book or system, and for Papua New Guinea vessels such Ballast Water record book shall be in the form prescribed.
- (2) Ballast Water record book entries shall be maintained on board the ship for a minimum period of two years after the last entry has been made and thereafter in the Company's control for a minimum period of three years.
- (3) In the event of the discharge of Ballast Water pursuant to Sections 7 or 8 or Subsection 16(6) or in the event of other accidental or exceptional discharge of Ballast Water not otherwise exempted by this Act, an entry shall be made in the Ballast Water record book describing the circumstances of, and the reason for, the discharge.
- (4) The Ballast Water record book shall be kept readily available for inspection at all

reasonable times and, in the case of an unmanned ship under tow, may be kept on the towing ship.

- (5) Each operation concerning Ballast Water shall be fully recorded without delay in the Ballast Water record book. Each entry shall be signed by the officer in charge of the operation concerned and each completed page shall be signed by the master.
- (6) The entries in the Ballast Water record book shall be in the working language of the ship. If that language is not English, French or Spanish the entries shall contain a translation into one of those languages. When entries in an official national language of the State whose flag the ship is entitled to fly are also used, these shall prevail in case of a dispute or discrepancy.
- (7) The Authority or an Inspector appointed under Section 29 may:
  - (a) inspect the Ballast Water record book on board any ship to which this section applies while the ship is in a Papua New Guinea port or offshore terminal; and
  - (b) make a copy of any entry, and require the master to certify that the copy is a true copy.
- (8) Any copy so certified shall be admissible in any judicial proceeding as evidence of the facts stated in the entry.
- (9) The inspection of a Ballast Water record book and the taking of a certified copy shall be performed as expeditiously as possible without causing the ship to be unduly delayed.

## **16. Ballast Water Management for ships**

- (1) A ship to which this Act applies constructed before 2009:
  - (a) with a Ballast Water Capacity of between 1500 and 5000 cubic metres, inclusive, shall conduct Ballast Water Management that at least meets the standard described in Sections 20 and 21 until 2014, after which time it shall at least meet the standard described in Section 21;
  - (b) with a Ballast Water Capacity of less than 1500 or greater than 5000 cubic metres shall conduct Ballast Water Management that at least meets the standard described in Section 20 or Section 21 until 2016, after which time it shall at least meet the standard described in Section 21.

- (2) A ship to which Subsection (1) applies shall comply with Subsection (1) not later than the first intermediate or renewal survey, whichever occurs first, after the anniversary date of delivery of the ship in the year of compliance with the standard applicable to the ship.
- (3) A ship constructed in or after 2009 with a Ballast Water Capacity of less than 5000 cubic metres shall conduct Ballast Water Management that at least meets the standard described in Section 21.
- (4) A ship constructed in or after 2009, but before 2012, with a Ballast Water Capacity of 5000 cubic metres or more shall conduct Ballast Water Management in accordance with Subparagraph (1)(b).
- (5) A ship constructed in or after 2012 with a Ballast Water Capacity of 5000 cubic metres or more shall conduct Ballast Water Management that at least meets the standard described in Section 21.
- (6) The requirements of this section do not apply to ships that discharge Ballast Water to a reception facility designed taking into account the Guidelines developed by the International Maritime Organization for such facilities.
- (7) Other methods of Ballast Water Management may also be accepted as alternatives to the requirements described in Subsections (1) to (5), provided that such methods ensure at least the same level of protection to the environment, human health, property or resources, and are approved in principle by the Committee.
- (8) If any Ballast Water is discharged from any ship to which this section applies in contravention of any provision of this section:
  - (a) the owner of the ship; and
  - (b) the master of the ship; and
  - (c) any other member of the ship's crew whose act caused or contributed to the discharge, unless the member was complying with an instruction from the master or someone authorised by the master to give the instruction;

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.

## **17. Ballast Water exchange**

- (1) A ship conducting Ballast Water exchange to meet the standard in Section 20 shall:

- (a) whenever possible, conduct such Ballast Water exchange at least 200 nautical miles from the nearest land and in water at least 200 metres in depth, taking into account the Guidelines developed by the International Maritime Organization;
  - (b) in cases where the ship is unable to conduct Ballast Water exchange in accordance with Subparagraph (1)(a), such Ballast Water exchange shall be conducted taking into account the Guidelines described in Subparagraph (1)(a) and as far from the nearest land as possible, and in all cases at least 50 nautical miles from the nearest land and in water at least 200 metres in depth.
- (2) In sea areas where the distance from the nearest land or the depth does not meet the parameters described in Subparagraphs (1)(a) and (b) the Authority may designate areas, in consultation with adjacent or other States, as appropriate, where a ship may conduct Ballast Water exchange, taking into account the Guidelines described in Subparagraph (1)(a).
- (3) A ship shall not be required to deviate from its intended voyage, or delay the voyage, in order to comply with any particular requirement of Subsection (1).
- (4) A ship conducting Ballast Water exchange shall not be required to comply with Subsections (1) or (2) as appropriate, if the master reasonably decides that such exchange would threaten the safety or stability of the ship, its crew, or its passengers because of adverse weather, ship design or stress, equipment failure, or any other extraordinary condition.
- (5) When a ship is required to conduct Ballast Water exchange and does not do so in accordance with this section, the reasons shall be entered in the Ballast Water record book.

## **18. Sediment management for ships**

- (1) All ships shall remove and dispose of Sediments from spaces designated to carry Ballast Water in accordance with the provisions of the ship's Ballast Water Management plan.
- (2) Ships described in Subsections 16(3) to 16(5) should, without compromising safety or operational efficiency, be designed and constructed with a view to:
  - (a) minimize the uptake and undesirable entrapment of Sediments,
  - (b) facilitate removal of Sediments, and
  - (c) provide safe access to allow for Sediment removal and sampling,

taking into account guidelines developed by the International Maritime Organization.

- (3) Ships described in Subsection 16(1) should, to the extent practicable, comply with this paragraph.

## **19. Duties of officers and crew**

Officers and crew of ships to which this Act applies shall be familiar with their duties in the implementation of Ballast Water Management particular to the ship on which they serve and shall, appropriate to their duties, be familiar with the ship's Ballast Water Management plan.

## **Part IV - Standards for Ballast Water Management**

### **20. Ballast Water exchange standard**

- (1) Ships performing Ballast Water exchange in accordance with this section shall do so with an efficiency of at least 95 percent volumetric exchange of Ballast Water.
- (2) For ships exchanging Ballast Water by the pumping-through method, pumping through three times the volume of each Ballast Water tank shall be considered to meet the standard described in Subsection (1). Pumping through less than three times the volume may be accepted provided the ship can demonstrate that at least 95 percent volumetric exchange is met.

### **21. Ballast Water performance standard**

- (1) Ships conducting Ballast Water Management in accordance with this section shall discharge:
  - (a) less than 10 viable organisms per cubic metre greater than or equal to 50 micrometres in minimum dimension; and
  - (b) less than 10 viable organisms per millilitre less than 50 micrometres in minimum dimension and greater than or equal to 10 micrometres in minimum dimension;

and discharge of the indicator microbes shall not exceed the specified concentrations described in Subsection (2).

- (2) Indicator microbes, as a human health standard, shall include:
  - (a) Toxicogenic *Vibrio cholerae* (O1 and O139) with less than 1 colony forming unit (cfu) per 100 millilitres or less than 1 cfu per 1 gram (wet weight) zooplankton samples ;
  - (b) *Escherichia coli* less than 250 cfu per 100 millilitres; and
  - (c) Intestinal Enterococci less than 100 cfu per 100 millilitres.

## **22. Approval of Ballast Water Management systems**

- (1) Except as specified in Subsection (2), Ballast Water Management systems used to comply with this Act must be approved by the Authority, taking into account the Guidelines for the Approval of Ballast Water Management Systems developed by the International Maritime Organization.
- (2) Ballast Water Management systems which make use of Active Substances or preparations containing one or more Active Substances to comply with this Act shall be approved by the International Maritime Organization, based on a procedure developed by the Organization.
- (3) Should the International Maritime Organization withdraw any approval of Active Substances, the use of the relevant Active Substance or Substances shall be prohibited within 1 year after the date of such withdrawal.
- (4) Ballast Water Management systems used to comply with this Act must be safe in terms of the ship, its equipment and the crew.

## **Part V - Survey and certification**

### **23. Surveys and inspections**

- (1) Any Papua New Guinea ship of 400 gross tonnage and above to which this Act applies, excluding floating platforms, FSUs and FPSOs, shall be subject to surveys specified below:
  - (a) An initial survey before the ship is put in service or before the Certificate required under Section 24 or 25 is issued for the first time. This survey shall verify that the Ballast Water Management plan required by Section 14 and any associated structure, equipment, systems, fittings, arrangements and material or processes comply fully with the requirements of the BWM Convention.

- (b) A renewal survey at intervals specified by the Authority, but not exceeding five years, except where Subsection 26(2), 26(5), 26(6), or 26(7) is applicable. This survey shall verify that the Ballast Water Management plan required by Section 14 and any associated structure, equipment, systems, fittings, arrangements and material or processes comply fully with the applicable requirements of the BWM Convention.
  - (c) An intermediate survey within three months before or after the second Anniversary date or within three months before or after the third Anniversary date of the Certificate, which shall take the place of one of the annual surveys specified in Subparagraph (1)(d). The intermediate surveys shall ensure that the equipment, associated systems and processes for Ballast Water Management fully comply with the applicable requirements of this Act and are in good working order. Such intermediate surveys shall be endorsed on the Certificate issued under Sections 24 or 25.
  - (d) An annual survey within three months before or after each Anniversary date, including a general inspection of the structure, any equipment, systems, fittings, arrangements and material or processes associated with the Ballast Water Management plan required by Section 14 to ensure that they have been maintained in accordance with Subsection (6) and remain satisfactory for the service for which the ship is intended. Such annual surveys shall be endorsed on the Certificate issued under Sections 24 or 25.
  - (e) An additional survey either general or partial, according to the circumstances, shall be made after a change, replacement, or significant repair of the structure, equipment, systems, fittings, arrangements and material necessary to achieve full compliance with this Act. The survey shall be such as to ensure that any such change, replacement, or significant repair has been effectively made, so that the ship complies with the requirements of the BWM Convention. Such surveys shall be endorsed on the Certificate issued under Sections 24 or 25.
- (2) The Authority shall establish appropriate measures for ships that are not subject to the provisions of Subsection (1) in order to ensure that the applicable provisions of this Act are complied with.
  - (3) Surveys and inspections under this section shall be carried out by officers of the Authority. The Authority may, however, appoint Recognized Organizations and Approved Surveyors to undertake such surveys or inspections on the Authority's behalf, and any Recognized Organizations and Approved Surveyors so appointed must meet certain qualifications and criteria, as prescribed.

- (4) When a survey undertaken by a Recognized Organization or Approved Surveyor determines that the ship's Ballast Water Management does not conform to the particulars of the Certificate required under Sections 24 or 25 or that the ship's Ballast Water Management is such that the ship is not fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources the Recognized Organization or Approved Surveyor shall report the matter immediately to the Authority, and in all cases the Authority may:
  - (a) suspend or withdraw the Certificate issued under Sections 24 or 25; and/or
  - (b) instruct the owner of the vessel to take corrective action; and/or
  - (c) prohibit the vessel from sailing until such corrective action is taken to the satisfaction of the Authority and/or the Certificate issued under Section 24 or 25 is re-validated or re-issued.
- (5) Whenever an accident occurs to a ship or a defect is discovered which substantially affects the ability of the ship to conduct Ballast Water Management in accordance with this Act, the owner, operator or other person in charge of the ship shall report at the earliest opportunity to the Authority, who shall cause investigations to be initiated to determine whether a survey as required by Subsection (1) is necessary. If the ship is in a port of another State, the owner, operator or other person in charge shall also report immediately to the appropriate authorities of the port State.
- (6) The condition of the ship and its equipment, systems and processes shall be maintained to conform with the provisions of this Act to ensure that the ship in all respects will remain fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources.
- (7) After any survey of the ship under Subsection (1) has been completed, no change shall be made in the structure, any equipment, fittings, arrangements or material associated with the Ballast Water Management plan required by Section 14 and covered by the survey without the sanction of the Authority, except the direct replacement of such equipment or fittings.

## **24. Issue of Certificate**

- (1) An International Ballast Water Management (BWM) Certificate in the form prescribed, shall be issued to any Papua New Guinea ship of gross tonnage 400 and above to which this Act applies, after passing survey in accordance with Section 23.

- (2) Such Certificate shall be issued either by the Authority or by a Recognized Organization only.

## **25. Carriage of valid Certificate**

- (1) A current and valid BWM Certificate approved and issued in accordance with Sections 23 and 24 shall be carried by any Papua New Guinea ship of gross tonnage 400 and above to which this Act applies.
- (2) A current and valid BWM Certificate in the form specified in Appendix I of the BWM Convention, issued and approved by the flag State or its recognized organization, shall be carried by any foreign vessel of gross tonnage 400 and above to which this Act applies that enters a Papua New Guinea port or terminal or operates in Papua New Guinea waters.
- (3) If any vessel to which this section applies fails to comply with any provisions of this section:
  - (a) the owner of the vessel; and
  - (b) the master of the vessel;

each commit an offence and shall each be liable upon conviction to a fine not exceeding K40,000.

## **26. Duration and validity of Certificates**

- (1) A Certificate issued under Section 24 shall be issued for a period specified by the Authority that shall not exceed five years.
- (2) For renewal surveys:
  - (a) Notwithstanding the requirements of Subsection (1), when the renewal survey is completed within three months before the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing Certificate.
  - (b) When the renewal survey is completed after the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing Certificate.

- (c) When the renewal survey is completed more than three months before the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of completion of the renewal survey.
- (3) If a Certificate is issued for a period of less than five years, the Authority may extend the validity of the Certificate beyond the expiry date to the maximum period specified in Subsection (1), provided that the surveys referred to in Section 23 that are applicable when a Certificate is issued for a period of five years are carried out as appropriate.
- (4) If a renewal survey has been completed and a new Certificate cannot be issued or placed on board the ship before the expiry date of the existing Certificate, the person or organization authorized by the Authority may endorse the existing Certificate and such a Certificate shall be accepted as valid for a further period which shall not exceed five months from the expiry date.
- (5) If a ship at the time when the Certificate expires is not in a port in which it is to be surveyed, the Authority may extend the period of validity of the Certificate but this extension shall be granted only for the purpose of allowing the ship to complete its voyage to the port in which it is to be surveyed, and then only in cases where it appears proper and reasonable to do so. No Certificate shall be extended for a period longer than three months, and a ship to which such extension is granted shall not, on its arrival in the port in which it is to be surveyed, be entitled by virtue of such extension to leave that port without having a new Certificate. When the renewal survey is completed, the new Certificate shall be valid to a date not exceeding five years from the date of expiry of the existing Certificate before the extension was granted.
- (6) A Certificate issued to a ship engaged on short voyages which has not been extended under the foregoing provisions of this section may be extended by the Authority for a period of grace of up to one month from the date of expiry stated on it. When the renewal survey is completed, the new Certificate shall be valid to a date not exceeding five years from the date of expiry of the existing Certificate before the extension was granted.
- (7) In special circumstances, as determined by the Authority, a new Certificate need not be dated from the date of expiry of the existing Certificate as required by Subparagraph (2)(b) or Subsections (5) or (6). In these special circumstances, the new Certificate shall be valid to a date not exceeding five years from the date of completion of the renewal survey.
- (8) If an annual survey is completed before the period specified in Section 23(1) then:

- (a) the Anniversary date shown on the Certificate shall be amended by endorsement to a date which shall not be more than three months later than the date on which the survey was completed;
  - (b) the subsequent annual or intermediate survey required by Section 23 shall be completed at the intervals prescribed by that Section using the new Anniversary date;
  - (c) the expiry date may remain unchanged provided one or more annual surveys, as appropriate, are carried out so that the maximum intervals between the surveys prescribed by Section 23 are not exceeded.
- (9) A Certificate issued under Sections 24 or 25 shall cease to be valid in any of the following cases:
- (a) if the structure, equipment, systems, fittings, arrangements and material necessary to comply fully with this Act is changed, replaced or significantly repaired and the Certificate is not endorsed in accordance with this section;
  - (b) upon transfer of the ship to the flag of another State.
  - (c) if the relevant surveys are not completed within the periods specified under Subsection 23(1); or
  - (d) if the Certificate is not endorsed in accordance with Subsection 23(1).

## **Part VI - Miscellaneous, administration & enforcement**

### **27. 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 29 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.

## **28. Duty to report discharges**

- (1) If any Ballast Water is discharged from any vessel into Papua New Guinea waters, or from any Papua New Guinea vessel wherever it may be, in contravention of the provisions of this Act, the owner, master or person in charge of the vessel shall by the fastest means available report the incident to the Authority, and in the case when the nearest coastal State is not Papua New Guinea, also to the relevant authorities in the nearest coastal State.
- (2) A report made by a person under Subsection (1) is not admissible in evidence against that person, or any other person involved in the incident being reported, in any legal proceedings.
- (3) Any person who:
  - (a) fails to reasonably comply with any provision of Subsection (1); or
  - (b) makes a report containing any information that to his or her knowledge is false or misleading;

commits an offence and is liable upon conviction to a fine not exceeding **K25,000**.

## **29. 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 Agriculture and Quarantine Inspection 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 Authority.

- (4) Where a person in possession of an identity card issued to him under Subsection (3) ceases to be an inspector, he 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.

### **30. 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 out to the limit of the territorial sea of Papua New Guinea, or if the vessel is a Papua New Guinea ship, anywhere :
  - (a) for the purposes of exercising the functions of an inspector in accordance with Section 32; 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 that is in Papua New Guinea waters out to the limit of the territorial sea of Papua New Guinea, 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.

### **31. Access to premises**

- (1) An inspector may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the functions of an inspector in accordance with Section 32.
- (2) Where an inspector believes on reasonable grounds that there is on premises any matter or thing that may afford evidence as to the commission of an offence against this Act, the inspector may make application to a magistrate for a warrant authorizing the inspector to enter the premises for the purpose of exercising the functions of an inspector in accordance with Section 32.
- (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 32.

- (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 32.

### **32. Function of inspectors**

- (1) The functions of an inspector who boards a vessel under Section 30 or enters premises under Section 31 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;
  - (c) to search for, inspect, take extracts from and make copies of any document that relates to the requirements of this Act; and
  - (d) to undertake Port State Control functions as provided for under the BWM Convention.
- (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.

### **33. 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, and where 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 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 an offshore installation or any other person whose immediate removal might pose a threat to the safe operation of the vessel or offshore installation, in which case such person shall be permitted to carry out any such tasks that are critical to the safe operation of the vessel 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.

### **34. 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.

### **35. 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.
- (3) 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 K1,000 for every day during which the offence continues.

### **36. 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 of a vessel 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 of any other equipment relating to the offence, as the case requires.

### **37. Powers of seizure and detention of vessels**

- (1) Subject to Section 30, where the Authority has clear reasonable cause to believe that Ballast Water has been discharged from a vessel into Papua New Guinea waters in contravention of any provision of this Act, it may cause the vessel to be detained in Papua New Guinea until the owner or agent of the vessel deposits with the Authority a sum of money, or furnishes such security which would in the opinion of the Authority, be adequate to meet the owner's liability for the costs of preventing, minimizing and ameliorating any damage to public health, coastal and marine resources and/or the economy of Papua New Guinea from the discharge.
- (2) If any vessel is detained under this section and the vessel proceeds to sea before it is released by the Authority:
  - (a) the owner of the vessel; and
  - (b) the master of the vessel;

each commit an offence and are each liable upon conviction to a fine not exceeding K1,000,000.

### **38. 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.