





## MARINE POLLUTION (AMENDMENT) BILL 2017

### Certificate of Urgency

**A BILL FOR AN ACT TO AMEND THE MARINE POLLUTION ACT 1992  
[CAP.48.16] TO UPDATE THE ACT AND TO ENSURE THAT THERE IS  
COMPLIANCE WITH CURRENT MARINE POLLUTION RELATED  
CONVENTION, AND FOR RELATED PURPOSES**

---

**1 Short Title**

This Bill may be cited as the Merchant Pollution (Amendment) Bill 2017.

**2 Commencement**

This Bill shall come into force on such date as the Minister may appoint by notice.

**3 Amendment of Section 2**

(1) Section 2(1) of the Marine Pollution Act is amended by:

(a) inserting the following new definitions in the correct alphabetical order:

**“Anti-fouling Convention”** means the International Convention on the Control of Harmful Anti-fouling Systems on Ships 2001;

**"anti-fouling paints or systems"** means paints, coatings or other treatments applied to the hulls of ships to prevent or minimise marine organisms attaching to and growing on such hulls;

**“ballast water”** includes water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship, and has the meaning given to it in MARPOL 73/78 and the Ballast Water Management Convention;

**“Ballast Water Management Convention”** means the International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004;

**"Director"** means the person holding the office of Director of Marine and Port Services, and includes any person lawfully acting in that position in the Division of the Ministry responsible for the regulation of maritime transport;

**“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;

**"HNS Convention"** means the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996;

**"incident"** means any occurrence, or series of occurrences having the same origin, which causes a discharge or creates a grave or imminent threat of causing a discharge;

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

**"MARPOL 73/78"** means the International Convention for the Prevention of Pollution from Ships (1973) as modified by the Protocol of 1978 relating thereto;

**"Minister"** means the Minister responsible for maritime transport, and includes any Minister lawfully acting in that capacity;

**"Ministry"** means the Ministry responsible for maritime transport;

**“Nairobi Convention”** means the Nairobi International Convention on the Removal of Wrecks, 2007;

**"noxious liquid substances"** means any substance referred to in Appendix II of Annex II of MARPOL 73/78;

Section 1 Marine Pollution (Amendment) Bill 2017

**"organotin compounds"** means tributyltin compounds and other chemical compounds based on tin with hydrocarbon substituents used for anti-fouling of vessels";

**"port"** includes all ports declared under any law, and all other places where ships load or discharge passengers or cargoes.

(b) by adding the following to the list of conventions in the definition of **"Convention"**:

(ca) International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (Anti-fouling Convention);

(cb) International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (Ballast Water Management Convention); and

(cc) International Convention on the Removal of Wrecks, 2007 (Nairobi Convention).";

(c) by repealing the definition of **"garbage"** and replacing it with the following:

**"garbage"** means all kinds of food wastes, domestic wastes and operational wastes, plastics, cargo residues, cooking oil, fishing gear, and animal carcasses generated during the normal operation of a ship and liable to be disposed of continuously or periodically, but does not include fresh fish (or any parts of fish) generated as a result of fishing activities undertaken during the voyage, or as a result of aquaculture activities which involve the transport of fish (including shellfish) for placement in the aquaculture facilities and the transport of harvested fish (including shellfish) from such facilities to shore for processing;"

(d) by repealing the definition of **"pollutant"** and replacing it with the following:

**"pollutant"** includes oil and oily mixtures, noxious liquid substances, harmful packaged substances, sewage and garbage as defined by MARPOL 73/78 and any water contaminated by any such substance, and any other substance that when added to any waters has the effect of contaminating those waters so as to make them unclean, noxious or impure or detrimental to the health, safety or welfare of any person, or poisonous or harmful to marine life;"

(3) Section 2 of the Marine Pollution Act is amended by adding sub-section  
(4) as follows:

- (4) Regulations made under this Bill may:
- (a) add to or delete from the list of Conventions listed in the definition of "Convention" in subsection (1), and any international marine pollution convention added to the list may be implemented, enforced or otherwise applied in accordance with this Bill and any regulations made under this Bill;
  - (b) make provision for any aspect of the application or enforcement of a Convention to which this Bill applies;
  - (c) modify the application of any Convention to which this Bill applies to meet any particular needs or circumstances; and
  - (d) prescribe offences for the breach of any aspect of a Convention to which this Bill applies, and any related offences, and impose penalties being fines not exceeding \$250,000, or imprisonment for terms not exceeding 1 year, or both."

#### **4 Insertion of new Part 1A**

The Marine Pollution Act is amended by inserting a new Part 1A as follows:

##### **" PART 1A - ADMINISTRATIVE AND PLANNING PROVISIONS**

##### **2A Responsibilities of the Ministry**

- (1) The Ministry is responsible for:
- (a) implementing the provisions of this Bill;
  - (b) ensuring that Tuvalu meets its obligations under international and regional conventions related to marine pollution; and
  - (c) ensuring that Tuvalu participates effectively in regional and international initiatives relating to preventing and responding to marine pollution incidents.

## Section 1 Marine Pollution (Amendment) Bill 2017

(2) Without limiting the generality of subsection (1), the Ministry has the following functions:

- (a) to provide administrative and technical support to the National Marine Pollution Committee;
- (b) to ensure that Tuvalu's laws relating to marine pollution are effectively applied and enforced, and that such laws support Tuvalu's roles and standing as a responsible maritime nation, and that they are kept up to date;
- (c) to act as the responsible authority and lead agency under any international or regional convention or initiative related to marine pollution;
- (d) ensuring that reports of marine pollution spills are made to the Government, and by the Government to relevant national, regional and international authorities;
- (e) taking effective action to respond to marine pollution incidents that occur within Tuvalu's jurisdiction, or which might affect Tuvalu's territory or resources;
- (f) establish and maintain a national marine pollution response equipment inventory;
- (g) co-operating with and assisting neighbouring countries and territories in the response to marine pollution incidents;
- (h) facilitating the provision and receipt of any external assistance relating to marine pollution incidents;
- (i) advising Government in relation to additional marine conventions to which Tuvalu should become a Party;
- (j) providing reports to regional and international agencies in relation to changes in circumstances that affect Tuvalu's participation in regional and international initiatives, including levels of risk of marine pollution incidents, capability to manage marine pollution incidents, and internal administrative arrangements and contact details; and

(k) otherwise participating in activities related to regional and international marine pollution conventions and initiatives.

(3) The Minister has all necessary powers to perform the responsibilities and functions under sub-sections (1) and (2), and may delegate any such power, in writing, to an officer of the Ministry and any other government officer.

2B The National Marine Pollution Committee

(1) For the purposes of responding to marine pollution incidents, a National Marine Pollution Committee may be established by the Minister.

(2) The Committee established under subsection (1):

(a) shall be chaired by the Director, or the nominee of the Director; and

(b) shall be comprised of other members appointed by the Minister, after consulting with the Minister, and shall include relevant government and industry representatives.

(3) The Committee has the following functions and responsibilities:

(a) to develop, review and implement the National Marine Spill Contingency Plan (NATPLAN) required under section 2C and related matters;

(b) to assist in the establishment and maintenance of the inventory of marine pollution response equipment under section 2D, and its effective utilisation;

(c) to review the provision and operation of waste facilities at ports, and setting standards for such facilities;

(d) to ensure the proper administration and utilisation of the National Marine Pollution Fund (POLFUND) in accordance with the requirements applying to the Fund under the law by which it is created;

(e) to promote effective participation in any bilateral, multilateral and regional marine spill contingency plans and related arrangements; and

(f) any other matters related to marine pollution as required by the Minister or Cabinet.

## Section 1 Marine Pollution (Amendment) Bill 2017

(4) The Committee shall meet at such times and places as are nominated by the Minister or the Director and may regulate its own procedures as it thinks fit.

(5) An Annual Report prepared by the Committee shall report on the operations and determinations of the Committee.

### 2C The National Marine Spill Contingency Plan (NATPLAN)

(1) The Director, with advice from the Committee, shall ensure that a National Marine Spill Contingency Plan (NATPLAN) is developed, maintained and implemented.

(2) The NATPLAN shall take effect when it is approved by the Minister acting on the advice of Cabinet, and must conform to all requirements stipulated in –

(a) any Convention which applies under this Act; and

(b) any approved disaster management plan.

(3) All owners and operators of ports and fuel and chemical handling and storage facilities must develop, maintain and implement site-specific marine spill prevention and contingency plans for their facilities, consistent with the NATPLAN and any requirements applying under an approved disaster management plan.

(4) All owners or operators of vessels to which MARPOL 73/78 applies must develop, maintain and implement shipboard marine pollution emergency plans consistent with the requirements of MARPOL 73/78.

(5) The plans required to be developed under this section shall be submitted to the Director for approval, and if approved by the Minister acting on the advice of Cabinet, shall form part of the NATPLAN.

### 2D Regional Cooperation

(1) The Marine Pollution Advisory Committee shall advise the Ministry in relation to any matters that –



- (a) can facilitate effective participation in regional and international arrangements relating to the response to marine pollution incidents; and
- (b) most effectively implement the arrangements provided for in the Conventions to which this Bill applies dealing with response to marine pollution incidents.

(2) The Ministry shall ensure that all necessary notifications are given in accordance with the procedures stated in any Convention to which this Bill applies.

(3) Should external assistance be required to effectively respond to a marine pollution incident, such assistance may be requested by the Ministry in accordance with the procedures contained in any bilateral, multilateral or regional marine spill contingency plan(s), and related arrangements in place at the time.

(4) Should other Pacific Island Countries and Territories need assistance in response to a marine pollution incident, such requests may be considered by the Minister in accordance with the procedures contained in any bilateral, multilateral or regional marine spill contingency plan(s) and related arrangements in place at the time.

#### 2E Appointment of On Scene Commander

(1) The Director shall act whenever necessary as the On - Scene Commander when a marine pollution incident emanating from a vessel occurs.

(2) As the On - Scene Commander, the Director has all necessary authority to:

- (a) command, manage and co-ordinate all operations relating to the response to marine pollution incidents emanating from vessels; and
- (b) control and direct the use of all resources allocated to the response to marine pollution incidents emanating from vessels.

(3) During a marine pollution incident emanating from a vessel, the On - Scene Commander has authority to direct the use of all national assets and resources that are deemed necessary to deal with the incident."

## **5 Repeal and Replacement of Section 5**

Section 5 of the Marine Pollution Act is repealed in its entirety, and replaced by the

following:

5. Requirements related to garbage on ships

(1) All words and expressions used in this regulation have the same meaning as is given to them in Annex V of MARPOL 73/78 (as amended).

(2) The discharge of garbage (including all plastics and any cooking oil) into the sea from any ship is prohibited, unless the discharge is allowed under Annex V (regulations 4, 5 and 6) of MARPOL 73/78 (as amended), or the discharge falls under an exception in regulation 7 of Annex V of MARPOL 73/78 (as amended).

(3) For the purposes of subsection (2), “plastics” includes synthetic ropes, synthetic fishing nets, plastic garbage bags and incinerator ashes from plastic products.

(4) Any ship is subject to inspection in Tuvalu whilst in port or at an offshore terminal to ensure compliance with all requirements under Annex V of MARPOL 73/78 (as amended), and any ship found to be in breach of any such requirements can be detained until the situation has been brought to order in accordance with Annex V of MARPOL 73/78 (as amended).

(5) Without limiting the generality of subsection (5), all ships in a port or at an offshore terminal in Tuvalu must meet the requirements of Annex V of MARPOL 73/78 (as amended), as they apply to the particular ship, in relation to all of the following:

- (a) the display of placards notifying crew and passengers of the requirements relating to garbage;
- (b) the carrying of a garbage management plan, and the contents of such plans;
- (c) the carrying and keeping of a Garbage Record Book, including the making of all required entries, unless waived by the Ministry in accordance with Annex V of MARPOL 73/78 (as amended).

(6) The owner and master of a ship which is in breach of any requirements of this section or any requirement under Annex V of MARPOL 73/78 (as amended) which is applicable to the ship, each commit an offence and despite section 9, shall

on conviction both be liable to a fine not exceeding \$250,000 or a term of imprisonment not exceeding 2 years, or both."

## 6 Insertion of new Section 5A

The Marine Pollution Act is amended by inserting a new section 5A as follows:

### 5A. Controls on the discharge of sewage from ships

(1) The requirements of this section apply to ships which are new ships and existing ships as defined by and in accordance with regulation 2 of Annex IV of MARPOL 73/78, subject to the exceptions provided for in regulation 3 of that Annex.

(2) In accordance with the requirements of regulations 9 – 11 (inclusive) of Annex IV of MARPOL 73/78, all ships to which this regulation and Annex IV applies, must:

- (a) be equipped with a sewage treatment plant, a sewage comminuting and disinfecting system or a holding tank, which is approved by the Ministry taking into account any applicable IMO Guidelines, and the operation of the ship and the number of persons which are likely to be aboard it;
- (b) be fitted with standard discharge connections which meet the requirements of regulation 10 of Annex IV of MARPOL 73/78;
- (c) not discharge sewage except in the circumstances and manner approved by regulation 11 of Annex IV of MARPOL 73/78.

(3) All ships to which this section applies are subject to the following surveys in accordance with the requirements of regulation 4 of Annex IV of MARPOL 73/78:

- (a) an initial survey before the ship is put in service or before the International Sewage Pollution Prevention Certificate is issued for the first time, which must include a complete survey of its structure, equipment, systems, fittings, arrangements and material to ensure that the structure, equipment, systems, fittings, arrangements and material fully comply with the applicable requirements of Annex IV;

## Section 1 Marine Pollution (Amendment) Bill 2017

- (b) a renewal survey at intervals specified by the Ministry, but not exceeding 5 years, unless required to the contrary by Annex IV, to ensure that the structure, equipment, systems, fittings, arrangements and material fully comply with applicable requirements of Annex IV; and
- (c) an additional survey, either general or partial according to the circumstances, which must be made after a repair resulting from investigations undertaken in accordance with this section, or whenever any important repairs or renewals are made to the ship.
- (4) All surveys and inspections of ships for the purposes of this section are to comply with the provisions of Annex IV of MARPOL 73/78.
- (5) An International Sewage Pollution Prevention Certificate is to be issued by or on behalf of the Ministry, after an initial or renewal survey for any ship which is engaged in voyages to ports or offshore terminals of any other Party to MARPOL 73/78, and the Ministry assumes full responsibility for any such certificate which is so issued.
- (6) An International Sewage Pollution Prevention Certificate which is issued by the Government of a Party to MARPOL 73/78 at the request of the Ministry has the same effect as a certificate issued under subsection (5).
- (7) All certificates issued for the purposes of this section must be in the form specified in the Annex to Annex IV of MARPOL 73/78, and must be in the English language, or accompanied by a translation into the English language, if they are in another language.
- (8) Any ship to which this section applies is subject to inspection in Tuvalu whilst in port or at an offshore terminal to ensure compliance with all requirements under Annex IV of MARPOL 73/78 (as amended), and any ship found to be in breach of any such requirements can be detained until the situation has been brought to order in accordance with Annex IV of MARPOL 73/78 (as amended).
- (9) The owner and master of a ship to which this section applies which is in breach of any requirements of this section or any requirement under Annex IV of MARPOL 73/78 (as amended) which is applicable to the ship, each commit an offence and despite section 9 shall on conviction both be liable to a fine not exceeding \$250,000 or a term of imprisonment not exceeding 2 years."

**7 Insertion of new Section 5B**

The Marine Pollution Act is amended by inserting a new section 5B as follows:

5B. Harmful substances in packaged form

(1) In this section, unless the context otherwise requires:

**“harmful substance”** means any substance which is identified as a marine pollutant in the IMDG Code, and includes empty packaging which has been used previously for the carriage of harmful substances, unless adequate precautions have been taken to ensure that they contain no residue that is harmful to the marine environment; and

**“packaged form”** means any form of containment specified for harmful substances in the IMDG Code.

(2) The requirements of this section do not apply to ship’s stores and equipment.

(3) The owner and master of any ship which carries a harmful substance must:

(a) comply with the requirements of Annex III of MARPOL 73/78, including the application of the criteria in the Appendix to Annex III to identify harmful substances;

(b) comply with any standard issued by the Ministry which specifies requirements for packing, marking, labelling, documenting and stowing, and for quantity limitations and exceptions for preventing or minimizing pollution of the marine environment by harmful substances;

(c) ensure that packages used for harmful substances comply with all of the following:

(i) they must be adequate to minimise the hazard to the marine environment, having regard to their specific contents;

(ii) they must be durably marked to indicate that the substance is a marine pollutant;

(iii) all required markings and labels must be in accordance with the requirements of the IMDG Code;

- (d) ensure that all documents relating to the carriage of harmful substances comply with the IMDG Code, and that they are made available to the Ministry;
- (e) ensure that a special list, manifest or stowage plan is prepared, and that the harmful substance on board, and its location on the ship, is indicated;
- (f) ensure that harmful substances are properly stowed on the ship, and that they are secured so as to minimise the hazards to the marine environment without impairing the safety of the ship and persons on board.

(4) The jettisoning of a harmful substance from a ship is prohibited, unless it is necessary for securing the safety of the ship, or saving life at sea.

(5) Any ship to which this section applies is subject to inspection in Tuvalu whilst in port or at an offshore terminal to ensure compliance with all requirements under Annex III of MARPOL 73/78 (as amended), and any ship found to be in breach of any such requirements can be detained until the situation has been brought to order in accordance with Annex III of MARPOL 73/78 (as amended).

(6) The owner and master of a ship to which this section applies which is in breach of any requirements of this section or any requirement under Annex III of MARPOL 73/78 (as amended) which is applicable to the ship, each commit an offence and despite section 9, shall on conviction both be liable to a fine not exceeding \$500,000 or a term of imprisonment not exceeding 2 years."

## **8 Insertion of new Section 5C**

The Marine Pollution Act is amended by inserting a new section 5C as follows:

5C. Controls over air pollution from ships

(1) The requirements of this section apply to ships in Tuvalu which are subject to the provisions of Annex VI of MARPOL 73/78, subject to the exceptions provided for in regulation 3 of that Annex.

## Marine Pollution (Amendment) Bill 2017 Section 1

(2) In accordance with the requirements of Chapter III of Annex VI of MARPOL 73/78, all ships to which this regulation and Annex VI applies:

- (a) must not deliberately cause or allow the emission of ozone depleting substances regulated under Annex VI;
- (b) must not carry equipment, or have any installation, which contains any prohibited ozone depleting substance under Annex VI;
- (c) must maintain an Ozone Depleting Substance Record Book if required to do so under Annex VI, and record the entries which are required under that Annex;
- (d) must comply with any requirements under regulation 13 of Annex VI relating to nitrogen oxides which apply to the ship;
- (e) must comply with any requirements under regulation 14 of Annex VI relating to sulphur oxides and particulate matter which apply to the ship;
- (f) must comply with any requirements under regulation 14 of Annex VI relating to volatile organic compounds which apply to the ship; and
- (g) can only undertake shipboard incineration if it complies with regulation 16 of Annex VI.

(3) All ships to which this section applies are subject to the following surveys in accordance with the requirements of regulation 5 of Annex VI of MARPOL 73/78:

- (a) an initial survey before the ship is put in service or before the International Air Pollution Prevention Certificate is issued for the first time, which must include a complete survey of its structure, equipment, systems, fittings, arrangements and material to ensure that the structure, equipment, systems, fittings, arrangements and material fully comply with the applicable requirements of Annex VI;
- (b) a renewal survey at intervals specified by the Ministry, but not exceeding 5 years, unless required to the contrary by Annex VI, to ensure that the structure, equipment, systems, fittings, arrangements and material fully comply with applicable requirements of Annex VI;
- (c) intermediate and annual surveys as required by Annex VI; and

(d) an additional survey (either general or partial, according to the circumstances), which must be made after a repair resulting from investigations undertaken in accordance with this section, or whenever any important repairs or renewals are made to the ship.

(4) All surveys and inspections of ships for the purposes of this section are to comply with the provisions of Article VI of MARPOL 73/78.

(5) An International Air Pollution Prevention Certificate is to be issued by or on behalf of the Ministry, after an initial or renewal survey for any ship, platform or drilling rig, which is engaged in voyages to ports or offshore terminals of any other Party to MARPOL 73/78, and the Ministry assumes full responsibility for any such certificate which is so issued.

(6) An International Air Pollution Prevention Certificate which is issued by the Government of a Party to MARPOL 73/78 at the request of the Ministry has the same effect as a certificate issued under subsection (5).

(7) All certificates issued for the purposes of this section must be in the form specified in the Annex to Article VI of MARPOL 73/78, and must be in the English language, or accompanied by a translation into the English language, if they are in another language.

(8) Any ship is subject to inspection in Tuvalu whilst in port or at an offshore terminal to ensure compliance with all requirements under Annex VI of MARPOL 73/78 (as amended), and any ship found to be in breach of any such requirements can be detained until the situation has been brought to order in accordance with Annex VI of MARPOL 73/78 (as amended).

(9) The owner and master of a ship which is in breach of any requirements of this section or any requirement under Annex VI of MARPOL 73/78 (as amended) which is applicable to the ship, each commit an offence and despite section 9, shall on conviction both be liable to a fine not exceeding \$250,000 or a term of imprisonment not exceeding 2 years."

## **9 Insertion of new Section 5D**

The Marine Pollution Act is amended by inserting a new section 5D as follows:



5D Controls over ballast water

- (1) No ballast water containing harmful aquatic organisms or pathogens is allowed to be discharged from a ship into Tuvalu waters.
- (2) The master of a ship that discharges ballast water in Tuvalu waters must:
  - (a) obtain all necessary approvals under Part IIIA, and all laws relating to quarantine and biosecurity prior to the discharge; and
  - (b) comply with the requirements of Part IIIA and the Ballast Water Management Convention, and all voluntary or mandatory ballast water management requirements issued by the International Maritime Organisation and which are in force at the time of the discharge.
- (3) The master of a ship that intends to discharge ballast water in Tuvalu waters must, prior to any discharge, complete and give to the Director notice of the discharge:
  - (a) which can be a copy of any form of this nature required to be given under laws relating to quarantine and biosecurity; or
  - (b) in the form approved by the Director for that purpose.
- (4) The owner and master of a ship from which any ballast water is discharged in Tuvalu waters:
  - (a) which contains harmful aquatic organisms or pathogens; or
  - (b) which is done in a manner which does not comply with Part IIIA or the Ballast Water Management Convention, or any of the voluntary or mandatory ballast water management requirements issued by the International Maritime Organisation in force at the time of the discharge;
  - (c) which is done without notice of the discharge required by this Bill having been submitted to the Director prior to a discharge; or
  - (d) who provides false or misleading particulars in a notice required under this Bill in relation to the discharge,

each commit an offence and shall on conviction both be liable to a fine not exceeding \$500,000 or a term of imprisonment not exceeding 2 years.

(5) It is a defence to any prosecution under paragraph (4)(a) if the offender can prove that all reasonable measures to comply with the Ballast Water Management Convention, and any voluntary or mandatory ballast water management requirements issued by the International Maritime Organisation in force at the time, were taken to ensure that no ballast water containing harmful aquatic organisms or pathogens were discharged from a ship into Tuvalu waters."

## 10 Insertion of new Section 5E

The Marine Pollution Act is amended by inserting a new section 5E as follows:

### 5E Hull cleaning and scraping

(1) The scraping and cleaning of the hulls and other external surfaces of ships in a manner that may result in the introduction of non-indigenous harmful aquatic organisms or pathogens into Tuvalu waters is prohibited.

(2) Any person who scrapes or cleans any hull or other external surface of a ship in a manner:

- (a) which permits the introduction of non-indigenous harmful aquatic organisms or pathogens into Tuvalu waters;
- (b) which is inconsistent with any requirements applying to the scraping and cleaning of hulls published by the Ministry or the International Maritime Organisation from time to time; or
- (c) which contravenes a direction given to the person by an inspector of the Ministry in relation to the scraping or cleaning of the hull,

is guilty of an offence and despite section 9, shall be liable upon conviction to a fine not exceeding \$250,000 or a term of imprisonment not exceeding or 2 years.

(3) The owner and master of a ship in relation to which an offence is committed under this section shall also be liable for that offence."

**11 Insertion of new Section 5F**

The Marine Pollution Act is amended by inserting a new section 5F as follows:

**5F Anti-fouling paints and systems**

(1) The Anti-fouling Convention applies to all ships of 24 metres or more in length in Tuvalu waters, and to any other ships prescribed by Regulations made under this Bill.

(2) Ships of 400 gross tonnage and above engaged in international voyages are required to undergo:

- (a) an initial survey and be certified before the ship is put into service or before the International Anti-fouling System Certificate is issued for the first time;
- (b) a survey and be certified when the anti-fouling paints or systems are changed or replaced; and
- (c) any other surveys specified by Regulations made under this Bill to apply and enforce the Anti-fouling Convention.

(3) Ships of 24 metres or more in length but less than 400 gross tonnage engaged in international voyages and operating in Tuvalu waters must carry a Declaration on Anti-fouling Systems signed by the owner or owner's authorised agent, and the Declaration must be accompanied by appropriate documentation to verify its contents, including a paint receipt or contractor invoice.

(4) The use and application of harmful anti-fouling paints or systems containing organotin compounds and any other prescribed harmful substance on ships in Tuvalu waters or on any man-made structure is prohibited.

(5) Any owner or master who contravenes any provision of the Anti-fouling Convention is guilty of an offence and despite section 9, shall be liable upon conviction to a fine not exceeding \$250,000 or a term of imprisonment not exceeding 1 year.

(6) The owner or master of any Tuvalu ship or any ship in Tuvalu waters must not use any harmful anti-fouling system, containing organotin compounds or any other prescribed harmful substance in Tuvalu waters and any person who applies

## Section 1 Marine Pollution (Amendment) Bill 2017

harmful anti-fouling paints or systems to a ship or man-made structure in Tuvalu commits an offence despite section 9, shall be liable upon conviction to a fine not exceeding \$500,000 or a term of imprisonment not exceeding 2 years.

(7) For the purposes of this section, 'man-made structures' includes any buoy, markers or any object specifically created for use or placement in water."

### 12 Amendment to Section 6

Section 6 of the Marine Pollution Act is amended as follows:

(a) by deleting the "or 5" from subsection (1) and replacing it with ", 5 or 5A";

(b) by deleting the "or 5" from subsection (1) and replacing it with ", 5 or 5A";

### 13 Amendment to section 9

Section 9 of the Marine Pollution Act is amended by deleting the amount of "\$100,000" from paragraph (a) and replacing it with the amount of "\$500,000".

### 14 Repeal and Replacement of Section 10

The Marine Pollution Act is amended by repealing section 10 in its entirety, and replacing it with the following:

10 Waste reception facilities

(1) Regulations may be made under this Bill in relation to the provision of waste reception facilities at ports where ships are permitted to discharge waste oil or oily residues, hazardous and noxious substances, sewage from those ships, or to deposit their garbage.

(2) Waste reception facilities will not be provided where a ship's wastes could cause unacceptable environmental impacts.

(3) The full or partial cost of providing and operating these waste reception facilities can be recovered by user fees which may be set:

- (a) by Regulations made under this Bill; or
- (b) by the Minister if no such Regulations apply; or
- (c) by any agency which is given responsibility for providing or managing the waste reception facilities.

(4) No water containing pollutants that have not been first processed by the ship's oily water separator, or other effective process for separating the pollutant from the water, is allowed to be discharged into any waste reception facility.

(5) The owner and master of a ship which discharges at a waste reception facility in breach of subsection (4) commit an offence and are both liable upon conviction:

- (a) to a fine not exceeding \$250,000 or a term of imprisonment not exceeding 1 year; and
- (b) to pay any compensation for any damage done to the facility or the cost of any remedial action that is necessary as a result of the breach.

(6) The Ministry has authority to enter into arrangements with other States which are Parties to MARPOL 73/78 for the establishment, operation and use of regional reception facilities to receive and dispose of wastes or any other substance or thing regulated by MARPOL 73/78, and such regional reception facilities must be operated in accordance with the applicable requirements under MARPOL 73/78, including:

- (a) compliance with applicable guidelines developed by IMO;
- (b) the development and application of a Regional Reception Facilities Plan; and
- (c) consultation with and reporting to IMO as required."

## 15 Amendments to Section 33

Section 33 of the Marine Pollution Act is amended as follows:

## Section 1 Marine Pollution (Amendment) Bill 2017

- (a) by inserting the words "or permitted" after the word "prescribed" in paragraph (b);
- (b) by repealing the amount of "2,000" in paragraph (b), and replacing it with the amount of "\$25,000";
- (c) by repealing the amount of "200" in paragraph (b), and replacing it with the amount of "\$2,500".

### **16 Insertion of new Section 34**

The Marine Pollution Act is amended by inserting a new section 34 as follows:

#### 34. Standards and Codes of Practice

- (1) The Minister has authority to approve and publish standards, codes of practice or operating procedures to ensure the effective implementation of this Bill and any Convention to which this Bill applies, and which relate to:
  - (a) design requirements applying to ships or anything used in connection with the operation of a ship so as to apply the provisions of any applicable Convention to which these Regulations apply;
  - (b) the nature, specifications or capabilities of any pollution prevention equipment which must be carried on board ships, or which must otherwise be available to respond to a marine pollution incident;
  - (c) operations and operational requirements applying to ships so as to apply the provisions of any applicable Convention to which these Regulations apply;
  - (d) the nature, scope and extent of plans and operational measures related to the discharge of any pollutant and the disposal of garbage, and to prevent the discharge of harmful aquatic organisms or pathogens from ballast waters, or by any other activity;
  - (e) operational aspects of hull scraping and cleaning, and other aspects of ship cleaning operations;

- (f) specifications and operational standards for waste reception facilities at ports (including any arrangements or requirements related to regional reception facilities), and any other matter associated with the discharge or disposal of wastes from ships;
  - (g) specifications and operational capabilities of equipment necessary to respond to marine pollution incidents from any ship or relevant land-based facility; and
  - (h) the nature, scope and procedure for keeping and maintaining records for any purpose associated with the implementation of these Regulations.
- (2) A standard, code of practice or operating procedure takes effect upon its approval by the Minister.
- (3) A person to whom a standard, code of practice or operating procedure made under this section is stated to apply, and who fails to comply with such a standard, code of conduct or operating procedure is guilty of an offence and is liable upon conviction to a fine not exceeding \$20,000."

## **17 Insertion of new Section 35**

The Marine Pollution Act is amended by inserting a new section 35 as follows:

### **35 Immunities**

- (1) The Minister, the Ministry, the Director and all officers, employees and persons acting under the authority of this Bill, including committees and persons acting with delegated authority for the purposes of implementing this Bill, are not subject to any action, liability, claim or demand for any matter or thing done or omitted to be done in good faith (whether negligently or not) in the performance or purported performance of any function or duty, or the exercise or purported exercise of any power under this Bill.
- (2) This section does not affect any rights under section 26."