



Protection of the Sea (Shipping Levy Collection) Act 1981

No. 35 of 1981

An Act relating to the levy imposed in respect of certain ships in Australian ports with oil on board

[Assented to 14 April 1981]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

1. This Act may be cited as the *Protection of the Sea (Shipping Levy Collection) Act 1981*.

Commencement

2. This Act shall come into operation on the day on which the *Protection of the Sea (Shipping Levy) Act 1981* comes into operation.

Repeal

3. The *Pollution of the Sea by Oil (Shipping Levy Collection) Act 1972* and the *Pollution of the Sea by Oil (Shipping Levy Collection) Amendment Act 1979* are repealed.

Interpretation

4. In this Act, unless the contrary intention appears—

“Australian port” means a place in Australia that is a port for the purposes of the *Customs Act 1901*;

“Collector” means a person who is a Collector for the purposes of the *Lighthouses Act* 1911;

“foreign-going ship” means a ship that is engaged in making overseas voyages;

“levy” means levy imposed by the Levy Act;

“Levy Act” means the *Protection of the Sea (Shipping Levy) Act* 1981;

“light dues” means light dues payable in accordance with regulations under the *Lighthouses Act* 1911;

“master”, in relation to a ship, means the person having command or charge of the ship;

“oil” means any hydrocarbon oil or hydrocarbon liquid fuel, including, but without limiting the generality of the foregoing, crude oil, fuel oil, diesel oil, lubricating oil, heating oil, petrol, aviation fuel and kerosene;

“oil in bulk” means oil in bunkers or tanks, or in bunkers and tanks;

“overseas voyage” has the same meaning as in the *Navigation Act* 1912;

“quarter” means a period of 3 months commencing on 1 January, 1 April, 1 July or 1 October in any year;

“ship” has the same meaning as in the *Navigation Act* 1912;

“tonnage”, in relation to a ship, means the register tonnage of the ship.

Exemption in respect of ship in an Australian port by reason of an emergency, &c.

5. Levy is not payable in respect of a ship for a quarter if, at no time during the quarter, was the ship in an Australian port except for the purpose, in the course of a voyage—

- (a) of taking on board water, provisions or fuel to be used by the ship for completing the voyage;
- (b) of engaging or discharging a member of the crew;
- (c) of disembarking a passenger or a member of the crew for urgent medical treatment; or
- (d) of sheltering or undergoing repairs.

Exempt periods in relation to foreign-going ships

6. (1) In the application of this Act and the Levy Act in relation to a foreign-going ship in respect of a quarter, regard shall not be had to a time when the ship was in an Australian port during the period (if any) that, in accordance with sub-section (2), is the exempt period in relation to the ship for the quarter.

(2) Where levy is payable in respect of a foreign-going ship for a quarter, the exempt period in relation to the ship for the next succeeding quarter is so much of that succeeding quarter as occurs before the expiration of a period

of 3 months from the earliest time during the first-mentioned quarter when the ship was in an Australian port, other than a time by reference to which levy was not payable in respect of the ship for that quarter.

Time for payment of levy

7. Levy in respect of a ship for a quarter becomes payable upon the expiration of the quarter.

Payments on account of levy

8. (1) Subject to sub-section (5), there is payable on the first day of a quarter, on account of levy that may become payable for that quarter in respect of a ship, being a ship to which the Levy Act applies other than a foreign-going ship, an amount equal to the amount of levy that may become so payable.

(2) Subject to sub-section (5), where—

- (a) on any day in a quarter, light dues become payable in respect of a foreign-going ship, being a ship to which the Levy Act applies; and
- (b) an amount has not previously become payable under this section on account of levy that may become payable in respect of the ship for that quarter,

there is payable on that day, on account of levy that may become so payable, an amount equal to the amount of levy that may become so payable.

(3) Where—

- (a) a foreign-going ship, being a ship to which the Levy Act applies, is in an Australian port at any time during a quarter; and
- (b) an amount has not previously become payable under this section on account of levy that may become payable in respect of the ship for that quarter,

a Collector may, by notice served on the master of the ship in such manner as is prescribed, require an amount to be paid on account of levy that may become so payable and, subject to sub-section (5), there is payable, within such period as is specified in the notice, on account of levy that may become so payable, an amount equal to the amount of levy that may become so payable.

(4) Where an amount is paid to the Commonwealth under this section on account of levy that may become payable in respect of a ship for a quarter, the amount so paid—

- (a) shall, if levy becomes payable in respect of the ship for the quarter, be deemed to be payment of the levy; or
- (b) shall, if levy does not become so payable, be repaid to the master or owner of the ship.

(5) An amount is not payable under this section on account of levy in respect of a ship for a quarter if the owner or master of the ship satisfies a Collector that levy is not, and is not likely to become, payable in respect of the ship for that quarter.

Persons liable to pay levy and amounts on account of levy

9. The owner and master of a ship are jointly and severally liable to pay levy that is payable in respect of the ship or an amount that, under section 8, is payable on account of levy that may become payable in respect of the ship.

Recovery of levy and amounts on account of levy

10. (1) Levy that has become payable, or an amount that, under section 8, is payable on account of levy, is a debt due to the Commonwealth by the person or persons by whom the levy or the amount is payable.

(2) In proceedings to recover levy in respect of a ship for a quarter, it shall be presumed, unless the contrary is established by the defendant—

- (a) that, at some time when the ship was in an Australian port during the quarter, there was on board the ship a quantity of oil in bulk weighing not less than 10 tonnes; and
- (b) that, at no time during the quarter, was the ship in an Australian port, in the course of a voyage, only for a purpose specified in section 5.

Recovery of unpaid levy by distress

11. (1) Where levy payable in respect of a ship has not been paid, a Collector may, without prejudice to any other remedy for the recovery of the levy, enter upon the ship and distrain goods or equipment belonging to the ship, and detain them until the levy is paid.

(2) If payment of the levy is not made before the expiration of the period of 3 days after the distress, the Collector may, at any time while the levy remains unpaid, sell by public auction the goods or equipment distrained and, out of the proceeds of the sale, may, to the extent that the amount of those proceeds allows, recover the levy and all reasonable expenses incurred by him under this section.

(3) For the purposes of a sale under sub-section (2), the Commonwealth shall be deemed to be the absolute owner of the goods or equipment the subject of the sale.

(4) Where, after deducting from the proceeds of the sale the amount of the levy and the expenses of the Collector, a surplus remains, the Collector shall, on demand, pay that surplus to the owner or master of the ship.

(5) A reference in this section to levy payable in respect of a ship shall be read as including a reference to an amount that, under section 8, is payable on account of levy that may become payable in respect of the ship.

Detention of ship for unpaid levy

12. (1) A ship in respect of which levy is payable may be detained by a Collector until the levy is paid.

(2) If a ship that has been detained by a Collector under sub-section (1) goes to sea without having been released by the Collector, the master of the ship is guilty of an offence punishable, upon conviction, by a fine not exceeding \$500.

(3) A reference in this section to levy payable in respect of a ship shall be read as including a reference to an amount that, under section 8, is payable on account of levy that may become payable in respect of the ship.

Regulations

13. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, prescribing penalties not exceeding \$200 for offences against the regulations.