



# Marine Pollution

## ***An introduction to Marine Pollution***

*Western Australia has the longest and most remote coastline in Australia. It is home to a wide range of marine ecosystems. It is therefore important that Western Australia's coastal and marine areas are managed effectively to preserve their unique environmental values. However, recent years have seen industrial development, tourism, overfishing and coastal urbanisation inflict an increasingly adverse impact on the marine environment.*

*The marine environment includes estuaries, mangrove swamps, the coastal zone, oceans, seas and other major water bodies. A number of State and Commonwealth laws exist to protect and prevent harm to this environment. This fact sheet examines the laws that control some of the common and serious marine pollutants such as industrial waste, antifouling paints, ballast water and oil spills.*

## **State and Commonwealth Marine Boundaries**

The West Australian Government has legislative capacity over the first 3 nautical miles from the baseline (usually the low water mark). Relevant West Australian Acts therefore have application up to 3 nautical miles offshore unless a Commonwealth Act states otherwise. Western Australia also retains jurisdiction over internal marine waters such as estuaries, ports, and harbours.

The Commonwealth Government can make laws for the following areas:

- Territorial sea – the sea extending from the baseline out to 12 nautical miles (except the first 3 nautical miles).
- Contiguous zone – the sea between 12 – 24 nautical miles from the baseline.
- Exclusive economic zone – the sea out to generally 200 nautical miles from the baseline.

The Commonwealth can also make laws which apply in both State and Commonwealth waters if the law is necessary to implement one or more international treaties. An example of a Commonwealth law which applies in both State and Commonwealth waters (and land) is the *Environmental Protection Biodiversity Conservation Act 1999* (Cth).

Generally, the sea more than 200 nautical miles from land is called the high seas and is governed by international law and custom.

## **WA Pollution Licensing and environmental impact assessment**

The *Environmental Protection Act 1986* (WA) ("the EP Act") contains measures for preventing or minimising pollution, which includes a general prohibition against pollution, with a mechanism for polluting industries to

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obtain a pollution licence subject to conditions. This regime applies to all pollution occurring in the territory of Western Australia, regardless of whether it is discharged into the air, internal waters or the sea less than 3 nautical miles from the baseline.

Pollution is defined under the EP Act as an alteration of the environment to its detriment or degradation, which involves an emission. An emission is defined as a discharge of waste, or an emission of noise, odour or electromagnetic radiation. For more information about pollution offences generally, see [Fact Sheet 27: Pollution and environmental harm](#).

Large-scale developments which are potentially harmful to the marine environment may also require assessment by the Environmental Protection Authority under Part IV of the EP Act (see [Fact Sheet 5: Environmental Impact Assessment in Western Australia](#)). If a Part IV assessment occurs, this will usually involve detailed consideration of the likely impacts of the development on coastal and marine areas, including impacts from pollution, noise, dredging and/or shipping traffic associated with the development.

## Prohibition orders

Under the *Fish Resources Management Act 1994 (WA)*, if a person is engaging in an activity that is polluting or likely to pollute the aquatic environment, the Minister for Fisheries may serve on that person a notice prohibiting their actions. The Notice may apply generally, at specified times or in specified circumstances. The penalty for contravening the notice is \$25,000 for an individual and \$50,000 for a body corporate.

## Management of beach and ocean litter

Worldwide, thousands of marine mammals, turtles and seabirds die each year from swallowing plastic bags and other objects, or become trapped in discarded fishing gear. A penalty of up to \$1,000 applies for littering on any land or into any waters in the state of Western Australia.

## Organochlorines

Organochlorines are a type of pesticide, soluble in animal fats. This means that they accumulate in animal tissues and become progressively more concentrated in carnivores higher up the food chain (through the process of bioaccumulation).

In almost every case, use of an organochlorine pesticide requires the permission of the relevant local government or the Department of Health. The manner in which organochlorines may be used is also prescribed to prevent contamination of certain areas or objects and to prevent the generation of mist or aerial particles.

## Antifouling paints

Antifouling paints are used to coat the bottom of ships to prevent barnacles and algae from attaching to the hull. Many antifouling paints contain metallic compounds which slowly leach into sea water and are highly toxic to a range of organisms including coral, molluscs, fish and mammals.

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It is illegal under WA law to apply anti-fouling paint to a vessel less than 25 metres in length or to piers or bouys in an enclosed or semi-enclosed water body. Vessels larger than 25 metres may be painted with anti-fouling paint as specified in the regulations, but the anti-fouling paint must be formulated to release minimal harmful compounds.

Australia is a party to the *International Convention on the Control of Harmful Anti-fouling Systems on Ships 2001*. As a result, the Commonwealth has also enacted laws restricting the use of anti-fouling paint by Australian ships in Commonwealth-controlled areas.

## Ballast

Empty ships take water on board as ballast in order to maintain stability. This water may inadvertently include organisms and pathogens. Discharge of ballast water therefore poses a significant threat to ecosystems by releasing potential pest species into a foreign environment.

Australia is a party to the *International Convention for the Control and Management of Ships' Ballast Water and Sediments*. This Convention aims to provide uniform international ballast water management arrangements for the shipping industry worldwide.

'Clean' ballast can be discharged in Western Australian waters and ports unless the harbour master directs otherwise. Discharging 'unclean ballast' or ballast mixed with oil attracts fines of up to \$250,000 for both the master and owner of the ship.

Ballast is considered to be clean if it meets Australian Quarantine Inspection Service (AQIS) regulations. These follow the advisory regulations of the International Maritime Organisation and include:

- devising ways to minimise uptake of harmful aquatic organisms, pathogens and sediments;
- avoiding unnecessary discharge of ballast water;
- discharging ballast into designated reception facilities;
- exchanging ballast on route, and taking up mid-ocean ballast – which is considered to be 'cleaner'; and
- disinfecting ballast.

Ballast can be discharged in Australian waters (from 3 nautical miles to generally 200 nautical miles). However, the master of an overseas vessel is required to take reasonable steps to ensure that the vessel is not carrying any diseases or pests. All vessels must carry detailed information on recent ballast uptakes and discharges and submit to quarantine inspection. Foreign ships can be detained if they are suspected of having discharged unclean ballast.

## Garbage disposal at sea

Dumping waste at sea within Australian territorial waters is an offence unless a permit is obtained from the Federal Minister for Environment. In accordance with Australia's obligations under the 1996 London Protocol of the *Convention on the Prevention of Marine Pollution by Dumping*, permits can only be obtained for a very limited list of substances (Annexe 1 substances), including dredged material, sewage sludge, fish waste, inert rocks and organic materials from natural sources. Incineration of wastes at sea and loading of wastes destined for dumping at sea is also an offence.

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## Sewerage and Other Waste

Sewerage, food scraps, stores and packaging material cannot be discharged at any port in Australia. Other types of waste may be discharged at port if authorised by the relevant port authority.

The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cth) regulates discharge of garbage, sewerage and galley wastes into the sea. Generally, any waste or sewerage usually has to be discharged slowly, in diluted form, and several miles from the coast.

It is an offence to discharge harmful substances, such as explosives, into Australian or West Australian waters.

## Oil pollution

Most Australian legislation is directed towards preventing major oil spillage rather than curbing terrestrial outflows, operational discharge and minor spills during refuelling which are estimated to pollute the Australian marine environment with around 16,000 tonnes of oil annually.

It is an offence to deliberately discharge oil or any oily mixture from land or a ship into State waters.

All Australian ships over 400 tonnes and most Australian oil tankers are required to have in place a shipboard oil pollution emergency plan and maintain an oil record book with details of all discharges and oil pumping operations to prevent oil discharges.

All vessels, including foreign vessels, must report incidents involving the discharge of oil to the Australian Maritime Safety Authority ("AMSA").

The AMSA has extraordinary powers in the event of an oil spill emergency. In certain circumstances ships may be destroyed or sunk to avoid pollution.

The *Protection of the Sea (Civil Liability) Act 1981* (Cth) places an obligation on oil tanker owners to maintain insurance or other financial security specifically to cover pollution damage, and to carry on board each tanker a certificate attesting to the fact that such cover is in force.

All major Australian oil companies must contribute to the Oil Pollution Compensation Fund. One of the features of this regime is that compensation is available for loss of income as a direct consequence of an oil spill (for example costs associated with the fishing and tourism industries). However, it is uncertain whether compensation would be available for loss of intrinsic ecological value.

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## How you can become involved

- The Department of Environment and Conservation has an Emergency Pollution Response Hotline, Tel: 1300 784 782 or email [pollutionwatch@dec.wa.gov.au](mailto:pollutionwatch@dec.wa.gov.au)
- Report maritime oil and chemical spills immediately to Australian Maritime Safety Authority, Tel: 1800 641 792.
- Become involved in the 'Clean up Australia' campaign [www.cleanup.com.au/au/](http://www.cleanup.com.au/au/)
- Monitor newspapers for proposals regarding coastal development and submit your opinion to the EPA (see [Fact Sheet 5: Environmental Impact Assessment in WA](#)).
- Monitor existing industries in your area. Find out what they are and are not permitted to do, and ensure that they comply.

## Contacts and further information

Department of Environmental and Conservation [www.dec.wa.gov.au/](http://www.dec.wa.gov.au/) Tel: (08) 6467 5000

Environmental Protection Authority [www.epa.wa.gov.au/](http://www.epa.wa.gov.au/) Tel: (08) 6467 5000

Australian Maritime Safety Authority [www.amsa.gov.au/](http://www.amsa.gov.au/) Tel: (08) 9430 2100

National Offshore Petroleum Safety Authority [www.nopsa.gov.au](http://www.nopsa.gov.au)

The 2010 Report of the Commission of Inquiry into the Montara Oil Spill contains an interesting analysis of laws relating to oil spills and liability and gaps in the regulatory framework. The report is available at: [www.ret.gov.au/Department/responses/montara/report/Pages/Reports.aspx](http://www.ret.gov.au/Department/responses/montara/report/Pages/Reports.aspx)

Copies of international maritime treaties are available from the International Maritime Organisation [www.imo.org](http://www.imo.org)

For copies of legislation considered in this fact sheet visit:

State Law Publisher (WA Legislation) [www.slp.wa.gov.au](http://www.slp.wa.gov.au)

Australian Legal Information Institute (Commonwealth Legislation) [www.austlii.edu.au/](http://www.austlii.edu.au/)

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## The Environmental Defender's Office WA (Inc)

The Environmental Defender's Office WA (EDO) is a community legal centre specialising in public interest environmental law.

The objects of the EDO include:

- to provide community groups and individuals with legal advice and representation to help protect the environment;
- to promote law reform that improves environmental protection; and
- to provide community education about environmental law.

The EDO is a non-profit, non-government organisation. The EDO receives its principal funding from the Federal and State Attorney-General's Departments.

However, these funds are limited and donations from the public provide a vital source of funds for many of our activities. Donations over \$2 are fully tax deductible. The EDO also welcomes people with a commitment to the environment to join as members.

If you require legal advice on an environmental issue or wish to find out more about the EDO, please contact us at the following address:

Environmental Defender's Office WA (Inc)

Suite 4, 544 Hay Street, Perth WA 6000

Tel: (08) 9221 3030

Fax: (08) 9221 3070

Freecall: 1800 175 542 (for WA callers outside the Perth metropolitan region)

Email: [edowa@edowa.org.au](mailto:edowa@edowa.org.au)

## Thank you to our donors

The EDO is grateful for the funding provided by the following organisations to create and maintain these fact sheets.



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