

**PREVENTION OF OIL POLLUTION OF NAVIGABLE  
WATERS (AMENDMENT) ACT.**

**New South Wales**



ANNO VICESIMO SECUNDO

**ELIZABETHÆ II REGINÆ**

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**Act No. 59, 1973.**

An Act to make further provision for the prevention of the pollution of navigable waters by oil; to increase certain penalties; for these and other purposes to amend the Prevention of Oil Pollution of Navigable Waters Act, 1960; and for purposes connected therewith. [Assented to, 12th October, 1973.]

**BE**

*Prevention of Oil Pollution of Navigable Waters (Amendment).*

**B**E it enacted by the Queen's Most Excellent Majesty, by No. 59, 1973 and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Prevention of Oil Pollution of Navigable Waters (Amendment) Act, 1973". Short title.
  
2. This Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette. Commencement.
  
3. The Prevention of Oil Pollution of Navigable Waters Act, 1960, is amended— Amendment of Act No. 48, 1960.
  - (a) (i) by inserting next after the definition of "Mixture containing oil" in section 4 (1) the following new definition:—
 

"New South Wales reef" means a reef in the jurisdiction. Sec. 4. (Definitions.)
  - (ii) by omitting the definition of "Occupier" in section 4 (1) and by inserting instead the following definition:—
 

"Occupier"—

    - (a) in relation to a place on land not being a pipeline, means the person exercising by himself, his servants or agents any right of occupation thereof, or if it has no occupier, the owner thereof, and in relation to a vehicle includes the person in charge thereof and the owner thereof

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thereof and not the occupier of the land on or over which such vehicle stands or moves; and

(b) in relation to a pipeline, means—

(i) the owner; and

(ii) where a lease, licence or other right of user has been granted by the owner in respect of the use of the pipeline for the carriage of oil or any mixture containing oil, the lessee, licensee or user thereof.

(iii) by omitting the definition of “Place on land” in section 4 (1) and by inserting instead the following definition :—

“Place on land” includes any structure or apparatus on or above or below the surface of, and any thing or vehicle resting on or moving over, any land, and any thing resting on or lying under the bed or shore of any navigable waters, and a pipeline, and also includes any thing afloat (other than a ship) if it is anchored or attached to the bed or shore of any navigable waters or is used in any operation for the exploration of the sea bed or sub-soil or the exploitation of their natural resources.

(iv) by omitting from the definition of “The jurisdiction” in section 4 (1) the words “the territorial limits” and by inserting instead the words “one nautical league of the coast”;

(v)

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- (v) by omitting from the definition of "The jurisdiction" in section 4 (1) the word "rivers" and by inserting instead the word "waters";
- (vi) by inserting next after the definition of "The jurisdiction" in section 4 (1) the following new definitions :—
- "Tidal waters" means a part of the sea, or a part of a river, within the ebb and flow of the tide.
- "Transfer operation" means any operation involved in the preparation for, or in the commencement, carrying on or termination of, a transfer of oil or of any mixture containing oil from or to any ship or any place on land.
- (b) by omitting from section 6 the words "two thousand dollars" and by inserting instead the matter "\$50,000"; **Sec. 6.**  
(Discharge of oil into waters.)
- (c) (i) by omitting section 6A (1); **Sec. 6A.**  
(Discharge of oil into waters in transfer operation.)
- (ii) by omitting from section 6A (2) the words "two thousand dollars" and by inserting instead the matter "\$50,000";
- (d) (i) by inserting in section 7 (2) after the words "place on land" the words "not being a pipeline"; **Sec. 7.**  
(Special defences.)
- (ii) by inserting next after section 7 (2) the following new subsection :—
- (2A) Where the occupier of a pipeline is charged with an offence under section 6 it shall be a defence to prove that the discharge of oil or mixture containing oil was not caused knowingly, wilfully or negligently.

(e)

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New secs.  
7A-7G.  
Prevention  
of pollution  
by oil from  
ship.

(e) by inserting next after section 7 the following new sections :—

7A. (1) Where a discharge of oil or any mixture containing oil occurs, or the Board is satisfied that a discharge of oil or any mixture containing oil is likely to occur, from a ship, then, for the purpose of preventing, removing or reducing the extent of the pollution or likely pollution by the oil or mixture containing oil of any waters within the jurisdiction, any part of the New South Wales coast or any New South Wales reef, the Board may, by notice in writing signed by a person appointed by it, addressed to the owner of the ship and served in accordance with section 7B, do any one or more of the following :—

- (a) require such action to be taken in relation to the ship or its cargo, or the ship and its cargo, as is specified in the notice;
- (b) prohibit the removal of the ship from a place specified in the notice except with, and in accordance with, the approval of the Board; or
- (c) prohibit the removal from the ship of any cargo, or any cargo specified in the notice, except with, and in accordance with, the approval of the Board.

(2) The Board shall specify in a notice under subsection (1) in relation to any requirement specified in the notice under paragraph (a) of that subsection, the time by which the requirement is to be complied with.

(3) Without limiting the generality of paragraph (a) of subsection (1), the action that the Board may, under that subsection, require to be taken in relation to a ship includes—

- (a) action to prevent the discharge of oil or any mixture containing oil from the ship;

(b)

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(b) the removal of oil or any mixture containing oil from the ship, or a specified part of the ship, in such manner, if any, as is specified by the Board to such place, if any, as is so specified; and

(c) the removal of the ship to a place specified by the Board.

(4) Nothing in this section shall be construed as preventing the service under subsection (1) of more than one notice in respect of a ship.

(5) Where a notice has been served under subsection (1) in respect of a ship (including a notice that has been varied under this subsection), the Board may, by further notice in writing addressed to the owner of the ship and served in accordance with section 7B, revoke or vary the earlier notice and, where the earlier notice is varied, it has effect as varied from the time when the other notice is so served.

(6) This section applies only to ships within the jurisdiction.

(7) In this section, "cargo" includes ballast and ship's stores and fuel.

7B. (1) Service of a notice under section 7A in respect of a ship shall be effected—

**Service of notices.**

(a) by serving it personally on the owner of the ship or, if the owner is a company, on a director, secretary or other officer of the company;

(b) by serving it personally on the agent of the ship or, if the agent is a company, on a director, secretary or other officer of the company; or

(c)

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- (c) by serving it personally on the master of the ship or, if for any reason (including the absence of the master from the ship) it is not practicable to serve the notice on the master, by handing it to any person on board the ship who appears to be an officer of the ship.

(2) Where service cannot be effected on any person under subsection (1), the notice shall be deemed to be properly served if the contents are transmitted to the master or person in command of a ship in any manner and receipt of the contents of the notice is acknowledged by any person on board the ship to have been received and understood.

(3) A statement in writing purporting to be made and signed by a person employed as a communications officer whose duties include the transmission of messages to ships at sea that he caused the contents of a notice given under section 7A to be transmitted to a ship at sea and received an acknowledgement of the message from the ship shall be evidence, until the contrary is proved, of service of the contents of the notice on the master of the ship.

**Offences.**

7c. (1) Where—

- (a) a notice under subsection (1) of section 7A is served in respect of a ship; and
- (b) a requirement specified in the notice under paragraph (a) of subsection (1) of section 7A is not complied with before the time specified in the notice as the time by which the requirement is to be complied with,

the

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the owner of the ship is guilty of an offence punishable upon conviction by a fine not exceeding \$50,000. **No. 59, 1973**

(2) Where—

- (a) a notice under subsection (1) of section 7A is served in respect of a ship; and
- (b) a prohibition specified in the notice under paragraph (b) or (c) of subsection (1) of section 7A is contravened,

the owner of the ship is guilty of an offence punishable upon conviction by a fine not exceeding \$50,000.

(3) It is a defence to a prosecution for an offence against this section if the person charged with the offence proves—

- (a) that his failure to comply with the notice resulted from the need to save life at sea; or
- (b) that compliance with the notice was not possible.

(4) If a person wilfully obstructs any person who is—

- (a) acting on behalf of the Board in connection with the service of a notice under this section; or
- (b) acting in compliance with a notice under this section,

he shall be guilty of an offence punishable upon conviction by a fine not exceeding \$50,000.

7D. (1) Where a requirement specified in a notice served under section 7A in respect of a ship is not complied with, the Board may, whether or not

**Powers of Board where notice not complied with.**

not



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not the owner of the ship has been convicted of an offence by reason of the requirement not having been complied with, cause such things to be done as it thinks proper for the carrying out of the action required by the notice.

(2) Where—

- (a) a notice under subsection (1) of section 7A is served in respect of a ship not being a tanker;
- (b) a requirement specified in the notice is not complied with or a prohibition specified in the notice is contravened; and
- (c) oil or any mixture containing oil discharges from the ship by reason of the requirement not having been complied with or by reason of the prohibition having been contravened,

the Board may, whether or not the owner of the ship has been convicted of an offence by reason of the requirement not having been complied with or by reason of the prohibition having been contravened, cause such things to be done as it thinks proper to prevent, or reduce the extent of, the pollution by the oil or mixture containing oil of any waters within the jurisdiction, any part of the New South Wales coast or any New South Wales reef, or to remove or reduce the effects of the pollution by the oil or mixture containing oil of any such waters, coast or reef.

(3) Subject to subsection (4), the amount of any expense or other liability incurred by the Board in, or by reason of, the exercise of its powers under subsection (1) or subsection (2) in relation to a ship—

- (a) is a debt due to the Board by, and may be recovered by the Board in any court of competent jurisdiction from, the owner of the ship; and

(b)

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- (b) is a charge upon the ship, which, except **No. 59, 1973** where the ship is not in waters within the jurisdiction, may be detained by a person authorised by the Board and may be so detained until the amount is paid or security for the payment of the amount is provided to the satisfaction of the Board.

(4) Subsection (3) does not apply in relation to the amount of any expense or other liability incurred by the Board in, or by reason of, the exercise of its powers under subsection (2) in relation to oil or any mixture containing oil that has discharged from a ship where—

- (a) the failure of the owner of the ship to comply with the notice under subsection (1) of section 7A resulted from the need to save life at sea; or
- (b) compliance with the notice was not possible.

7E. (1) This section applies to a tanker, whether within the jurisdiction or elsewhere.

Prevention  
of pollution  
by oil from  
tankers.

(2) Where a discharge of oil or any mixture containing oil occurs from a tanker the Board may (whether or not a notice has been served in respect of the tanker under section 7A and whether or not any notice so served has been complied with) cause such things to be done as it thinks proper to prevent, or reduce the extent of, the pollution by the oil or mixture containing oil of any waters within the jurisdiction, any part of the New South Wales coast or any New South Wales reef, or to remove or reduce the effects of the pollution by the oil or mixture containing oil of any such waters, coast or reef.

(3)

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(3) Subject to subsection (4), where the Board has incurred expenses or other liabilities in the exercise of its powers under subsection (2) in relation to any oil or any mixture containing oil that has discharged from a tanker, the total amount of those expenses and liabilities, or where the discharge of oil or mixture containing oil did not occur as a result of the actual fault or privity of the owner, that total amount to the extent that it does not exceed the maximum liability applicable to the tanker under subsection (5), in relation to that incident—

- (a) is a debt due to the Board by, and may be recovered by the Board in any court of competent jurisdiction from, the owner of the tanker; and
- (b) is a charge upon the tanker which may be detained by a person authorised by the Board and may be so detained until the amount is paid or security for the payment of the amount is provided to the satisfaction of the Board.

(4) Subsection (3) does not apply in relation to a tanker, or the owner of a tanker, where the owner of the tanker proves that the discharge of the oil or mixture containing oil—

- (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character;
- (b) was wholly caused by an act or omission done by a third party with intent to cause damage; or
- (c) was wholly caused by the negligence or other wrongful act of any government, or other authority, responsible for the maintenance

of

of lights or other navigational aids in the exercise of its functions in relation to those lights or aids. **No. 59, 1973**

(5) For the purposes of subsection (3), the maximum liability applicable to a tanker in relation to an incident that resulted in the discharge of oil or any mixture containing oil from the tanker is—

- (a) an amount calculated by multiplying the sum of \$120 by the tonnage factor applicable to the tanker; or
- (b) the amount of \$12,600,000,

whichever is the lesser.

(6) In this section—

“adjusted net tonnage”, in relation to a tanker, means the number of tons that would be the net tonnage of the tanker if, in ascertaining that tonnage by reference to the gross tonnage of the tanker in accordance with the normal rules for measuring the tonnage of ships, no deduction were made from the gross tonnage of the tanker in respect of engine-room space;

“incident” means an occurrence or a series of occurrences having the same origin;

“owner”, in relation to a tanker from which oil or any mixture containing oil has discharged, means the owner of the tanker at the time the incident that caused the discharge occurred, or, if the incident consisted of a series of occurrences having the same origin, at the time of the first of the occurrences;

“third

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“third party”, in relation to a tanker, means any person other than—

- (a) the owner of the tanker;
- (b) a servant or agent of the owner of the tanker; or
- (c) the master, an officer or any other member of the crew of the tanker or of any other ship also owned by the owner of the tanker;

“tonnage factor”, in relation to a tanker, means a number equal to the number of tons included in the adjusted net tonnage of the tanker or, if the tanker cannot be measured in accordance with the normal rules for measuring the tonnage of ships, a number equal to forty per centum of the number of tons of oil that the tanker is capable of carrying in bulk as cargo.

(7) For the purposes of the definition of “tonnage factor” in subsection (6), one ton of oil shall be deemed to occupy forty cubic feet of space.

**Prevention  
of pollution  
by oil from  
place on  
land or  
apparatus.**

7F. (1) Where a discharge of oil or any mixture containing oil occurs, or the Board is satisfied that a discharge of oil or any mixture containing oil is likely to occur, into any waters within the jurisdiction from—

- (a) any place on land; or
- (b) any apparatus used for or in connection with a transfer operation,

then, for the purpose of preventing, removing or reducing the extent of the pollution or likely pollution by the oil or mixture containing oil of any

waters

*Prevention of Oil Pollution of Navigable Waters (Amendment).*

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waters within the jurisdiction, any part of the New South Wales coast or any New South Wales reef, the Board may, by notice in writing signed by a person appointed by it, addressed to the occupier or person in charge of the place on land or apparatus and served in accordance with subsection (4) require with respect to the place on land or apparatus any one or more of the following :—

- (c) that any operation or activity be terminated ;
- (d) that all or such part of the oil or mixture containing oil as is specified in the notice be removed ;
- (e) that all or such part of the oil or mixture containing oil as is specified in the notice be removed in such manner as is specified in the notice ;
- (f) that all or such part of the oil or mixture containing oil as is specified in the notice be removed to such place as is specified in the notice ;
- (g) that all or such part of the oil or mixture containing oil as is specified in the notice be retained ;
- (h) that no oil or mixture containing oil, or no further oil or mixture containing oil, or no oil or mixture containing oil in excess of such amount as is specified in the notice be received ;
- (i) that the reception, removal or transfer of oil or mixture containing oil be carried out in accordance with such manner as is specified in the notice ;
- (j) that any equipment, plant or machinery be operated or put in operating condition ; or
- (k)

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(k) that such work of repair, replacement or reconstruction as is specified in the notice be carried out.

(2) If any requirement of the Board under subsection (1) made by notice addressed to the occupier of a place on land or the person in charge of any apparatus used for or in connection with a transfer operation is not complied with forthwith or, as the case may require, within such time as is specified in the notice, the occupier of that place on land or the person in charge of the apparatus shall be liable to a penalty not exceeding \$50,000.

(3) If any requirement of the Board under subsection (1) is not complied with forthwith or, as the case may require, within such time as is specified in the notice, the Board may cause that requirement to be complied with and for the purposes of so doing any officer, servant or agent of the Board or any other person authorised by the Board, using such force as is necessary, may enter any place on land and take possession to such extent as is required of any ship, place on land, or apparatus used for or in connection with a transfer operation and take and retain possession of any substance or thing and use and operate any equipment, plant or machinery and do all such other things as are necessary to cause that requirement to be complied with.

(4) A notice under subsection (1) may be served by delivering it to the occupier or the person being or appearing to be in charge of the place on land or apparatus used for or in connection with a transfer operation.

(5) The costs and expenses incurred by the Board in the exercise of its powers under this section may be recovered by the Board as a debt in any court

court of competent jurisdiction from the person to whom the notice containing the requirement was addressed. **No. 59, 1973**

(6) Proceedings under this section shall be in addition to and not in derogation of or in substitution for any proceedings which may be taken apart from this section.

7G. (1) Where a discharge of oil or any mixture containing oil occurs, or the Board is satisfied that a discharge of oil or any mixture containing oil is likely to occur, into any waters within the jurisdiction from—

**General  
preventive  
powers of  
Board.**

- (a) any place on land; or
- (b) any apparatus used for or in connection with a transfer operation,

then, for the purpose of preventing, removing or reducing the extent of the pollution or likely pollution by the oil or mixture containing oil of any waters within the jurisdiction, any part of the New South Wales coast or any New South Wales reef, the Board may cause such work to be done and such operations to be carried out as it considers necessary.

(2) The costs and expenses incurred by the Board in the exercise of its powers under this section may be recovered by the Board as a debt in any court of competent jurisdiction from the occupier of the place on land or the person in charge of the apparatus, as the case may require.

(3) Notwithstanding subsection (2), where a person is convicted of an offence under section 6A in respect of a discharge referred to in subsection (1) which has occurred, the Board may recover the

COSTS



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costs and expenses incurred by it in the exercise of its powers under this section in lieu of recovering them from the person from whom it would otherwise have recovered them under subsection (2).

(4) Proceedings under this section shall be in addition to and not in derogation of or in substitution for any proceedings which may be taken apart from this section.

**Sec. 8.**  
(Removal  
of oil  
pollution.)

(f) by omitting section 8 (1) and by inserting instead the following subsection :—

(1) Where a discharge of oil or any mixture containing oil occurs into any waters within the jurisdiction from—

- (a) any ship not being a tanker;
- (b) any place on land; or
- (c) any apparatus used for or in connection with a transfer operation,

the Board may take such action as it deems appropriate to remove, disperse, destroy or mitigate the pollution caused by the oil so discharged, or the oil contained in any mixture so discharged, or any substance other than water contained in any such mixture, or to prevent any such oil or substance from reaching or polluting any waters within the jurisdiction, any part of the New South Wales coast or any New South Wales reef, and may recover all costs and expenses incurred in and about such removal, dispersal, destruction, mitigation or prevention from the owner or master of the ship, the occupier of the place on land or the person in charge of the apparatus, as the case may require.

(g)

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(g) by inserting next after section 8 the following new sections :—

8A. (1) Where by reason of a discharge of oil or any mixture containing oil into any waters within the jurisdiction from—

New secs.  
8A-8C.  
Recovery  
of damages  
for oil  
pollution.

- (a) any ship;
- (b) any place on land; or
- (c) any apparatus used for or in connection with a transfer operation,

a person suffers loss of or damage to property or incurs expense in preventing or mitigating or in attempting to prevent or mitigate any loss of or damage to property, including the property of another, that person may recover from the owner of the ship, the occupier of the place on land or the person in charge of the apparatus, as the case may be, from which the discharge occurred, the amount of such loss or damage and the expense so incurred as a debt in any court of competent jurisdiction.

(2) Subsection (1) shall not apply to the expenses and other liabilities incurred by the Board in the exercise of its powers under section 7E.

(3) Nothing in subsection (1) shall enable a person to recover from the owner of a ship, being a tanker, an amount which exceeds the amount calculated in accordance with the provisions of subsections (5) and (6) of section 7E.

8B. Where a discharge of oil or any mixture containing oil occurs from two or more ships and it is not reasonably practicable to identify the oil or mixture containing oil that has discharged from a particular ship, all of the oil or mixture containing

Several  
liability—  
ships.

oil

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oil that has discharged from those ships shall be deemed, for the purposes of sections 7E, 7G and 8A, to have discharged from each of those ships, but a person is not, by virtue of this section, entitled to recover from the owners of those ships amounts that, in the aggregate, exceed the total amount recoverable under those sections.

**Joint and several liability—pipelines.**

8C. Where a discharge of oil or any mixture containing oil occurs from a pipeline—

- (a) the owner; and
- (b) where a lease, licence or other right of user has been granted by the owner in respect of the use of the pipeline for the carriage of oil or any mixture containing oil, the lessee, licensee or user thereof,

shall, for the purposes of sections 6, 6A, 7F, 7G, 8 and 8A, be jointly and severally liable.

**Sec. 9.  
(Equipment in ships to prevent oil pollution.)**

- (h) by omitting from section 9 (3) the words “one thousand dollars” and by inserting instead the matter “\$10,000”;

**Sec. 10.  
(Keeping of oil records.)**

- (i) (i) by omitting from section 10 (5) the words “one thousand dollars” and by inserting instead the matter “\$5,000”;
- (ii) by omitting from section 10 (7) the words “one thousand dollars” and by inserting instead the matter “\$5,000”;

**Sec. 11.  
(Reporting and investigation of discharges of oil, etc.)**

- (j) (i) by omitting from section 11 (1) the words “four hundred dollars” and by inserting instead the matter “\$10,000”;

(ii)

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- (ii) by omitting from section 11 (5) the words "four hundred dollars" and by inserting instead the matter "\$2,000";
- (k) by omitting from section 12 (6) the words "one thousand dollars" and by inserting instead the matter "\$5,000";
- (l) by omitting from section 13 (3) the words "four hundred dollars" and by inserting instead the matter "\$2,000";
- (m) (i) by omitting from section 14 (2) the words "one thousand dollars" and by inserting instead the matter "\$2,000";
- (ii) by omitting section 14 (3) and (4) and by inserting instead the following subsection :—
- (3) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.
- (n) by omitting from section 15 (2) the words "four hundred dollars" and by inserting instead the matter "\$2,000";
- (o) by omitting section 18 and by inserting instead the following section :—
18. (1) Proceedings for an offence against this Act or the regulations may be taken before a stipendiary magistrate sitting alone or before the Supreme Court in its summary jurisdiction.

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(2) If proceedings in respect of an offence against this Act or the regulations are brought in a court of petty sessions held before a stipendiary magistrate, the maximum penalty that the court may impose in respect of the offence is, notwithstanding any other provision of this Act, \$2,000 (including any daily penalty) or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

(3) If proceedings in respect of an offence against this Act are brought in the Supreme Court in its summary jurisdiction, the Supreme Court may impose a penalty not exceeding the maximum provided by this Act or the regulations in respect of the offence.

(4) All penalties, recovered for any offence under this Act or the regulations, shall be paid into the funds of the Board.

**Sec. 19.**  
(Proof of  
certain  
matters not  
required.)

(p) by omitting from section 19 the words "as amended by subsequent Acts,".