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PROTECTION OF THE SEA (CIVIL LIABILITY) BILL 1981

Date Introduced: 5 March 1981
House: House of Representatives
Presented by: Hon. R.J.D. Hunt, Minister for
Transport

Short Digest of Bill

Purpose

To provide for civil liability for pollution damage.

Background

See Bills Digests of the Protection of the Sea (Powers of Intervention) Bill 1981, the Protection of the Sea (Discharge of Oil from Ships) Bill 1981 and the Navigation (Protection of the Sea) Amendment Bill 1981.

The International Convention on Civil Liability for Oil Pollution Damage (the main Convention) is in force internationally and the Protocol to the International Convention on Oil Pollution Damage (the Protocol) will come into operation internationally on 8 April 1981. The passage of this Bill will give effect to those instruments, copies of which are set out in Schedules to the Bill. Existing provisions in Part VIIA of the Navigation Act 1912 are to be repealed (See Bills Digest on the Navigation (Protection of the Sea) Amendment Bill 1981).

Main Provisions

The Bill is to come into operation on a date to be proclaimed which is not to be a date earlier than the date on which the International Convention on Civil Liability for Oil Pollution Damage comes into force for Australia (clause 2).

Clause 3 sets out definitions. "The Convention" will mean the main Convention as amended by the Protocol once the Protocol comes into force for Australia; before that it will mean the main Convention only.

Under clause 4 the Act binds the Commonwealth, the States, the Northern Territory and the Territory of Norfolk Island.

Part II sets out liability and limitation of liability under the Convention. It is not to apply to trading ships on intra-State voyages or to Australian fishing vessels on domestic voyages if a State law or Northern Territory law makes the necessary provisions (clause 7).

Clause 8 provides that certain provisions of the Convention have the force of law in Australia. The most important are: Article I which covers definitions including "oil" defined as any persistent oil such as crude oil, fuel oil, heavy diesel oil, lubricating oil and whale oil whether carried as cargo or in the bunkers and "pollution damage" which means loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil, wherever occurring, and includes the cost of and further loss caused by preventive measures; Article II which limits the Convention to pollution damage caused on the territory (including the territorial sea) of a Contracting State and to preventive measures taken to prevent or minimize the damage; Article 3 which renders the owner liable for pollution damage unless it is covered by exceptions such as damage resulting from an act of war; Article V dealing with limitation of liability (this is the subject of an amendment in the Protocol); Article 7 (para 1) which requires the owner of a ship to maintain insurance and other financial indemnity.

Clause 9 invests State Supreme Courts and Territory Supreme Courts (so far as constitutionally permissible) with jurisdiction to hear and determine claims for compensation under the applied provisions of the Convention. Clause 10 gives the owner or insurer of a ship against which a claim is made or apprehended, the right to apply for a declaration of limited liability; State Supreme Courts and Territory Supreme Courts (where constitutionally permissible) are invested with jurisdiction. Clause 11 permits the transfer of proceedings from one Supreme Court to another.

Clause 12 enables the making of regulations to give effect to the applied provisions of the Convention, in particular such things as: conversion of amounts of money, acceptable guarantees and ascertainment of tonnage; this does not limit the making of rules of court by Supreme Court judges.

Part III deals with the giving of insurance certificates relating to liability for pollution damage.

Sub-clause 13(2) construes contracts of insurance or other financial security in respect of a ship to mean the insurance contract or other security under the applied

provisions; and a reference to the limits of liability means the amount to which the owner is entitled under Article V to limit his liability. Part III applies to every ship carrying more than 2,000 tons of oil in bulk as cargo except for Government ships (ships, including warships, owned by countries including the Commonwealth or by a State or the Northern Territory) unless they are being used for commercial purposes (clause 14, sub-clause 13(11) and paragraph 13(2)(c)).

Clause 15 requires insurance certificates to be carried on all ships to which Part III applies but it is not intended to exclude or limit the concurrent operation of State or Northern Territory laws, giving effect to specified paragraphs of Article 7 of the Convention, insofar as these laws apply to trading ships on intra-State voyages and Australian fishing vessels on domestic voyages. The owners or masters of ships covered by Part III which do not carry a relevant insurance certificate when entering or leaving Australian ports or terminals in the Australian territorial sea commit an offence (penalty for masters and unincorporated owners \$50,000, for incorporated owners \$100,000) (sub-clause 15(1)). Australian-registered ships which do not carry a relevant insurance certificate when entering or leaving overseas ports or terminals in the territorial sea of other countries also commit an offence with the same penalties (sub-clause 15(2)). There are lesser penalties for failing to carry a relevant insurance certificate at other times (\$2,000 for masters and unincorporated owners, \$5,000 for incorporated owners) (sub-clause 15(4)). Failure to produce a certificate that is in force is an offence for the master or any other person if requested to do so by an officer (penalty \$200) (sub-clause 15(3)) and a ship may be detained if an officer has reasonable cause to think that a certificate is in force and the master is trying to take the ship out of an Australian port (sub-clause 15(4)). Sub-clause 15(7) sets out the meaning of relevant insurance certificate depending on where the ship is registered, if it is registered in a country to which the Convention applies and whether it is a Government ship. Clauses 16, 17 and 18 relate to the granting of certificates and the extension, cancellation and lapsing of certificates. Clause 19 permits applications to the Administrative Appeals Tribunal to review refusals to grant certificates and the cancellation of certificates.

Part IV deals with the recovery of expenses of the Minister under the Protection of the Sea (Powers of Intervention) Bill 1981. Clause 20 makes such expenses a debt due to the Commonwealth by the owners of any ships involved unless certain exceptions apply; e.g. there was an incident involving an act of war. Where the incident was

not the fault of the owner, his liability is limited to the lesser of, the amount calculated by reference to the tonnage factor of the ship and a prescribed amount, or another prescribed amount. Tonnage factor is defined in sub-clause 20(7). Clause 20 does not apply to pollution damage; nor is it intended to affect Part VIII of the Navigation Act 1912. Clause 21 makes certain expenses a charge on the ship and clause 22 allows ships to be detained until payment is made or security is given. If a detained ship goes to sea there is an offence (penalty for the master or unincorporated owner, \$5,000 or imprisonment for two years or both, for an incorporated owner, \$10,000).

Part V relates to miscellaneous matters. Clause 23 provides that offences against sub-clause 15(1) or (2) and clause 23 are indictable unless both parties agree to the offence being dealt with by a court of summary jurisdiction and it is appropriate to do so; if so reduced penalties apply (\$5,000 for a body corporate, \$2,000 for a natural person).

Clause 25 enables the making of regulations to give effect to Article X of the Convention which enables the enforcement of judgements in other Contracting States unless obtained by fraud or the defendant was not given reasonable notice or an opportunity to present his case. The regulations may invest State Supreme Courts, and Territory Supreme Courts, where constitutionally permissible, with jurisdiction and may fix fees; this is not to limit the power of Supreme Court judges to make rules of court.

For further information, if required, contact:

9 March 1981

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