

Maritime Legislation Amendment Bill 2012

Introduced into the House of Representatives on 27 June 2012

Portfolio: Infrastructure and Transport

Committee view

1.2 The committee considers that this bill is compatible with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

1.3 The committee notes that the bill engages the right to the presumption of innocence contained in Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR).

Purpose of the bill

1.4 This bill amends the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* to implement amendments to the Annexes to the International Convention for the Prevention of Pollution from Ships which were adopted by the Marine Environment Protection Committee of the International Maritime Organisation on 15 July 2011. The bill imposes restrictions on the discharge of sewage from passenger ships in special areas; revises requirements relating to the disposal by ships of garbage at sea and makes the Energy Efficiency Design and the Ship Energy Efficiency Management Plan mandatory for certain ships.

1.5 The bill also:

- clarifies the application of Federal jurisdiction in the parts of the territorial sea that lie between Australian baselines and 3 nautical miles out to sea from those baselines; and
- repeals the *Stevedoring Levy (Imposition) Act 1998* and the *Stevedoring Levy (Collection) Act 1998*.

Compatibility with human rights

Right to the presumption of innocence (Article 14(2) ICCPR)

1.6 The statement of compatibility indicates that the bill may raise human rights issues because it contains a strict liability offence, which may raise concerns with respect to the presumption of innocence.

1.7 Section 26FEW of the bill requires Australian ships to carry a Ship Energy Efficiency Management Plan (SEEMP). The master and the owner of the ship each commit an offence of strict liability if the ship does not have on board a SEEMP.

1.8 Strict liability offences are provided for in section 6.1 of the *Criminal Code Act 1995*. The effect of an offence being one of strict liability is to remove the need

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

for the prosecution to prove fault in the defendant, with respect to the contravention of the requirement, which it would otherwise be incumbent on the prosecution to do.

1.9 Article 14(2) of the ICCPR protects the right of a person charged with a criminal offence ‘to be presumed innocent until proved guilty according to law’. The UN Human Rights Committee has provided little guidance on how Article 14 (2) ICCPR should be interpreted in the context of strict liability offences. However, case law from comparable jurisdictions with analogous protections (such as the United Kingdom, New Zealand and Canada, as well as the jurisprudence of the European Court of Human Rights) indicates that such offences will not necessarily violate the presumption of innocence, so long as they pursue a legitimate aim and are reasonable, necessary and proportionate to that aim.

1.10 The statement of compatibility states that that shipowners and masters have a responsibility to be aware of the requirement for the ship to carry a SEEMP and to ensure that the ship in fact carries the SEEMP, and therefore if the SEEMP is not carried by the ship they should be liable without any need to prove intention or recklessness on their part. Further, sometimes it may be difficult to prove that they had the requisite mental element (i.e. intention or recklessness), hence a requirement to prove a mental element would make the offence harder to enforce.

1.11 The statement of compatibility indicates that the provision for the strict liability offence is consistent with guidance issued by the Senate Standing Committee for the Scrutiny of bills and by the Criminal Justice Division of the Attorney-General’s Department, about the circumstances in which strict liability offences are appropriate.

1.12 The committee considers that strict liability offences which are drafted in accordance with these principles are likely to be consistent with the presumption of innocence, in particular as they require consideration of whether:

- the offence is regulatory (in other words, it is justifiable to expect individuals who participate in a regulated activity to be deemed to have accepted certain conditions, particularly where those activities carry public health and safety or environmental risks, and to show why they are not at fault for infringements); and
- the penalty falls at the lower end of the scale and does not include imprisonment.