Date introduced: 8 October 1986
House: House of Representatives
Presented by: Hon. Peter Morris, M.P., Minister for Transport

DIGEST OF BILL

Purpose

To introduce greater controls over the discharge of pollutants by ships into the sea.

Background

The International Convention for the Prevention of Pollution from Ships 1973, (MARPOL), as amended by the 1978 Protocol, is designed to control operational discharges of oil and other harmful substances from ships and to minimise the possibility of accidental discharges. It includes prohibitions of intentional discharges with penalties for violations and a system for enforcement as well as laying down the necessary construction standards for ships.

Australia signed the Convention in 1973, subject to ratification. Earlier in 1973, in a working paper submitted to the Sea-Bed Committee in preparation for the Law of the Sea Conference, Australia expressed its position on one of the major problems relating to marine pollution, i.e. the relation between exploitation of natural resources and environmental protection, as follows:

'States have, in accordance with the Charter of the United Nations and the principles of International Law, the sovereign right to exploit their own resources pursuant to their own environmental policies. This right shall be exercised in accordance with the duty of all States to protect and preserve the marine environment, both in their own interests and in the interests of mankind as a whole, and to take all practicable measures available to prevent or minimise damage to the marine environment outside
their territorial sea from all sources including land-based sources within their national jurisdiction.'[1]

Parties to MARPOL are obliged to apply Annexes I and II which deal respectively with oil and noxious liquid substances. These were given effect with the passage of the Navigation (Protection of the Sea) Amendment Act 1983 and the Protection of the Sea (Prevention of Pollution from Ships) Act 1983. Earlier this year, the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 was amended to extend the operation of the legislation to all ships in the Australian territorial sea, thereby making Australian ships subject to the more stringent operational controls that had operated on foreign ships since 1983, particularly in the region of the Great Barrier Reef.

Annex III deals with the prevention or minimisation of pollution by harmful substances carried by sea in packaged forms, or in freight containers, portable tanks or road and rail tank wagons. It requires compliance with its Regulations on packaging, marking, labelling, documentation, stowage, quantity limitations, exceptions and notifications.

Annex IV covers the prevention of pollution by sewage from ships and applies to all ships over 200 gross tons or those certified to carry more than 10 persons. It prohibits any discharges in the region of the Great Barrier Reef.

Annex V contains Regulations for the prevention of pollution by garbage. Again, discharge of garbage in the Great Barrier Reef region is prohibited.

Outline

This Bill will amend the Navigation Act 1912 and the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 to implement optional Annexes III, IV and V; and the 1985 amendments of Annex II and of Protocol I which deals with the reporting of discharges of pollutants.

Schedules 1 to 4 to the Bill will amend the penalties provided for in these Acts as part of a general review of penalties in Commonwealth legislation.

Main Provisions

For a detailed analysis of the clauses of the Bill, refer to the Explanatory Memorandum.
Amendments of the Navigation Act 1912

Clause 4 will omit paragraph 250(c) from the Navigation Act 1912 (the Principal Act) to remove the immunity from liability for throwing overboard any dangerous goods shipped without the knowledge of the owner or master.

Clause 11 will insert a new Division 128 into the Principal Act to deal with ships carrying packaged harmful substances.

A new section 267ZC will be inserted into the Principal Act to allow regulations to be made to give effect to the Regulations of Annex III which deal with application, packaging, marking and labelling, documentation, stowage and quantity limitations. The Division will not override State or Territory laws that give effect to Annex III (proposed section 267ZB).

Proposed section 267ZF will allow regulations to be made to give effect to Annex IV, though the Division will not override State or Territory laws that give effect to Annex IV (proposed section 267ZE).

Proposed section 267ZG will empower the Minister to issue an International Sewage Pollution Prevention Certificate (1973) if satisfied that the ship is constructed in accordance with Annex IV.

Proposed section 267ZJ will require the master or owner of an Australian ship to give notice of any alteration or damage to the ship which affects its compliance with the provisions of Annex IV. Failure to do so within 7 days will attract a maximum fine of $1000 for people or $5000 for companies (proposed sub-section 267ZJ(1)). Continued failure to give notice will attract the same penalty in the case of both the master and the owner for each day that notice is not given (proposed sub-section 267ZJ(2)).

New section 267ZK will require the owner of an Australian ship to arrange for it to be surveyed at least once during the period in which a sewage certificate is in force (proposed sub-section 267ZK(1)). Failure to comply will attract a maximum fine of $2000 for people or $10 000 for companies (proposed sub-section 267ZK(2)).

New section 267ZM will make it an offence for an Australian ship to go to sea without a sewage certificate. The maximum penalty for masters and owners will be a fine of
$10,000 or 4 years' imprisonment in the case of people and $50,000 in the case of companies. Proposed sub-section 267ZM(3) will provide for regulations to exempt ships in a prescribed class.

Clause 11 will also insert a new Division 12C into the Principal Act to deal with sewage.

New section 267ZP will require the master of an Australian ship seeking Customs clearance to produce the sewage certificate to a Customs Officer upon request. The Customs Officer may refuse to grant clearance and may detain the ship until the certificate is produced.

New section 267ZO will empower the Minister to direct the master or owner of a foreign ship not constructed in accordance with the provisions of Annex IV that the ship is to avoid ports or off-shore terminals in Australia or to comply with specified requirements while approaching, using or leaving them (proposed sub-section 267ZO(1)). This power is to be used only to protect the environment (proposed sub-section 267ZO(2)).

Decisions relating to certificates will be reviewable by the Administrative Appeals Tribunal (clause 14 which will amend section 242B of the Principal Act).

Amendments of the Protection of the Sea (Prevention of Pollution from Ships) Act 1983

Clause 21 will amend section 21 of this Act to give effect to amendments to Annex II which provide for the mandatory pre-washing of cargo tanks in accordance with an approved procedure.

Clause 25 will insert a new Part IIIA (sections 26A and 26B) into the Act to deal with the prevention of pollution by packaged harmful substances.

Proposed section 26B will impose a duty on the master of a ship, or if the master is unable to comply or the ship is abandoned, the owner, charterer or operator, to report 'prescribed incidents'. Proposed sub-section 26B(11) will define 'prescribed incident' as the unlawful discharge of a harmful substance. Proposed sub-section 26A(1) defines 'harmful substance' as a substance which is identified as a marine pollutant in the International Maritime Dangerous Goods Code.
Clause 26 will insert new section 26AA into the Act to require an exporter or importer of a harmful substance or master of the ship which will carry it to notify a prescribed officer of the proposed shipment. The penalty for failure to do so will be a maximum fine of $5000 for people and $25 000 for companies.

Clause 26 will also insert a new sub-section 26AB(1) into the Act to prohibit the jettisoning of a harmful substance into the sea near the Jervis Bay Territory or an external Territory. If this occurs, the master and owner of the ship will each attract a maximum penalty of a $50 000 fine in the case of people and a $250 000 fine in the case of companies. Discharges carried out to secure a ship's safety or to save life at sea will be exempt (proposed sub-section 26AB(5)).

Clause 28 will insert a new Part IIIB (proposed sections 26C and 26D into the Act) which will deal with the prevention of pollution by sewage.

Proposed section 26D will place a general prohibition on, and provide penalties for, the discharge of sewage from a ship into the sea with exemptions similar to those for the jettisoning of a harmful substance into the sea. Additional exemptions will apply where the ship is damaged (proposed paragraph 26D(5)(b)); sewage in a certain form has been discharged at a prescribed distance from the nearest land (proposed paragraphs 26D(6)(a) to (c)); the sewage has been treated in a certified plant and is not visible in the sea (proposed paragraphs 26D(7)(a) and (b)); or discharge is made into the territorial waters of a foreign country in accordance with its laws (proposed sub-section 26D(8)).

New sub-section 26D(9) will prohibit the discharge of sewage mixed with wastes or waste water unless the more stringent conditions applicable to the discharge of those wastes are satisfied.

Clause 28 will also insert a new Part IIIC into the Act (proposed sections 26E and 26F) to deal with prevention of pollution by garbage.

New section 26F provides for a general prohibition on, and penalties for, the disposal of garbage from a ship into the sea, with exemptions similar to those for the jettisoning of a harmful substance into the sea. Additional
exemptions will apply where the disposal is of certain types of bio-degradable garbage in prescribed circumstances (proposed sub-sections 26F(6) to 26F(8)); where the ship or its equipment is damaged (proposed sub-section 26F(9)); or fishing nets are accidently lost overboard (proposed sub-section 26F(10)). Proposed sub-section 26F(11) will prohibit the disposal of garbage mixed with other matter unless the more stringent conditions applicable to the disposal of that matter are satisfied.

The Protection of the Sea (Civil Liability) Act 1981 will also be amended to implement the 1984 Protocol to the International Convention on Civil Liability for Oil Pollution Damage 1969. The Convention provides for the payment of compensation to persons who suffer ship-sourced oil pollution damage. The Protocol increases the liability limits and extends the scope of the Convention (clauses 36, 37, 38 and 40 which will respectively amend sections 3, 8 and 9 of this Act and include a new Schedule containing the text of the Protocol of 1984).

The Bill will also amend the Protection of the Sea (Shipping Levy Collection) Act 1981 to bring the definition of 'tonnage' into line with the 1969 Tonnage Measurement Convention (clause 42 which will amend section 4 of this Act).

For further information, if required, contact the Law and Government Group.
Reference


This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.