



INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 153 2002–03

Maritime Legislation Amendment (Prevention of Pollution from Ships) Bill 2003

ISSN 1328-8091

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Published by the Department of the Parliamentary Library, 2003

I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Maritime Legislation Amendment (Prevention of Pollution
from Ships) Bill 2003

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20 May 2003

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Maritime Legislation Amendment (Prevention of Pollution from Ships) Bill 2003

Date Introduced: 25 March 2003

House: House of Representatives

Portfolio: Transport and Regional Services

Commencement: The Bill itself commences on Royal Assent. The main operational provisions (Schedule 1) only commence when certain parts of previously-passed legislation themselves commence.

Purpose

To amend the *Navigation Act 1912* and the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* to allow ratification and implementation of Annex IV of the Convention for the Prevention of Pollution from Ships, 1973/78.

Background

Australia is a Party to the International Convention for the Prevention of Pollution from Ships 1973/78, commonly known as the MARPOL Convention. The origins of MARPOL largely lie in the international reaction to the grounding of the *Torrey Canyon* oil tanker in the English Channel the late 1960s. That accident resulted in the spillage of 120,000 tons of crude oil into the sea, causing massive environmental damage. MARPOL was developed by the International Maritime Organisation (IMO), of which Australia is a founding member.

MARPOL includes 6 technical Annexes, each dealing with a different form of marine pollution. The Maritime Legislation Amendment (Prevention of Pollution from Ships) Bill 2003 (the Bill) relates to Annex IV, which deals with ship-based sewage.

While Annex IV has been existence for many years, it has not still come into force internationally because until recently not enough countries had agreed to ratify it. The Commonwealth actually passed legislation back in 1986 (the *Protection of the Sea Legislation Amendment Act 1986*) that, amongst other things, placed Australia in a position to ratify Annex IV and implement it domestically. However, with the delay in

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Annex IV coming in to force internationally, the provisions of that legislation related to Annex IV were apparently never proclaimed.

In March 2000, the IMO reached agreement on changes to Annex IV that have resulted in sufficient countries ratifying Annex IV such that it will come into force in September 2003. Under the changes, Annex IV now applies only to ships above certain size thresholds travelling on international voyages. Specifically, it applies to new ships of 400 gross tonnage and above, and new ships of less than 400 gross tonnage certified to carry more than 15 persons. For existing ships within these limits, it will apply five years after the date the Annex comes into force, namely September 2008.

Following the 2000 IMO agreement, the (Commonwealth-State Ministerial) Australian Transport Council recommended that Australia should ratify Annex IV.¹ Annex IV was also tabled before the Joint Standing Committee on Treaties in March this year.²

According to the *Explanatory Memorandum* to the Bill, over 3,000 international trading ships visited Australian ports in 1999-2000.³ Such ships range from large cruise liners than can discharge approximately 100,000 litres of sewage per day, to bulk carrier vessels that might only discharge approximately 300 litres per day. Such sewage, if discharged too near to land, can have a major impact on coastal water quality. For example, sewage can lead to elevated levels of nutrients which contribute to algal blooms, blocking light to the ocean floor affecting the growth of seagrass. Oxygen depletion from sewage breakdown also removes the oxygen required by fish and other marine life to breathe.

Under Annex IV, discharges of sewage from eligible ships on international voyages will be restricted as follows:

- untreated sewage may only be discharged at a distance of more than 12 nautical miles from the nearest land, provided that sewage held in holding tanks is not discharged instantaneously, but at a moderate rate when the ship is proceeded at a speed of not less than 4 knots
- disinfected sewage may only be discharged at a distance of more than 3 nautical miles from the nearest land, providing the system meets technical standards set by the IMO, and
- effluent from an IMO-approved sewage treatment plant may be discharged at any location providing the effluent does not produce visible floating solids nor cause discolouration of the surrounding water.

Implementation of Annex IV will enable Australia to have consistent national standards for international trading ships, and allow Australia to implement the full range of enforcement measures available under MARPOL, including regular inspections to ensure compliance and boarding a suspect vessel to obtain evidence of possible violations.

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Annex IV also places a general obligation on Australia to ensure adequate ports facilities to meet the demand for the reception and disposal of sewage from international trading vessels if they cannot properly discharge it within the restrictions mentioned above. In almost all Australian ports where there is a demand for such facilities, this obligation is met through the use of private contractors dealing direct with ships through shipping agents. According to the *Explanatory Memorandum*,⁴ a survey of available waste reception facilities for sewage in Australian ports carried out in 2001 as part of an IMO survey indicated that sewage discharge facilities are available at most major trading ports and many smaller ports.

In terms of State-Commonwealth cooperation in relation to Annex IV, the Australian Transport Council has agreed that the Commonwealth legislation should apply to all jurisdictions, but with a savings clause to preserve the operation of any existing or future complementary State/Territory legislation.⁵ This approach has been applied in respect of the other four MARPOL Annexes that are currently in force internationally. According to the *Explanatory Memorandum*, several Australian States have indicated that they propose to introduce legislation to control sewage from ships. However they have been awaiting Commonwealth action with respect of Annex IV before introducing complementary legislation.⁶

Main Provisions

Schedule 1 - Amendments to the *Navigation Act 1912*

Amongst other matters, **Item 3** replaces the existing section 267ZF power to make regulations implementing certain technical aspects of Annex IV. The current power refers to regulations ‘empower[ing] the Minister to make orders’. **Item 3** will delete the reference to the Minister with the result that future regulations may give the power to make orders etc to other parties, such as the Australian Maritime Safety Authority (AMSA).

Existing sections 267ZG-ZP relate to what are called ‘international sewage pollution prevention certificates’. Such certificates demonstrate the ship in question is constructed in compliance with relevant Annex IV provisions. Currently existing sections 267ZG-ZP allow the Transport Minister to issue these certificates to appropriate Australian and foreign ships, cancel them, detain ships until the surrender of certificates etc. **Items 4, 7, 9, 13, and 14** will transfer give this power to AMSA. The *Explanatory Memorandum* comments that this is:⁷

an effort to improve administrative efficiencies by moving operational matters away from the requirements of Ministerial approval.

Item 6 makes two changes. The first relates to the Minister’s power in existing subsection 267ZG(2) to temporarily extend the currency⁸ of an international sewage pollution

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prevention certificate for an Australian ship where the certificate would have otherwise expired in mid-voyage. **Item 6** repeals this power, which according to the *Explanatory Memorandum*, will now be transferred to subordinate legislation (marine orders)⁹. Presumably the extension power will be exercisable by AMSA, rather than the Minister, although no indication is given. The second change effected by **item 6** is to allow a survey authority to issue an international sewage pollution prevention certificate to an Australian ship if the authority is satisfied that the ship conforms to Annex IV construction requirements, irrespective of whether or not the ship is actually caught by Annex IV.¹⁰ This change is effected by the insertion of a **new subsection 267ZG(2)**. The *Explanatory Memorandum* states that the rationale for this provision is that it will:¹¹

enable the Australian Maritime Safety Authority to concentrate on port State control functions and auditing of the survey authorities without compromising the survey and certification functions. While the Australian Maritime Safety Authority still retains the power to issue an International Sewage Pollution Prevention Certificate, the arrangements separate the survey and certification function from the inspection and detention function.

Existing section 267ZQ allows the Minister to deny a foreign ship entry into an Australian port or access to an off-shore terminal if it's found that its construction does not comply with relevant Annex IV provisions. **Item 17** transfers this power to AMSA for the same reason given for **item 4** etc. **Item 20** amends existing subsection 267ZQ(2) to ensure AMSA, as the Minister must do under the current situation, only uses the section 267ZQ power to the extent that it appears to them 'necessary or expedient to do so for the protection of the environment'.

Schedule 1 - Amendment of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*

Item 27 amends existing paragraph 26D(6)(a). As originally developed, Annex IV allowed certain treated sewage to be discharged if the relevant ship was at least 4 nautical miles from the coast. When Annex IV was amended by the IMO in 2000, 4 nautical miles was changed to 3. **Item 27** brings existing paragraph 26D(6)(a) into line with this change.

Item 31 repeals subsection 26D(9). Existing subsection 26D(9) deals with the situation where a ship discharges sewage that is mixed with wastes or waste water that are themselves covered by other MARPOL Annexes.¹² Subsection 26D(9) only requires the most 'stringent' of the relevant Annexes to be complied with. However, the amended Annex IV requires that *all* Annexes shall be complied with in such 'mixed waste' situations. **Item 31**, along with the consequential amendments of **items 25, 28** and **30**, brings section 26D into line with the new Annex IV requirements.

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Endnotes

- 1 *Explanatory Memorandum*, p. 9.
- 2 The committee does not seem to have reported as yet. See:
<http://www.aph.gov.au/house/committee/jsct/march2003/tor.htm>
- 3 At p. 2.
- 4 At p. 7.
- 5 *Explanatory Memorandum*, p. 7.
- 6 Ibid.
- 7 At p.12.
- 8 By up to 5 months.
- 9 See <http://www.amsa.gov.au/sd/mo/mo%5Findex.htm>
- 10 For example, the ship may fall bellow the size thresholds mentioned in the background section to this Digest.
- 11 At p. 13.
- 12 For example garbage, which is covered by Annex V.

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