



Navigation Amendment Bill 2004

Mary Anne Neilsen
Law and Bills Digest Section

Contents

Purpose.	2
Background.	2
Main Provisions	2
Schedule 1—Amendments of the <i>Navigation Act 1912</i>	2
Summary and indictable offences.	2
Nautical assessors	3
Penalties.	3
Concluding Comments.	4
Criminal offences in subordinate legislation	4
Endnotes.	4

Navigation Amendment Bill 2004

Date Introduced: 9 December 2004

House: House of Representatives

Portfolio: Transport and Regional Services

Commencement: The substantive provisions commence 28 days after Royal Assent

Purpose

The Bill proposes amendments to the *Navigation Act 1912* in order to:

- clarify that an offence against the regulations which aim to prevent collisions and require the display of lights and signals on ships, is an indictable offence
- remove references to nautical assessors, and
- revise several penalty provisions.

Background

As there is no central theme to the Bill the background to the various measures will be discussed below.

Main Provisions

Schedule 1—Amendments of the *Navigation Act 1912*

Summary and indictable offences

Section 4G of the *Crimes Act 1914* provides that an offence is indictable¹ if it is punishable by imprisonment for a period exceeding 12 months unless the contrary intention appears. An offence that is punishable by 12 months imprisonment or less, or by a fine only, is summary. The *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* issued with the authority of the Minister for Justice and Customs in February 2004 states:

Departures from this well-established dividing line have been rare and should only be made where there is a clear reason for such a departure'.²

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

Section 258 of the Navigation Act provides that the regulations may prescribe measures to be observed for the prevention of collisions and for the display of lights and signals. Currently the maximum penalty for an offence against the regulations made under section 258 is a fine of \$10,000 and a term of imprisonment of two years. By virtue of section 4G of the Crimes Act this is an indictable offence.

Item 1 inserts **proposed subsection 258(4)**³ to clarify that an offence against the regulations made under section 258 is an indictable offence. The Explanatory Memorandum states that this is a response to an unreported judgement in *R v Rodel Diaz Baladad* from the County Court of Victoria. Judge Campbell found there was evidence of a ‘contrary intention’ according to section 4G of the Crimes Act. After examining the history of section 258 his Honour decided that Parliament intended that offences against the regulations according to section 258 should be tried by a summary hearing.

Nautical assessors

Subsections 258(6) and (7) of the Navigation Act refer to nautical assessors appointed to advise a Court in matters dealing with offences against the regulations. These assessors were previously appointed under Part IX of the Act, a Part which was repealed in 1990⁴. As there is no longer a mechanism for the appointment of nautical assessors, **item 2** repeals subsections 258(6) and (7) so as to remove this anomaly.

Penalties

Subsection 4B(2) of the Crimes Act provides that if an offence is expressed to be subject to a penalty of imprisonment but no fine is specified, the maximum fine for a natural person is 5 penalty units⁵ multiplied by the maximum prison term in months. The maximum penalty applicable to a body corporate is 5 times higher (subsection 4B(3)). The *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* states ‘this imprisonment term/fine ratio should be followed unless there are grounds to depart from it.’⁶

Items 4-7 make amendments to bring several penalty provisions in the Navigation Act into line with this rule and, in the process, will also increase the pecuniary penalties. For example **item 4** replaces in section 258A⁷ the existing penalty of \$10,000 or imprisonment for 4 years or both, with a maximum penalty of imprisonment for 4 years. By virtue of the formula set out in subsection 4B(2) of the Crimes Act, the court could impose a maximum fine of 240 penalty units (i.e. 48 x 5), currently \$26,400, an increase of \$16,400. This could be imposed instead of, or in addition to a maximum penalty of 4 years imprisonment.

Section 265 of the Navigation Act deals with the obligations on the master of a ship to render assistance to ships or aircraft in distress. Subsection 265(6) places obligations on the master to keep records relating to requests for such assistance. **Item 8** increases the penalty for breach of this requirement from \$2,000 to 50 penalty units (currently \$5,500).

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

Concluding Comments

Criminal offences in subordinate legislation

Item 1 of the Bill, discussed above, brings to the attention of the Parliament section 258 of the Navigation Act. That section imposes penalties of up to two years imprisonment and/or a fine of \$10,000 for offences against the regulations. Section 258 is an old provision and Parliament may wish to consider whether it is in line with current practice regarding penalties for offences contained in subordinate legislation. On this point the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* states:

Where an Act authorises the creation of offences in a regulation or other subordinate legislation it should specify that these offences may carry a maximum fine not exceeding 50 penalty units for an individual and 250 penalty units for a body corporate. [...]

It has long been the approach of the Commonwealth Parliament and Commonwealth Governments that serious criminal offences and penalties should be contained in Acts of Parliament rather than subordinate legislation. It is important that serious offences pass through the full Parliamentary process, so that the Parliament can give close attention to the scope of the offence and the appropriateness of the penalty. There is also a legitimate expectation on the part of those who read legislation that fundamental aspects of a legislative scheme (such as serious criminal offences) will be contained in the parent Act.

Most Commonwealth Acts enacted in recent years that authorise the creation of offences in subordinate legislation, have specified the maximum penalty that may be imposed is 50 penalty units or less. Penalties of imprisonment have not been authorised. This is the maximum applicable to a natural person.⁸

The Bill could provide an opportunity to redraft section 258 so that offences relating to the prevention of collisions and the display of lights and signals would be contained in the Act rather than in subordinate legislation.

Endnotes

-
- 1 An indictable offence is one for which the trial of the accused is to be before a judge and jury.
 - 2 Section 5.3: Indictable / Summary Distinction.
 - 3 There is an apparent error in the Explanatory Memorandum: Item 1 inserts new subsection 258(4) – not subsection 258(3).
 - 4 Repealed by the *Transport and Communications Legislation Amendment Act (No. 2) 1989* (No. 23, 1990).

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

- 5 Currently 1 penalty unit = \$110.
- 6 Section 5.1 Setting a penalty.
- 7 Section 258A places obligations on ships masters to navigate carefully near ice.
- 8 Section 5.2 Provisions about penalties.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

© Copyright Commonwealth of Australia 2005

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of Parliamentary Services, other than by senators and members of the Australian Parliament in the course of their official duties.

This brief has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Information and Research Service, nor do they constitute professional legal opinion.

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2438.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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