Maritime Legislation Amendment Bill 2011

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Law and Bills Digest Section

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Maritime Legislation Amendment Bill 2011

Date introduced: 22 September 2011

House: House of Representatives

Portfolio: Infrastructure and Transport

Commencement: Sections 1 to 3 commence on the day the Act receives the Royal Assent. Items 1 to 6, 8 to 11, and 13 to 17 of Schedule 1 commence on the day after the Act receives the Royal Assent. Items 7 and 12 of Schedule 1 also commence on the day after the Act receives the Royal Assent, but will not commence at all if item 1 of Schedule 1 to the Protection of the Sea (Prevention of Pollution from Ships) Amendment (Oils in the Antarctic Area) Act 2011 (PPS(OAA) Act) commences on or before that day.\(^1\) Item 18 of Schedule 1 commences immediately after the commencement of the PPS (OAA) Act, but will not commence at all if the PS (PPS) (OAA) Act commences on, or before this Act receives the Royal Assent.\(^2\)

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through [http://www.aph.gov.au/bills/](http://www.aph.gov.au/bills/). When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at [http://www.comlaw.gov.au/](http://www.comlaw.gov.au/).

Purpose

The purpose of the Bill is to deter shipping companies and their crews ‘from engaging in unsafe and irresponsible actions at sea, particularly near [Australia’s] environmentally sensitive marine eco-systems’.\(^3\) To this end, the Bill seeks to include new and expanded offence and civil penalty

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1. The Protection of the Sea (Prevention of Pollution from Ships) Amendment (Oils in the Antarctic Area) Bill 2011 is also currently before the Parliament. The PPS (OAA) Bill proposes to repeal the same provisions of the PPS Act as those proposed to be repealed by items 3 and 12 of the Bill. If the PPS (OAA) Bill were passed before the Bill, there would be no need to give effect to items 3 and 12 of the Bill. The following is a link to the PPS (OAA) Bill: [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4641%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4641%22)

2. Item 18 of Schedule 1 to the Bill proposes to repeal provisions of the PPS Act which would also have been repealed by the PPS (OAA) Act. If the Bill were passed after the PPS (OAA) Act, the repeal of those provisions by the Bill would be unnecessary.

3. A Albanese (Minister for Infrastructure and Transport) and C Wallace (Queensland Minister for Main Roads), Greater safeguards for the reef as world’s largest ship tracking system extends its reach, joint media release, 1 July 2011, viewed 6 October 2011, [http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/896636/upload_binary/896636.pdf?fileType=application%2Fpdf#search=%22shen%20neng%20albanese%20%20|%20EBSCO,AAP%22](http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/896636/upload_binary/896636.pdf?fileType=application%2Fpdf#search=%22shen%20neng%20albanese%20%20|%20EBSCO,AAP%22)

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provisions in the *Navigation Act 1912* (Navigation Act)\(^4\) and the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (PPS Act).\(^5\) The penalties provided for under the proposed provisions are higher than those currently provided for under either Act.

**Background**

**Damage to Reef and oil spillage by ships**

Two shipping incidents, one in March 2009, involving the Hong Kong China registered general cargo ship, *Pacific Adventurer*\(^6\) and the other in April 2010, involving the Chinese bulk carrier, *Shen Neng 1*\(^7\), highlighted the impact that pollution from ships can have on the Australian coastline and Australian waters.

The first of these incidents involved the release into the waters off the Queensland coast, east of Moreton Bay, of over 270 tonnes of heavy fuel oil. Clean-up operations took over two months and involved a total of over 2500 people. The second incident involved damage to the Great Barrier Reef, just east of Great Keppel Island. Approximately four tonnes of fuel oil was released into the surrounding waters.

There are eleven ports operating adjacent to the Great Barrier Reef, accounting for $17 billion of exports.\(^8\) The volume of shipping through Reef waters is said to have increased from 2743 in 2006/07 to 3417 in 2009/10 and is expected to double over the next ten years.\(^9\)

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7. C Glennie, ‘Bligh says coal carrier is now stabilised’, *ABC Radio AM*, media transcript, 6 April 2010, viewed 5 October 2011, [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=customrank;page=0;query=Abstract%3A%22shen%20neng%22%20Dataset%3Aemms,radio,radiofrm,pressrel,pressclp%20%7C%20External%3AEBSCO_AAP;rec=12;resCount=Default](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=customrank;page=0;query=Abstract%3A%22shen%20neng%22%20Dataset%3Aemms,radio,radiofrm,pressrel,pressclp%20%7C%20External%3AEBSCO_AAP;rec=12;resCount=Default)
8. A Albanese (Minister for Infrastructure and Transport) and C Wallace (Queensland Minister for Main Roads), *Greater safeguards for the reef as world’s largest ship tracking system extends its reach*, joint media release, op. cit.
9. Ibid.

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Government response to Reef damage and oil spillage

Following the Shen Neng 1 incident, the Australian Maritime Safety Authority (AMSA) undertook a review of safe navigation in the Great Barrier Reef. In its report, released in April 2010, AMSA made four key recommendations:

- to extend the existing Reef Vessel Traffic Service (REEFVTS) to the southern boundary of the Great Barrier Reef
- to enhance navigational aids in the Great Barrier Reef leveraging off current and anticipated technology to assist navigation by both pilots and masters and to increase situational awareness in real time
- to develop a whole of government management plan in the medium term for securing the future protection of the Great Barrier Reef given forecast increased shipping volumes and technological developments in navigational safety and
- to strengthen regulatory arrangements, including modernising the penalty and offence provisions under the PPS Act and the Navigation Act to make them more consistent with regimes such as those recently included in the Great Barrier Reef Marine Park Act 1975.

In response to calls for compulsory coastal pilotage through the area, AMSA also concluded that:

... introducing compulsory coastal pilotage in the area may unnecessarily increase costs, be a logistical challenge and may not be a cost effective mechanism to mitigate the risk of groundings.

To date, the Government has implemented three of AMSA’s recommendations. REEFVTS has now been extended to cover the whole Barrier Reef and navigational aids have been enhanced. For example, the North Reef Lighthouse, north of Gladstone, has been refurbished with new vessel

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10. REEFVTS uses a range of technologies to compile a timely and accurate vessel traffic image and ship traffic information. Independent shore-based operators are able to communicate relevant information to ships, for instance, that they are approaching shallow water or other shipping traffic, or that they are deviating from the recommended route. See Australian Maritime Safety Authority report, ‘Improving safe navigation in the Great Barrier Reef’, Australian Maritime Safety Authority website, April 2010, pp. 4 and 5, viewed 26 September 2011, http://www.amsa.gov.au/shipping_safety/Great_BARRIER_Reef_and_Torres_Strait/documents/AMSA%20report%20on%20safe%20navigation%20in%20the%20GBR.pdf

11. Ibid., pp. 4-5.

12. Ibid., p. 4.


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tracking equipment and a new under keel clearance management system has been instigated for the restricted waters of the Torres Strait.\(^\text{15}\)

Additionally, the Great Barrier Reef Shipping Management Group has been re-established. Its members are from AMSA, Maritime Safety Queensland, the Great Barrier Reef Marine Park Authority and the Department of Infrastructure and Transport.\(^\text{16}\) A new User Guide has also been developed to provide mariners with the information they need to travel through this sensitive area.\(^\text{17}\)

An ongoing assessment is also being undertaken by the Australian Transport Safety Bureau, of the safety of Australia’s system of coastal pilotage in the Great Barrier Reef and Torres Strait.\(^\text{18}\) The report of this assessment is anticipated later this year.\(^\text{19}\)

**The need for stronger penalties**

The amendments proposed by this Bill to the PPS Act, and to the Navigation Act, represent the Government’s response to the remaining recommendation made by AMSA.

In its report, AMSA noted ‘the relatively low level of the penalties provided for in the PPS Act for so-called ‘strict liability’ offences’ which, in practice, the report noted are ‘applicable to the vast majority of pollution incidents that occur in Australian waters’.\(^\text{20}\)

AMSA highlighted the discrepancy between the penalty levels under the PPS Act and those provided for in the *Great Barrier Reef Marine Park Act 1975* (GBRMP Act).\(^\text{21}\) Under the GBRMP Act, there is provision for penalties of up to 20 000 penalty units ($2.2 million for an individual and $5.5 million for a corporation) for an aggravated contravention.\(^\text{22}\)

In contrast, under the PPS Act, the reckless or negligent discharge of oil or an oily mixture into the sea attracts a maximum of 2000 penalty units ($220 000 for an individual and $1.1 million for a corporation), while an additional strict liability offence for the master, and for the owner, of a ship in


\(^{18}\) Ibid.

\(^{19}\) Ibid.


\(^{22}\) Ibid. The relevant section of GBRMP Act is section 38DB.
relation to such discharge, attracts a maximum of 500 penalty units ($50 000 for an individual, or $275 000 for a corporation). 23

AMSA also noted Australia’s obligations, as a signatory to the *International Convention for the Prevention of Pollution by Ships* (MARPOL), to maintain adequate penalty levels for such offences. Article 4(4) of the MARPOL provides:

> The penalties specified under the law of a Party pursuant to the present Article shall be adequate in severity to discourage violations of the present Convention and shall be equally severe irrespective of where the violations occur. 24

**Basis of policy commitment**

On 18 April 2010, the Minister for Infrastructure and Transport indicated that the Government had initiated a review of the offences under the relevant maritime and environmental legislation, with a view to toughening the penalties for breaches. 25

The Minister said that the aim of the review was ‘simple’, being:

> ...to further deter shipping companies and their crews from engaging in unsafe and irresponsible actions at sea, particularly near environmentally sensitive marine ecosystems. 26

A further objective of the review was noted by the Minister:

> ...to ensure penalties are high enough and comparable with State and international regulations. 27

The Minister has also subsequently said that:

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26. Ibid.


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Our rules must act as a serious deterrent to behaviour that threatens the marine environment or human safety.28

Committee consideration

The Bill had not been referred to a Parliamentary Committee at the time of the preparation of this Bills Digest.

Policy position of non-government parties/independents

At the time of the Shen Neng 1 incident, the Shadow Minister for Transport, Warren Truss, said:

While some are suggesting that all vessels sailing near the Barrier Reef should carry local pilots, and undoubtedly, if there had been a pilot on board, this incident would not have occurred, there are more practical ways of ensuring ships do not stray off course.

The GPS-based Vessel Monitoring System (VMS) operating in more northerly waters detects vessels that have moved off course and is able to alert them. When an Inquiry is held into this incident, the Government should urgently examine extending the VMS further south.

The Government now requires small fishing vessels to carry VMS and they are relentlessly pursued if they accidentally take a fish from an incorrect zone. If it is necessary for small fishing vessels to have VMS, why should not the same rules apply to large bulk carriers?29

Mr Truss did not refer to the possibility of introducing severer penalties into Australia’s marine legislation for oil spillages and other damage to marine ecosystems.

To avoid shipping incidents such as the grounding of the Shen Neng 1, the Australian Greens have proposed extending satellite tracking and compulsory piloting of vessels to all the waters of the Great Barrier Reef.30

Measures included in the Greens’ marine and coastal policy include: introducing an Oceans Act that coordinates sustainability of ocean uses through a statutory National Oceans Authority, reporting to the Parliament and enforcing ecosystem-based regional management plans and targets; introducing random mandatory vessel monitoring systems in Australian waters and increasing mandatory observer coverage to at least 50% of all commercial vessels and phasing out the entry into Australian waters of all single skin tankers.31

28. Ibid.

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Position of major interest groups

**Australian Marine Conservation Society**

Following the *Shen Neng 1* incident, the Australian Marine Conservation Society called for an increase in fines for shipping leaving authorised safe shipping channels through the Great Barrier Reef.\(^{32}\) Other measures supported by the Society included compulsory pilotage through the area, and the extension of the existing Vessel Tracking System to cover the entire area of the Great Barrier Reef.\(^{33}\)

**World Wildlife Fund Australia (WWF)**

Following the *Shen Neng 1* incident, the WWF made urged the Government to undertake a formal review of the incident. As part of this review process, WWF recommended consideration of the following measures:

- All large commercial vessels travelling within all parts of the Great Barrier Reef World Heritage Area be required to have qualified and experienced pilots on board;
- Effective Vessel Tracking Systems be implemented or extended to cover the entire area of the Great Barrier Reef;
- A review of shipping routes inside and outside the Great Barrier Reef be conducted, with a focus on narrow channels and proximity to reef habitats, mindful of the need to maximise safety factors for vessels and crew, for example during cyclone seasons, as well as minimise environmental risk.\(^{34}\)

**Financial implications**

There are said to be no financial implications arising from the Bill.\(^{35}\)

**Main issues**

There are reportedly, over 25 000 voyages by ships to and around Australia annually and 99% of Australian’s international trade is transported by ship.\(^{36}\) An appropriate balance is required between

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33. Ibid.

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this shipping activity and the protection of environmentally sensitive marine ecosystems in Australian coastal waters, such as the World Heritage Listed Great Barrier Reef.

The Reef does not only support multi-billion dollar shipping, tourism, and fisheries industries. It is also extensively used as an international waterway for vessels transiting the Reef, and supports various recreational and subsistence activities. Good environmental management is critical to its survival and an effective regulatory system is a key element in maintaining the integrity of the Reef.

Key provisions

Proposed amendments to the Navigation Act

Item 3 of Schedule 1 inserts proposed Division 12E—Pollution or damage to the marine environment into Division 4 of the Navigation Act.

Proposed Subdivision B—Ships causing pollution or damage to the Australian marine environment

Proposed subsection 267ZZH(1) extends the application of the proposed subdivision to ships excluded by section 2 of the Navigation Act from the application of the Act.

Section 2 of the Navigation Act provides that, unless otherwise specified, the Act does not apply to a trading ship proceeding on a voyage other than an overseas voyage or an inter-state voyage; an Australian fishing vessel proceeding on a voyage other than an overseas voyage; a fishing fleet support vessel proceeding on a voyage other than an overseas voyage; an inland waterways vessel; or a pleasure craft; or in relation to its owner, master or crew.

As a result of the proposed amendment, these vessels would come within the ambit of proposed subdivision B.

Proposed subsection 267ZZH(2) provides that proposed subdivision B applies in Australia’s coastal sea, its exclusive economic zone (EEZ) and on the high seas. However, the note to the proposed subsection states that a master of a ship would only be liable for an offence or civil penalty under the proposed subdivision if the pollution to the marine environment occurs in Australia’s coastal sea or exclusive economic zone (EEZ).

The coastal sea of Australia is defined in proposed subsection 267ZZG as the territorial sea of Australia proclaimed under the Seas and Submerged Lands Act 197338 and the sea on the landward side of the territorial sea that is not within the limits of a state or territory.

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37. As well as representing a response to shipping incidents of the sort described above, the proposed amendments to the Navigation Act are part of a larger ongoing project to rewrite the Act for the first time since its passage in 1912. The aim of the rewrite is to cast the Act in ‘plain English to reflect contemporary conditions and practices’.

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Australia’s territorial sea generally extends up to 12 nautical miles from the territorial sea baseline.\textsuperscript{39} Internal waters are on the landward side of this baseline, which is generally the low-water mark. Australia’s territorial sea is governed by the Commonwealth, states and territories in accordance with the offshore constitutional settlement.\textsuperscript{40}

Australia’s EEZ extends from the outer edge of the territorial sea up to 200 nautical miles from the territorial sea baseline. The outer limit may be less than this where agreements exist with neighbouring countries.\textsuperscript{41}

‘High seas’ are defined in Article 1 of the United Nations Convention on the High Seas as ‘all parts of the sea that are not included in the territorial sea or in the internal waters of a state’.\textsuperscript{42}

Proposed section 267ZZI provides that the master of a ship must not operate the ship in a negligent or reckless manner that causes pollution or damage to the marine environment in the Australian coastal sea, or EEZ. Proposed subsection 267ZZI(5) sets out nine factors to which the court may have regard in determining whether the requisite standard of care has been met and whether or not there was a risk of pollution or damage.

Civil and criminal penalties are provided for, with a higher civil penalty for an aggravated contravention. The civil and criminal penalties are set at 600 penalty units (proposed subsections 267ZZI(2) and (7)). However, in the case of an aggravated contravention, there is a civil penalty of 6000 penalty units. An aggravated contravention is defined in proposed section 267ZZN (see below).

A civil penalty provision differs from a criminal offence provision in a number of other important respects. Although set out in legislation in the same way as a criminal offence provision and subject to proceedings in court, the burden of proof in civil proceedings is the ‘balance of probabilities’, whereas in criminal proceedings, it is the higher standard of ‘beyond reasonable doubt’. A civil


\textsuperscript{39} Due to the proximity of Papua New Guinea, the territorial sea around certain Torres Strait islands is only three nautical miles wide, in accordance with the Torres Strait Treaty entered into with Papua New Guinea. See: \url{http://www.austlii.edu.au/cgi-bin/sinodisp/au/other/dfat/treaties/1985/4.html?stem=0&synonyms=0&query=torres%20strait}

\textsuperscript{40} For further details of the settlement, see: ‘The offshore constitutional settlement’, Attorney-General’s Department website, viewed 29 September 2011, \url{http://www.ag.gov.au/www//agd/nsl/nu/Page/InternationalLaw_TheOffshoreConstitutionalSettlement}


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penalty provision only carries a financial penalty rather than imprisonment and the imposition of a civil penalty does not constitute a criminal conviction.  

Provisional subsection 267ZZI requires the master of a ship to ensure that the ship is not operated in a negligent or reckless manner that causes pollution, or damage, to the marine environment in the Australian coastal sea or EEZ. Provisional subsection 267ZZI(5) sets out nine matters to which the court may have regard in determining whether the requisite standard of care has been met and whether or not there was a risk of pollution or damage.

The civil and criminal penalties provided for under provisional subsections 267ZZI(2) and (7), including the higher civil penalty for an aggravated contravention, are commensurate with those provided for under provisional section 267ZZI.

Provisional Subdivision C— Australian ships causing pollution or damage to the marine environment outside Australia

Provisional section 267ZZK provides that provisional subdivision C applies to all ships, including those generally excluded by section 2, from the operation of the Navigation Act.

Provisional section 267ZZL provides that the master of an Australian ship must not operate the ship in a negligent or reckless manner that causes pollution, or damage, to the marine environment in the seas beyond Australia’s territorial sea or EEZ.

Australian ship is defined in provisional section 267ZZG as a ship registered in Australia, or an unregistered ship having Australian nationality.

The nine factors with respect to which the court may have regard under provisional section 267ZZL in determining whether the requisite standard of care has been met and whether or not there was a risk of pollution or damage, reflect those provided for in provisional subdivision B (provisional subdivision 267ZZL(5)).

The civil and criminal penalties provided for under provisional subsections 267ZZL(2) and (6), including the higher civil penalty for an aggravated contravention, are also the same as those provided for under provisional subdivision B.

Provisional section 267ZZM imposes a similar obligation on the master of an Australian ship to ensure that the ship is not operated in a negligent or reckless manner that causes pollution, or damage, to the marine environment in the seas beyond Australia’s territorial sea or EEZ.

Provisional Subdivision D— Aggravated contravention of civil penalty provisions

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Proposed subsection 267ZZN(1) provides that the contravention of a civil penalty provision in proposed Division 1E is an *aggravated contravention* if the relevant conduct resulted in serious harm to the marine environment, or had the potential to cause serious harm to the marine environment.

Matters which may be taken into account in making this determination are set out in proposed subsections 267ZZN(2) and (3). The matters include the magnitude of the harm, the size, the sensitivity and environmental significance of the area affected and the prospects for repairing the harm. The Explanatory Memorandum states that the proposed clause is based on section 38GB of the GBRMP Act.  

**Item 4** inserts proposed section 269E which creates a strict liability offence where the master of a ship, required to report under the Regulations in relation to prescribed areas, for the purposes of Division 14 of Part IV of the Navigation Act, fails to do so. The Great Barrier Reef has been prescribed a particularly sensitive sea area by the IMO.

The Explanatory Memorandum explains that:

> As a strict liability offence, no fault elements apply to the physical elements of the offence and therefore no intention or state of mind of the master needs to be proved by the prosecution. The intent is to make it absolutely clear that the prosecution does not have to establish that the master knew or was reckless as to the fact that the ship was in a mandatory reporting area. This is appropriate in the circumstances because the defendant is the best placed person to provide evidence on whether any culpability should be attached to the physical offence. It will be easier and less costly for the defendant to disprove an unjust charge than for the prosecutor to make out fault elements of an unjust charge, such as the location of the ship.

The penalty for commission of an offence under proposed section 269E is 240 penalty units.

The Explanatory Memorandum states that:

> The proposed penalty is appropriate and proportionate to the seriousness with which Australia takes its responsibilities in relation to particularly sensitive sea areas, such as in the sea area of the Great Barrier Reef, which are utilized by shipping.

**Item 5** inserts proposed Division 3A—Civil penalty provisions.

**Proposed Subdivision B—Obtaining a civil penalty provision**

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46. Explanatory Memorandum, op. cit., p. 5.

47. Ibid.

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**Proposed section 399A** provides that a provision is a civil penalty provision if the provision sets out at its foot a pecuniary penalty, or penalties, indicated by the words ‘civil penalty’.

**Proposed section 399B** provides that within six years of an alleged contravention of a civil penalty provision, AMSA may apply to the Federal Court of Australia for an order for the payment of a pecuniary penalty.

Other matters with respect to civil penalties dealt with in **proposed subdivision B** include: the matters to be taken into account by the Court in determining the level of penalty, including the nature and extent of the contravention, any loss or damage suffered because of the contravention, the circumstances in which the contravention took place, and whether the persons had previously engaged in similar conduct (**proposed section 399B(6)**); the Commonwealth’s right to recover pecuniary penalties as debts payable to the Commonwealth (**proposed section 399C**); conduct contravening more than one civil penalty provision (**proposed section 399D**); and multiple contraventions (**proposed section 399E**).

**Proposed section 399G** underlines the fact that in proceedings in relation to a civil penalty order, the Court is to apply the rules of evidence and procedure for civil matters, while **proposed section 399H** confirms that the alleged contravention of a civil penalty provision cannot give rise to criminal proceedings.

**Proposed Subdivision C— Civil proceedings and criminal proceedings**

The **proposed subdivision** provides guidance on the interrelationship between civil and criminal proceedings, including:

- the Court cannot make a civil penalty order where a person has already been convicted in criminal proceedings (**proposed section 399I**)
- proceedings for a civil penalty order must be stayed if criminal proceedings are also on foot (**proposed section 399K**)
- criminal proceedings may be commenced after proceedings for a civil penalty order are on foot (**proposed section 399L**)
- evidence given in a civil proceeding cannot be used in criminal proceedings (**proposed section 399M**).

**Proposed Subdivision D— Miscellaneous**

**Proposed section 399N** provides that attempts to contravene a civil penalty provision, aiding, procuring or inducing, being knowingly concerned in, or conspiring with others to cause a contravention would also constitute a contravention of the provision.

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48. However, this does not extend to criminal proceedings instituted in relation to the falsity of any evidence given by the individual during civil penalty proceedings: Explanatory Memorandum, op. cit., p. 6.

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Proposed section 399P provides that an obligation on a person to do an act or thing under a civil penalty provision within a designated timeframe continues until the act or thing is done. This means that a person who does not do the act or thing within the timeframes, commits a separate contravention for each day the act or thing is not done.

Proposed section 399Q provides that a person will not be liable for a penalty if they were reasonably mistaken about the facts surrounding the contravention, and that a contravention would not have occurred apart from this misunderstanding.

Proposed amendments to PPS Act

Item 8 makes a proposed amendment to subsection 9(1B) by expanding the persons who may commit the strict liability offence of discharging oil, or an oily mixture, into the sea to include the charterer as well as the owner or master of a ship. Item 8 also makes a proposed amendment to increase the penalty for an offence under this provision from a maximum of 500 to a maximum of 20 000 penalty units.

Items 10 and 14 make proposed amendments to paragraphs 9(3)(a) and (b) and subsection 10(3) of the PPS Act to extend their application to the charterer of a ship.

Item 15 also makes a proposed amendment to subsection 10(3) of the PPS Act to increase the penalty for an offence under the provision from a maximum of 500 to a maximum of 20 000 penalty units.

Proposed amendments to PPS(OAA) Act

Item 18 repeals items 3 and 4 of Schedule 1 to the PPS(OAA) Act.

Concluding comments

Maintaining an appropriate balance between the protection of environmentally sensitive areas of world significance such as the Great Barrier Reef and the fostering of major economic and recreational activities is difficult.

The stricter and more far reaching offence and civil penalty regime proposed in the Bill accords with the approach recommended by AMSA in its report, and also appears consistent with Australia’s international legal obligations under the MARPOL. The amount of shipping traversing Australia’s coastal waters, and the waters of the Great Barrier Reef, appears to warrant the introduction of the more robust offence and civil penalty regime proposed in this Bill.

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49. For additional information, see footnotes 1 and 2.

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