PROTECTION OF THE SEA (DISCHARGE OF OIL FROM SHIPS)
BILL 1981

Date Introduced: 5 March 1981
House: House of Representatives
Presented by: Hon. R.J.D. Hunt, Minister for Transport

Short Digest of Bill

Purpose

To repeal existing legislation about the pollution of the sea by oil and to make new provisions to that effect.

Background

See also Bills Digests on the Protection of the Sea (Civil Liability) Bill 1981 and the Protection of the Sea (Powers of Intervention) Bill 1981.

The 1954 Convention for the Prevention of Pollution of the Sea by Oil was given effect for Australia by the Pollution of the Sea by Oil Act 1960. Amendments made to the Convention in 1962 and 1969 were effected by amendments to the Act in 1965 and 1972 respectively. Since then, two Amendments to the Convention have been made. The 1971 (Tanker) Amendments relate to tank arrangements and limitation of tank sizes (see Schedule 5 to this Bill and the Bills Digest of the Navigation (Protection of the Sea) Amendment Bill 1981 which covers amendments of the Navigation Act 1912 dealing with certification of tankers). The 1971 (Great Barrier Reef) Amendments extend the application of the Convention so that discharges of oil will, according to the Minister's Second Reading Speech, be prohibited within 50 miles of the baseline of the territorial sea in the Great Barrier Reef Area (see Schedule 4 to this Bill).

This Bill repeals the Pollution of the Sea by Oil Act 1960 and amending Acts and implements the Convention as amended.

Main Provisions

The Act is to come into operation on a date to be proclaimed (clause 2).
Clause 3 repeals the existing legislation relating to pollution of the sea by oil.

Clause 6 saves existing Commonwealth laws and any State or Territory laws. The Bill is to bind the Commonwealth, States and the Northern Territory and the Territory of Norfolk Island (the Territories) but not to render any of them liable to prosecution for an offence although masters of Commonwealth, State and Territory ships may be liable for an offence.

Clause 9 creates offences relating to the discharge of "oil" or an "oily mixture" into the Sea from Australian ships (these terms are not defined but, by virtue of sub-clause 4(3) they relate to definitions in the Convention and mean, respectively, "crude oil, fuel oil, heavy diesel oil and lubricating oil" and "a mixture with an oil content"; this appears to be a narrower range of oils than those on which shipping levy is imposed: see Bills Digest of the Protection of the Sea (Shipping Levy Collection) Bill 1981). Penalties are $50,000 for the master or an unincorporated owner and $100,000 for an incorporated owner. Sub-clause 9(2), however, provides that it is not an offence to discharge oil or an oily mixture into the territorial sea or sea on the landward side of the territorial sea (on the basis that State and Territory laws will apply); exceptions also apply where the discharge is to secure the ship's safety, prevent damage to a ship or cargo or save life at sea; and also, where there has been an unavoidable leakage, and all reasonable precautions were taken to prevent or minimize the leakage (sub-clause 9(2)). Sub-clause (3) provides for further exceptions relating to ships proceeding en route where the rate of discharge is less than 60 litres per mile and to discharges from tankers generally, tankers on ballast voyages and tankers when ballast is discharged. Clause 9(4) shifts the onus of proof for matters under sub-clauses 9(2) and (3) to the defendant, leaving the prosecution to prove only that a discharge of oil or oily mixture occurred into the sea.

Clause 10 extends the application of clause 9 when the 1971 (Great Barrier Reef) Amendments to the Convention come into operation. The extension, in fact, limits the operation of the exceptions in sub-clause 9 so that where the exception relates to the discharge being made "as far as practicable from land" it will relate to discharges "as far as practicable from the nearest land" bringing in the wording of the Convention in relation to the Great Barrier Reef; this means that the discharge must be outside the areas specified in the 1971 (Great Barrier Reef) Amendments set out in Schedule 4; the term "the nearest land" is defined in the Convention to refer to these areas and sub-
clause 4(3) of the Bill brings in Convention definitions for interpretation purposes in the Bill.

Clause 11 requires the master of an Australian ship to give notice of any discharge of oil or an oily mixture into the sea or report to an officer if required to do so. The penalty for failing to do so is $5,000. The clause does not apply to discharges into the territorial sea or sea on the landward side of the territorial sea (on the basis that State and Territory laws apply). Making a false statement in a notice or report is an offence (penalty: $5,000), but notices or reports are not to be given in evidence without the master's consent in proceedings under clause 9.

Clause 12 requires the keeping of an oil record book on every Australian ship and failure to carry one is an offence (for the master or an unincorporated owner $5,000; for an incorporated owner $10,000). Sub-clause 12(4) requires details of "prescribed operations" (presumably to be specified by regulation) to be entered in the oil record book and failure to do so is an offence for the master (penalty $5,000). Making a false statement in an oil record book is an offence under clause 13 (penalty $10,000). Clause 14 deals with the retention of oil record books and offences are created if this does not occur (penalty $5,000 for masters and unincorporated owners and $10,000 for incorporated owners).

Clause 15 lists the powers of inspectors. Clause 16 makes offences indictable although if both parties agree and it is appropriate they may be heard by a court of summary jurisdiction with reduced penalties. Clause 18 allows the admission of records kept in pursuance of the Bill as prime facie evidence and their certification for production in proceedings. Clause 19 allows the appointment of analysts whose certificates about substances are to be prime facie evidence.

Clause 20 allows the making of regulations which apply provisions relating to oil record books to foreign ships (but not ones to which the Convention applies).

Clauses 21 and 22 relate to the making of regulations, and to the making of orders under the regulations to give effect to Article VII of the Convention which deals with the fittings required on ships to prevent the escape of oil into bilges unless there are measures to ensure that oil in bilges is not discharged into the sea in contravention of the Convention. These orders are to be gazetted and tabled as if they were regulations and can be disallowed and, although not statutory rules, are subject to the publication provisions of the Statutory Rules.
Publication Act 1903.

For further information, if required, contact:

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