PROTECTION OF THE SEA (POWERS OF INTERVENTION) 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 authorize the Government to take measures to protect the sea from oil and other noxious substances discharged from ships.

Background

Sea also Bills Digests of Protection of the Sea (Civil Liability) Bill 1981, the Protection of the Sea (Discharge of Oil from Ships) Bill and the Navigation (Protection of the Sea) Amendment Bill 1981.

The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (the Convention) has come into force internationally and this Bill will enable Australia to ratify it. The 1973 Protocol relating to Intervention on the High Seas in Cases of Pollution By Substances Other than Oil (the Protocol) has not come into force internationally. This Bill will implement the Convention and the Protocol. Provisions relating to intervention in Part VIlA of the Navigation Act 1912 are to be repealed by the Navigation (Protection of the Sea) Amendment Bill 1981. The Minister states in his Second Reading Speech that this Bill will be broader than the provisions of the Convention or the Protocol and will be based on powers conferred by customary international law; provisions to this effect are now contained in the Part VIlA of the Navigation Act 1912.

Main Provisions

The Act is to commence on a date to be proclaimed, not earlier than the Convention comes into force for Australia (clause 3). Sub-clause 4(2) declares Parliament's intention that any provisions relating to the Protocol are to have full force and effect whether or not the Protocol has entered into force.
Under clause 4 the Bill is to bind the Commonwealth, the States, the Northern Territory and the Territory of Norfolk Island (the Territories); they are not to be prosecuted for an offence although their servants may be. Under clause 5, State and Territory laws are to continue to apply; nothing in the Historic Shipwrecks Act 1976 affects the operation of this Act.

Clause 8 enables the Minister to take such measures on the high seas as he considers necessary to prevent, mitigate or eliminate grave and imminent danger to Australia's coastline or related interests from pollution of the sea by oil following a maritime casualty or acts related to it. Many of these terms are defined in the Convention (which is set out in Schedule 1) and by sub-clause 8(6) they have the same meaning in the Bill as they do in the Convention. "Oil" means crude oil, fuel oil, diesel oil and lubricating oil; "maritime casualty" means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo; "related interests" is defined to mean maritime, coastal, port or estuarine activities including fishing, tourism, health of the coastal population and conservation of living marine resources and wild life (see Article 2 in the Convention).

The Minister may, in particular, take actions to move ships, remove cargo, salvage the ship or its cargo, sink or destroy ships, sink, destroy or discharge cargo into the sea, or take control of the ship or issue instructions to the owner, master or any salvor (sub-clause 9(2)). Warships and other foreign ships used on a non-commercial basis are exempted (sub-clause 8(3)). In exercising his powers the Minister must act in accordance with Articles III and IV of the Convention which require such things as consultation with other member States, notification of interested parties, consultation with independent experts from a list maintained by the Inter-Governmental Maritime Consultative Organization and notification of measures taken to member States (sub-clause 8(4)).

Clause 9 makes similar provisions relating to the measures to be taken by the Minister to deal with pollution of the sea by substances other than oil (by sub-clause 9(2) these include substances enumerated in a list to be maintained by the Organization and "those other substances which are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea"; see Article 1 of the Protocol in Schedule 2 to the Bill).
Clause 10 relates to the taking of measures other than in accordance with the Convention or Protocol. It relates only to ships in internal waters (within the limits of a State or Territory) or in the coastal sea of a State or Territory and to Australian ships on the high seas. If oil or a noxious substance is escaping or has escaped from one of these ships or the Minister is satisfied that this will happen he may take measures to prevent or reduce the extent of pollution of Australian waters or the Australian coast or an Australian reef, to protect them from pollution, to prevent damage to the related interests of Australia (similarly defined as in the Convention) or to protect them from damage and to remove the effects or likely effects of pollution (sub-clause 10(2)). "Noxious substance" means a substance specified in items 1, 2, 3 or 4 of the Protocol or as prescribed.

The powers of the Minister are similar to those he has under clauses 8 and 9 (sub-clause 10(3)). In exercising his powers the Minister is to act in accordance with specified principles; for example, measures taken are to be in proportion to the damage, should not exceed those reasonably necessary to achieve the end sought and should not unnecessarily interfere with the rights and interests of other countries or of persons likely to be affected (sub-clause 10(4)). Under sub-clause 10(6) these requirements do not apply to trading ships on intra-State voyages, to Australian fishing vessels or domestic voyages or to pleasure craft.

Clause 11 specifies in more detail the directions that may be given under the Bill in relation to ships and their cargo and clauses 12, 13 and 14 specify how these may be addressed. Under clause 15 directions may be revoked. Clauses 16 and 17 deal with the form (in writing) and service of directions; and notification of new owners and the Minister when a change of ownership occurs is covered by clause 18.

It is an offence to contravene a direction under the Bill (penalty: $50,000 for a body corporate; $20,000 for a natural person with lesser penalties of $5,000 and $2,000 respectively where both parties agree to the offence being dealt with by a court of summary jurisdiction and it is appropriate for it to be so heard). It is a defence where failure to comply with a direction was to save life at sea, or where compliance was not possible or not possible within the required time (clause 19).

Clause 21 shifts the onus of proof to the defendant in relation to such things as proving the exemptions under sub-clause 10(6).
Clauses 23 and 24 apply to the regulations that can be made under the Bill and to the making of orders about "noxious substances". Orders are to be gazetted and tabled and may be disallowed; and, although not statutory rules, they are subject to the same requirements about publication under the Statutory Rules Publication Act 1903.

For further information, if required, contact:

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