ENVIRONMENT PROTECTION (SEA DUMPING) BILL 1981

Date Introduced: 14 May 1981
House: House of Representatives
Presented by: Hon. D.S. Thomson, Minister for Science and Technology for Hon. I.B.C. Wilson, Minister for Home Affairs and Environment

Short Digest of Bill

Purpose

To implement the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters.

Background

The 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters (hereinafter called "the Convention") was signed by Australia in 1973 subject to ratification. It has been in force internationally since 1975 and by the enactment of this legislation Australia will be able to become a party to the Convention.

The aim of the Convention is to prohibit the dumping of certain categories of matter and to regulate, by licensing, the dumping of others. The Bill in implementing the Convention applies to Australian vessels, aircraft and platforms in any part of the sea and to other vessels (with specified exceptions) in Australian waters.

Main Provisions

The Beaches, Fishing Grounds and Sea Routes Protection Act 1932 is repealed by clause 3.

Important definitions in relation to the operation of the legislation contained in clause 4 are those of "Australian aircraft", "Australian platform", "Australian vessel" and "Australian waters". Also in relation to aircraft, platforms and vessels, the meaning of "owner" is extended to include co-owner, shareholder or person having the use or control thereof.

As provided in Article III 1(c) of the Convention clause 5 of the Bill exempts the disposal of wastes arising
from exploration for, or exploitation of, seabed mineral resources. Clause 7 also exempts vessels, aircraft or platforms of the Defence Force and those belonging to the naval, military or air forces of a foreign country. This is in accordance with the international law concept of sovereign immunity. However, Article VII 4 of the Convention requires that the contracting parties shall ensure by the adoption of appropriate measures that such vessels, aircraft etc. act in a manner consistent with the object and purpose of the Convention.

Clause 8 provides that the Bill will bind the Crown but will not act so as to make the Commonwealth and State Governments liable for prosecution. However, provision is made for the person in charge of a Crown vessel, aircraft or platform to be prosecuted as the owner.

Provision is made in clause 9 for the States and the Northern Territory to give effect to the Convention in relation to their coastal waters. (See Bills Digest 80/67 Coastal Waters (State Powers) Bill 1980 and 80/72 Coastal Waters (Northern Territory Powers Bill 1980).

Clauses 10, 11 and 12 provide that the dumping of waste, the dumping of a vessel etc., or the loading of a vessel etc. for the purpose of dumping, otherwise than in accordance with a permit shall be an offence. The provisions apply in Australian waters and to Australian vessels wherever situated. Clause 13 provides penalties for the offences under clauses 10, 11 and 12 ranging from $10,000 to $100,000.

The controls imposed upon the incineration at sea of wastes by clause 14 give effect to a 1978 amendment of the Convention which deals specifically with this problem.

Clause 15 provides the defences applicable to charges under clauses 11 to 14. Apart from provisions relating to the safety of human life or of the vessel, aircraft or platform the clause also provides that it shall be a defence where the dumping is carried out by an Australian vessel etc. outside Australian waters in accordance with a permit under the Convention issued by a country that is a party to the Convention. However, this recognition of "foreign permits" does not apply to offences within Australian waters.

By clause 16 a general power is conferred on the Minister to take such steps as are necessary to remedy or mitigate the damage caused by a dumping in Australian waters that results in danger or in an interference with exploration or exploitation of natural resources. Clause 17
provides that the cost of such remedial action shall be payable by a person convicted of the offence of dumping the waste and that the amount shall be a charge over the vessel etc.

Provisions relating to the grant, suspension, revocation, imposition of conditions, and variation of operation of permits are contained in clauses 19 to 23 of the Bill. Clause 22 deals specifically with permits in respect of radioactive wastes and is stated in the explanatory memorandum to give effect paragraph C5 of the recommendations of the International Atomic Energy Agency.

Clause 24 provides that decisions made in respect of permits pursuant to clauses 19, 20, 21 and 23 will be subject to review by the Administrative Appeals Tribunal. This is subject to exception where an inquiry has been directed to be held under section 11 of the Environment Protection (Impact of Proposals) Act 1974, or where under clause 19(5) the Minister does not consider that an emergency situation exists.

Provisions relating to the appointment and powers of inspectors for the purposes of the legislation are contained in clauses 26 to 30. All Federal and Territorial police are to be inspectors by virtue of their office. The powers conferred include the boarding of an Australian vessel, or a vessel within Australian waters, and bringing it to port where it is believed on reasonable grounds that offence of dumping has been or will be committed.

Clause 33 makes provision for the granting of an injunction restraining any anticipated contravention of clauses 10, 11, 12 or 14.

Clause 34 enables the Minister to delegate his powers under the legislation.

Offences of making false statements in respect of an application for a permit or to an inspector in the course of his duty, and of failing to comply with the conditions of a permit are provided by clauses 35 and 36 respectively. Clause 37 sets out procedures to be adopted in respect of summary and indictable offences.

Provisions relating to documentary evidence are contained in clause 38 and clause 39 provides for the appointment of an analyst for the purpose of the Act, the certificate of such analyst to be prima facie evidence of the nature of a substances.
Clause 40 enables fees to be prescribed for the granting of permits and clause 41 enables the making of regulations for the purposes of the Act.

The Convention is set out in Schedule 1 of the Bill and the 1978 and 1980 amendments are in Schedules 2 and 3 respectively.

For further information, if required, contact:

Science, Technology and Environment Group

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LEGISLATIVE RESEARCH SERVICE