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1993

**THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA**

**SENATE**

**ENVIRONMENT PROTECTION (SEA DUMPING)  
AMENDMENT BILL 1993**

**EXPLANATORY MEMORANDUM**

(Circulated by authority of the  
Minister for the Environment, Sport and Territories,  
the Honourable Ros Kelly MP)



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## OUTLINE

The purpose of this Bill is to amend the *Environment Protection (Sea Dumping) Act 1981* to implement the Government's decision to ratify the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping, commonly referred to as the SPREP Dumping Protocol, which is one of two protocols to the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region. As Australia is a Contracting Party to the international Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, otherwise known as the London Convention 1972, and the substantive provisions of this Convention are consistent with those of the SPREP Dumping Protocol, Australia would have little difficulty in meeting the obligations under this Protocol.

## FINANCIAL IMPACT STATEMENT

As a great majority of the obligations under the SPREP Dumping Protocol are already met by the existing provisions of the *Environment Protection (Sea Dumping) Act 1981*, the financial implications of ratifying the Protocol will be minimal.

## NOTES ON CLAUSES

### Clause 1 - Short title

1. This clause provides:

(1) for the Act to be cited as the *Environment Protection (Sea Dumping) Amendment Act 1993*; and

(2) that in the Act a reference to the "Principal Act" means the *Environment Protection (Sea Dumping) Act 1981*.

### Clause 2 - Commencement

2. This Act will come into effect on the date of proclamation, with automatic entry into force if proclamation is not made within 12 months of date of assent.

### Clause 3 - Definitions

3. Clause 3(a) redefines "Australian waters" by inserting after paragraph (b) in section 4 of the Principal Act new paragraphs (c) and (d):

(1) paragraph (c) transfers the substance of regulation 2A of the *Environment Protection (Sea Dumping) Regulations* and regulation 2A will be repealed after the Act comes into effect; and

(2) paragraph (d) extends geographical coverage to the continental shelf where it goes beyond the Australian fishing zone which is the area covered by the SPREP Dumping Protocol.

4. Clause 3(b) provides the new definition of "Australian fishing zone" as in the *Fisheries Management Act 1991* and will replace regulation 2 of the *Environment Protection (Sea Dumping) Regulations* when the Act comes into effect. It also defines the "SPREP Protocol" which is set out in Schedule 4.

#### **Clause 4 - Declaration by Minister in relation to coastal waters of a State etc.**

5. Clause 4(1) amends section 9 of the Principal Act to provide that where a State or the Northern Territory seeks the "rolling back" of the provisions of the Principal Act, so that State or Northern Territory law can apply to loading and dumping of wastes in the relevant coastal waters, the State or Northern Territory law must give effect to the SPREP Protocol as well as the London Convention 1972.

6. Subclauses (2), (3), (4) and (5) apply to a declaration in force under section 9 of the Principal Act. Only Tasmania is currently affected by these subsections, which will require that the Tasmanian *Environment (Sea Dumping) Act 1987* should make provision within 12 months to give effect to the SPREP Protocol, or the rollback declaration must be revoked.

#### **Clause 5 - Loading of wastes or other matter etc. for dumping etc.**

7. This clause amends section 12 of the Principal Act to make it an offence to load any waste or other matter onto an Australian vessel or aircraft for the purpose of dumping at sea from a country that is not a party to the SPREP Dumping Protocol.

#### **Clause 6 - Penalties for certain offences**

8. The list of substances the dumping of which is prohibited under the SPREP Dumping Protocol is different from the list in Annex I to the London Convention 1972. In particular, the dumping of organophosphorous compounds is banned under the SPREP Dumping Protocol but not under the London Convention 1972. Therefore, this clause amends section 13 of the Principal Act to provide the same penalties for dumping banned substances under both the SPREP Dumping Protocol and the London Convention 1972.

## **Clause 7 - Defences to charge of an offence**

9. The main differences between the SPREP Dumping Protocol and the London Convention 1972 are:

- geographical coverage (dealt with under Clause 3);
- incineration of wastes or other matter which is not specifically covered under the SPREP Dumping Protocol;
- a slight difference in the list of substances covered under Annexes I and II of the SPREP Dumping Protocol and the London Convention 1972; and
- parties to the SPREP Dumping Protocol may not necessarily also be parties to the London Convention 1972.

10. Therefore, this clause amends section 15 of the Principal Act to take account of all these possible variations with the effect that no offence is committed provided the appropriate permit is granted for a dumping or incineration activity in accordance with either the SPREP Dumping Protocol or the London Convention 1972.

## **Clause 8 - Restoration of environment**

11. This clause amends section 16 of the Principal Act to make it consistent with the new definition of "Australian waters".

## **Clause 9 - Grant of permit**

12. Considering the slight difference in the list of substances banned under the SPREP Dumping Protocol and the London Convention 1972, this clause amends section 19 of the Principal Act to reflect this difference and describes the special circumstances under which such substances may be dumped at sea. Also, considering the different approach to incineration of wastes at sea under different treaties or conventions to which Australia is a party, the provisions of all these treaties and conventions need to be taken into account in deciding whether a permit should be granted for incineration of wastes or other matter at sea.

#### **Clause 10 - Applications for review**

13. This clause amends section 24 of the Principal Act to exclude appeals to the Administrative Appeals Tribunal for review of a decision made by the Minister to refuse a dumping permit where this decision is, except in emergency situations, required by the SPREP Dumping Protocol.

#### **Clause 11 - Addition of a new Schedule**

14. This clause provides for the SPREP Dumping Protocol to be set out in new Schedule 4 to the Principal Act.

#### **Clause 12 - Amendments of the Principal Act relating to penalties**

15. This clause amends the Principal Act relating to penalties as set out in Schedule 2 to this Bill, to refer to penalty units.

