

1981

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

Environment Protection (Sea Dumping) Bill 1981

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Home Affairs  
and Environment the Hon. Ian Wilson)



## OUTLINE

The purpose of this Bill is to provide the legislative basis which will enable Australia to give effect to the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. The Convention has been in force internationally since 1975. Australia signed the Convention in 1973 subject to ratification. Some 45 countries, including the United States, Canada, Federal Republic of Germany, France, Japan, U.S.S.R. and United Kingdom are now party to the Convention. The Convention obliges contracting parties to prohibit the dumping of certain categories of matter and to regulate, by licensing, the dumping of others. Contracting Parties are obliged to apply the measures of the Convention to vessels and aircraft registered in its territory or flying its flag, vessels and aircraft loading in its territory or territorial seas matter which is to be dumped, vessels and aircraft and fixed or floating platforms under its jurisdiction believed to be engaged in dumping. Relevant provisions of the Convention have been applied in Australia since 1972 by the Commonwealth Government on a voluntary basis in cooperation with States and industry. This legislation, by opening the way for Australia to become a party to the Convention, will formalise our own national arrangements to control marine pollution through dumping as agreed between the Commonwealth, States and the Northern Territory as part of the Offshore Settlement. The legislation makes provision for the States and the Northern Territory to give effect to the Convention in relation to their coastal waters.



## NOTES ON CLAUSES

### Clause 1

Provides for the citation of the Bill.

### Clause 2

Provides that the Bill is to come into operation on a date to be fixed by Proclamation. This will allow any necessary administrative arrangements to be completed before the Bill is brought into operation.

### Clause 3

Repeals the Beaches, Fishing Grounds and Sea Routes Protection Act 1932.

### Clause 4

Contains the definitions which are required for the purposes of the Bill.

Definitions in sub-clause (1) of particular importance are those of "Australian platform", "Australian waters", "coastal waters", "continental shelf", "Convention" and "territorial sea".

"Australian platform" is defined in such a way as to include all platforms, whether Australian or foreign owned, that are operating in the sea above the continental shelf of Australia or of an external Territory or in Australian waters.

"Australian waters", means the territorial sea of Australia or an external Territory including Australian internal waters. The definition does not include State internal waters.

"Coastal waters" is given the same meaning as in the Coastal Waters (State Powers) Act 1980.

"Continental shelf" has the same meaning as in the Seas and Submerged Lands Act 1973. That Act provides that "continental shelf" has the same meaning as in the Convention on the Continental Shelf.

"Convention" has been defined so as to include future amendments to the Convention that are accepted by Australia. Such amendments are to be set out in regulations under the Bill.

"Territorial sea" has the same meaning as in sections 5 and 7 of the Seas and Submerged Lands Act 1973.

Sub-clause 4(4) provides that an expression that is used in the Bill and in the Convention is to have the same meaning in the Bill as it has in the Convention. For example, when the expression "dumping" occurs in the Bill it will have the same meaning as that expression has in Article III 1.(a) and (b) in the Convention.

Clause 5

Provides that the Bill will not apply to the disposal of wastes arising from the exploration and exploitation of seabed mineral resources. This exception is provided for in Article III 1.(c) of the Convention.

Clause 6

Extends the Bill to every external Territory and applies its provisions both within and outside Australia.

Clause 7

Provides that the Bill does not apply to vessels, aircraft or platforms belonging to the Australian Defence Force or to the defence forces of a foreign country.

Clause 8

Provides that the Bill will bind the Crown in right of the Commonwealth, the States, the Northern Territory and Norfolk Island. The clause ensures that the Commonwealth or a State or Territory is not liable for prosecution, but the person in charge of a vessel, aircraft or platform, belonging to the Crown is liable for prosecution for an offence.

Clause 9

Sub-clause (1) provides that where a State or the Northern Territory legislates to give effect to the Convention in the coastal waters of that State or the Northern Territory the Minister shall, by notice published in the Gazette, declare that the Bill is not to apply to the coastal waters of that State or the Northern Territory.

Sub-clause (3) ensures that the Minister may revoke a declaration under sub-clause (1) should the laws of a State or the Northern Territory be subsequently amended or repealed so that effect is not given to the Convention.

Where a declaration is in force in relation to the coastal waters of a State or the Northern Territory, sub-clause (2) ensures that references to Australian waters or to the sea in the Bill will be read as not including references to the coastal waters of that State or Northern Territory.

This clause gives effect to the agreement reached at the June 1980 Premiers' Conference.

Clause 10

Makes it an offence for foreign and Australian vessels and aircraft to dump wastes into Australian waters and for Australian vessels, aircraft and platforms to dump wastes into any part of the sea, otherwise than in accordance with a permit.

Clause 11

Makes it an offence for any vessels, aircraft or platforms to be dumped into Australian waters, for Australian vessels, aircraft or platforms to be dumped into any part of the sea and for any vessels, aircraft or platforms to be dumped into any part of the sea from an Australian vessel, aircraft or platform, otherwise than in accordance with a permit.

Clause 12

Makes it an offence to load wastes, vessels, aircraft or platforms, otherwise than in accordance with a permit, for the purpose of dumping into the sea or incineration at sea. The clause applies to the loading of any vessel or aircraft in Australia or in Australian waters or to the loading of any Australian vessel or aircraft in, or in the territorial sea of, a country that is not a party to the Convention.

Clause 13

Sets out the penalties for offences against clauses 10, 11 or 12.

Clause 14

Prohibits or regulates the incineration at sea of wastes or other matter. This clause gives effect to the amendments to the Convention set out in Schedule 2 to the Bill. Sub-clause (6) sets out the penalties for offences against this clause.

Clause 15

Sets out the defences to a charge of an offence against clause 10, 11, 12 or 14. The various defences are -

- (a) the dumping, loading or incineration was in accordance with a permit granted by a country (other than Australia) that was a party to the Convention. This defence does not apply where the dumping or incineration occurs in Australian waters or in the sea above the continental shelf of Australia or an external territory or where wastes are loaded for the purpose of being dumped into Australian waters or into the sea above the continental shelf above Australia or an external territory;
- (b) the dumping was necessary to secure the safety of human life, or of a vessel, aircraft or platform due to stress of weather;
- (c) the dumping appeared to be the only way of averting a threat to human life or to the safety of a vessel, aircraft or platform.

In the case of (b) and (c) the dumping must have been conducted in such a manner as to minimize the likelihood of damage to human or marine life and must have been reported to the Minister as soon as possible after the dumping.

#### Clause 16

Empowers the Minister to take such steps as he considers proper to repair or remedy any condition, or to mitigate any damage, arising from the dumping of wastes, vessels, aircraft or platforms into Australian waters or into the sea above the continental shelf of Australia or an external Territory.

#### Clause 17

Provides that where a person has been convicted of dumping in contravention of the Bill and the Commonwealth has incurred expenses or other liabilities in repairing or remedying any condition resulting from that dumping, that person is liable to pay to the Commonwealth an amount equal to the total amount of those expenses and liabilities.

Sub-clause (2) ensures that the Commonwealth cannot recover more than the total amount of the expenses and liabilities incurred where 2 or more persons have been convicted in respect of the same act of dumping.

Sub-clause (3) provides that where the owner of a vessel, aircraft or platform has been convicted of a dumping offence the vessel, aircraft or platform may be detained until the amount is paid. Only Australian vessels etc or vessels/ aircraft in Australia or in Australian waters may be detained.

Sub-clause (5) makes it an offence for detained vessels to go to sea before they are released.

#### Clause 18

Sets out the procedures for applications for permits.

Under sub-clause (3) the Minister may require additional information to that supplied by the applicant in his application.

Where, in considering an application, the Minister considers it will be necessary for research or analysis to be undertaken to determine the consequences of the proposed dumping the Minister may require the applicant to enter into an agreement with the Commonwealth. The agreement may require the applicant (a) to undertake the necessary research at his own expense; (b) to reimburse the Commonwealth for research and supervision undertaken by it; (c) to give a security to the Commonwealth in respect of amounts that may become payable; (d) to report to the Minister the results of any research or analysis.



Clause 19

Sets out the procedures to be followed in granting permits.

Sub-clause (5) provides that a permit to dump wastes to which Annex 1 to the Convention applies shall not be granted except in an emergency posing an unacceptable risk relating to human health and admitting no other feasible solution. This is in accordance with Article V2 of the Convention.

Sub-clauses (6), (7) and (8) provide that in granting dumping and incineration permits the Minister is to have regard to the factors set forth in the Annexes to the Convention and to the Regulations for the Control of Incineration of Wastes or other Matter at Sea (Schedule 2 to the Bill). This is in accordance with Article IV 2 to the Convention.

Sub-clause (9) provides that before granting a permit the Minister may require an applicant to undertake research and monitoring relating to the effects of the dumping on the marine environment, to reimburse the Commonwealth any expense incurred in undertaking research or monitoring relating to the dumping, to give a security to the Commonwealth for the payment of any amount he may become liable to pay to the Commonwealth, to report to the Minister the results of any research, monitoring or investigation.

Clause 20

Provides for the suspension and revocation of permits.

Clause 21

Provides that the Minister may, when granting a permit, impose conditions in respect of the permit.

Clause 22

Paragraph D of Annex II to the Convention provides that in the issue of permits for the dumping of radio-active wastes the Contracting Parties shall take full account of the recommendations of the International Atomic Energy Agency. That Agency has recommended that the dumping of radio-active wastes should be supervised by escorting officers with appropriate powers of direction. Clause 22 gives effect to paragraph C.5 of the I.A.E.A. recommendations.

Clause 23

Provides that the holder of a permit may apply to the Minister to vary the operation of a permit.

Clause 24

Provides that persons may apply to the Administrative Appeals Tribunal for a review of decisions by the Minister under clauses 19, 20, 21 and 23.

An appeal to the Tribunal does not lie where a public inquiry has been held under section 11 of the Environment Protection (Impact of Proposals) Act 1974 or where a permit has been granted in an emergency situation under sub-clause 19(5).

Clause 25

Sets out various matters which the Minister must cause to be published in respect of dumping permits.

Clause 26

Provides that the Minister may appoint inspectors to enforce the Bill.

Clause 27

Provides that members of the Australian Federal Police and Territory police officers are inspectors ex officio.

Clause 28

Provides that inspectors, other than police officers, are to be issued with identity cards.

Clause 29

Provides that, for the purposes of policing the Bill, an inspector may board vessels, aircraft or platforms or stop and detain vessels or aircraft. This power only extends to Australian vessels, aircraft or platforms or foreign vessels or aircraft that are in Australia or an external territory or are in Australian waters.

Clause 30

Empowers an inspector to enter premises for the purpose of exercising his functions under clause 31 either with the consent of the owner of the premises or in pursuance of a warrant issued by a Justice of the Peace.

Clause 31

Sets out the functions of an inspector under the Bill.

Clause 32

Provides that an inspector may, without warrant, arrest any person, if he has reasonable grounds to believe that the person is committing or has committed an offence against the Bill and proceedings against the person by summons would not be effective. A person so arrested must forthwith be brought before a Justice of the Peace or other proper authority.

Clause 33

Provides that the Attorney-General or an interested person may apply to a prescribed court for an injunction to prevent breaches of clauses 10, 11, 12 or 14 of the Bill. An interested person is defined to mean a person whose use or enjoyment of any part of the sea is likely to be adversely affected by the proposed breach. The regulations will declare which courts of a State or Territory will be prescribed courts for the purposes of this clause.

Clause 34

Empowers the Minister to delegate his powers under the Bill. Instruments of delegation are to be in writing signed by the Minister. A delegation by the Minister does not prevent him from exercising his powers under the Bill.

Clause 35

Makes it an offence for a person, in connection with a permit, to make false or misleading statements or present information that is false or misleading.

Clause 36

Makes it an offence for persons to fail to comply with conditions imposed in respect of permits.

Clause 37

Sub-clause (1) provides that offences against clauses 10, 11, 12 or 14 are indictable offences. Notwithstanding this, sub-clause (2) provides that such offences may be dealt with summarily if the court is satisfied that it is proper to do so and the defendant and the prosecutor agree.

Clause 38

Provides for any record kept in pursuance of the Bill, or a certified copy of an entry in that record, to be admitted as prima facie evidence in proceedings for an offence against the Bill. Documents purporting to be a record or certified copy will be taken as such unless the contrary is proved.

Clause 39

Provides that certificates of analysts appointed by the Minister to examine substances shall be admissible as prima facie evidence. Documents purporting to be certificates shall be taken as such unless the contrary is proved. A certificate shall not be taken as evidence until the person charged is given a copy of the certificate and given notice that the certificate is to be used as evidence.

Clause 40

Provides that fees to be paid in respect of applications for permits may be prescribed by the regulations.

Sub-clause (3) provides that the Minister may waive the payment of any fee where he considers it necessary or desirable to do so.

Clause 41

Provides that the Governor-General may make regulations prescribing matters required or permitted by the Bill. In particular, the regulations may provide the manner of service of notices under the Bill and may provide for the imposition of penalties not exceeding \$500.

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