

1986

THE PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PROTECTION OF THE SEA LEGISLATION AMENDMENT BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister
for Transport the Hon. Peter Morris, MHR)

PROTECTION OF THE SEA LEGISLATION AMENDMENT BILL 1986

Outline

The object of the Protection of the Sea Legislation Amendment Bill 1986 is to amend four Commonwealth Acts to facilitate the implementation of a number of anti-pollution incentives which have been incorporated in international conventions.

In addition, the Bill contains amendments to penalties provided for in the Navigation Act 1912 and the Protection of the Sea (Prevention of Pollution from Ships) Act 1983. The amendments form part of a general review of penalties contained in Commonwealth legislation.

The Bill will enable Australian implementation of Annexes III, IV and V to the International Convention for the Prevention of Pollution from Ships, 1973 (the MARPOL Convention). This object will be achieved by extending the operation of the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 and the Navigation Act 1912 to give effect to Annexes III, IV and V, which deal respectively with prevention of ship-sourced pollution from harmful substances in packaged forms, sewage and garbage.

Annex III applies to all ships carrying harmful substances in packaged forms, or in freight containers, portable tanks or road and rail tank wagons. The Annex requires that detailed provisions on packaging, marking, labelling, documentation, stowage, quantity limitations, exceptions and notifications, for preventing or minimizing pollution by harmful substances be complied with.

Annex IV prohibits ships from discharging sewage within four miles of the nearest land unless they have in operation an approved treatment plant. Between four and twelve miles from land sewage must be comminuted and disinfected before discharge. Annex V sets specific minimum distances for the disposal of the principal types of garbage. A significant feature of this Annex is the complete prohibition placed on the disposal of plastics, including synthetic ropes and fishing nets, into the sea.

The Bill includes amendments to the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 to apply this Act explicitly to the Jervis Bay Territory and external Territories. These amendments will clarify the application of the division of responsibility agreed to by the Commonwealth and the States/NT for the implementation of the Convention.

The Bill also includes amendments to both the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 and the Navigation Act 1912 to give effect to the 1985 Amendments to the MARPOL Convention. These Amendments

relate to Annex II of MARPOL, which deals with the prevention of pollution by noxious liquid substances carried in bulk, and to Protocol I, which deals with the reporting of discharges of pollutants.

The Amendments were made by the International Maritime Organization under the tacit amendment procedure contained in the Convention which is reserved for technical amendments. The Amendments take account of technical developments which have occurred since the original Convention was developed, and contain requirements which are both more readily achievable on board ships and more easily enforceable by governments.

The Bill includes amendments to the Protection of the Sea (Civil Liability) Act 1981 which will enable Australia to implement the 1984 Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969. This Convention is designed to ensure that compensation is available to persons who suffer oil pollution damage as a result of maritime casualties involving oil-carrying ships. The 1984 Protocol increases the liability limits and extends the scope of the Convention.

Finally, the Bill will amend the Protection of the Sea (Shipping Levy Collection) Act 1981 to bring the definition of "tonnage" into line with the 1969 Tonnage Measurement Convention and its implementing legislation. This will ensure that this Act can be easily applied to all ships whether their tonnage has been determined under the 1969 Convention or the traditional method which is embodied in Regulations under the Navigation Act 1912.

Structure of Bill

The Bill consists of five Parts. Part I contains the title and details of commencement. Parts II, III, IV and V relate respectively to amendments to the Navigation Act 1912, Protection of the Sea (Prevention of Pollution from Ships) Act 1983, Protection of the Sea (Civil Liability) Act 1981 and Protection of the Sea (Shipping Levy Collection) Act 1981.

The Bill is structured in this way to allow for the proclamation of the various amendments at different times, as dictated by the international entry into force of the instruments to which the amendments refer.

Administration

The Bill will be administered by the Federal Department of Transport within existing resources.

Financial Impact Statement

Administrative costs will continue to be recovered by way of fees. Immediate effect on revenue of amendment to Protection of the Sea (Shipping Levy Collection) Act is expected to be slight. The levy rate is reviewed annually to ensure that it is kept at a level which will adequately fund the National Plan to Combat Pollution of the Sea by Oil. There is no net budgetary impact arising from the Bill.

NOTES ON CLAUSES

PART I - PRELIMINARY

CLAUSE 1 SHORT TITLE

The short title of the Act will be the Protection of the Sea Legislation Amendment Act 1986.

CLAUSE 2 COMMENCEMENT

Clause 2 specifies the entry into force arrangements for the various initiatives contained in the Bill. Matters relating to the operation of the Bill and amendments to existing legislation which should operate immediately will enter into force upon Royal Assent (sub-clause (1)).

Sub-clauses (2) and (3) allow the amendments to the provisions giving effect to Annexes I and II and Protocol I to the MARPOL Convention to come into force when the corresponding parts of the substantive Acts are proclaimed.

Sub-clause (4) provides that the other provisions of the Act will be brought into force by Proclamation. This is necessary as these provisions apply to treaty instruments which are not yet in force internationally.

Sub-clause (5) provides that Part IV, which concerns the 1984 Civil Liability Protocol, will not enter into force before the Protocol enters into force for Australia.

PART II - AMENDMENTS (MARPOL CONVENTION) OF THE NAVIGATION ACT 1912

CLAUSE 3 PRINCIPAL ACT

The Principal Act for the purposes of Part II of the Bill is the Navigation Act 1912.

CLAUSE 4 POWERS OF OWNER OR MASTER AS TO DANGEROUS GOODS

Section 250 of the Principal Act enables the owner or master of a ship to take certain actions, for which he will not be subject to any liability, in relation to the carriage of dangerous goods.

Clause 4 will amend this provision to remove the power to lawfully throw overboard any dangerous goods shipped without the knowledge of the owner or master.

CLAUSE 5
APPLICATION OF DIVISION

This clause amends section 267 of the Principal Act to provide that the specified provisions of the Convention will not apply to the extent that a law of the Jervis Bay Territory and any external Territory makes provision giving effect to certain Regulations of Annex I.

CLAUSE 6
ALTERATION, ETC., OF CONSTRUCTION OF SHIPS
AND CANCELLATION OF CERTIFICATES

Clause 6 removes sub-sections 267D(3) and (4) from the Principal Act. These provisions deal respectively with the prosecution of a person for more than one offence relating to a failure to provide, within the prescribed time, notice of an alteration to a ship's construction, and authorising that one action can cover more than one prosecution for similar offences.

Following an amendment to the Acts Interpretation Act 1901 (Section 45B) provisions of this type are not needed in individual Acts and they are being removed when the opportunity arises.

CLAUSE 7
DIRECTIONS IN RELATION TO FOREIGN SHIPS

Clause 7 is a minor textual amendment to section 267K of the Principal Act to take account of a recent amendment to the Acts Interpretation Act, which provides that the term "contravene" includes "non-compliance".

CLAUSE 8
APPLICATION OF DIVISION

This clause amends section 267N of the Principal Act to provide that the specified provisions of the Convention will not apply to the extent that a law of the Jervis Bay Territory and any external Territory makes provision giving effect to certain Regulations of Annex II.

CLAUSE 9
ALTERATION, ETC, OF CONSTRUCTION OF SHIPS AND
CANCELLATION OF CERTIFICATES

The 1985 Amendments to Annex II of the Convention have introduced the concept of active maintenance of a ship and its equipment to conform with Convention and Annex II requirements.

Clause 9 will amend section 267S of the Principal Act to require that vessels be maintained in such a manner that they will not pose an unreasonable threat to the marine environment.

Clause 9 also removes sub-sections 267S(3) and (4) from the Principal Act. The comments provided in connection with Clause 6, above, also apply.

CLAUSE 10
DIRECTIONS IN RELATION TO FOREIGN SHIPS

Clause 10 is a minor textual amendment to section 267Y of the Principal Act to take account of a recent amendment to the Acts Interpretation Act, which provides that the term "contravene" includes "non-compliance".

CLAUSE 11
INSERTION OF NEW DIVISIONS

New Divisions 12B and 12C, which refer to Annexes III and IV of the Convention respectively, are inserted in Part IV of the Principal Act. The proposed new Divisions are similar to existing Divisions in the Principal Act which deal with Annexes I and II of the Convention. The provisions of the proposed new Divisions are summarised below.

DIVISION 12B
SHIPS CARRYING PACKAGED HARMFUL SUBSTANCES

Proposed Section 267ZA
Interpretation

This provision defines some terms which are important to an interpretation of the Division. To a great extent the meanings of words used in Division 12B will be the same as those words when used in the Convention.

The terms "Australian ship" and "Foreign ship" have been defined in identical terms to the definition of these terms in existing pollution legislation.

Proposed Section 267ZB
Application of Division

This provision preserves the operation of State and Northern Territory law concerning packaging, marking and labelling, documentation, stowage and quantity limitations with regard to MARPOL Annex III pollutants. This provision will have effect in relation to ships to which sub-section 2(1) of the Principal Act refers, namely, ships which normally fall within State and Territory jurisdiction.

Proposed Section 267ZC
Regulations to give effect to Regulations 1 to 6
(inclusive) of Annex III

Proposed section 267ZC provides that regulations may be made which will give effect to Regulations 1 to 6 (inclusive) of Annex III. These Regulations deal with application, packaging, marking and labelling, documentation, stowage and quantity limitations. The proposed section also anticipates that the regulations made under this authority may authorise the Minister to make orders.

DIVISION 12C
SEWAGE

Proposed Section 267ZD
Interpretation

This provision defines some terms which are important to an interpretation of the Division. To a great extent the meanings of words used in Division 12C will be the same as those words when used in the Convention.

The terms "Australian ship" and "Foreign ship" have been defined in identical terms to the definition of these terms in existing pollution legislation.

Proposed Section 267ZE
Application of Division

This provision preserves the operation of State and Northern Territory law concerning surveys, certification and fittings in relation to ships to which sub-section 2(1) of the Principal Act refers, namely, ships which normally fall within State and Territory jurisdiction.

Proposed Section 267ZF
Regulations to give effect to Regulations 3 and 11
of Annex IV

Proposed section 267ZF provides that regulations may be made which will give effect to Regulations 3 and 11 of Annex IV, which deal with surveys and discharge connections respectively. The proposed section also anticipates that the regulations made under this authority may authorise the Minister to make orders.

Proposed Section 267ZG
International Sewage Pollution Prevention Certificates
(1973) for Australian ships

Proposed section 267ZG empowers the Minister to issue an International Sewage Prevention Certificate (1973) if he is satisfied that the ship has been constructed in accordance with the requirements of Annex IV to the Convention. The issue of such certificates is required by Regulation 4 of Annex IV.

Where an Australian ship is overseas when the certificate expires, the Minister may extend the certificate to allow the ship to complete its voyage. Such an extension shall not be for a period exceeding 5 months.

Proposed Section 267ZH
International Sewage Pollution Prevention Certificates
(1973) for foreign ships

This provision gives effect to Regulation 5 of Annex IV which provides that where a party to the Convention requests another party to issue a certificate, the second party may, after appropriate surveys and provided the ship is constructed in accordance with Annex IV requirements, issue the prescribed certificate.

Proposed Section 267ZJ
Alteration, etc, of construction of ships and cancellation
of certificates

Proposed section 267ZJ deals with alterations or damage to Australian ships. A ship's owner or master shall give notice to a prescribed person of any alteration or damage (267ZJ(1)). The Minister may cancel a sewage certificate if the certificate was fraudulently obtained, issued on false information, if the ship has been damaged or altered so that compliance with Annex IV is affected, or proposed section 267ZK survey requirements have not been fulfilled (267ZJ(5)). Penalties not exceeding \$1,000 for a natural person and \$5,000 for a body corporate are provided.

Proposed sub-sections 267ZJ(6) and (7) respectively provide that a certificate cancelled by the Minister is of no further force after notice has been served on the owner, agent or master of the ship, and that the Minister may require the cancelled certificate to be surrendered.

Proposed Section 267ZK
Ships to be surveyed periodically

Proposed section 267ZK requires that a survey of a ship be made at least once during the period in which a sewage certificate is in force. Penalties not exceeding \$2,000 for a natural person and \$10,000 for a body corporate are provided for non-compliance.

Proposed Section 267ZL
Cancellation of Certificate if ship ceases to be an
Australian ship

Proposed section 267ZL provides that a sewage certificate ceases to have effect when the ship to which it refers ceases to be an Australian ship. Where the ship's new Flag State is a party to the Convention, the certificate is still valid for a period of 5 months, or until the certificate expires, whichever occurs first.

Proposed Section 267ZM
Certificates required for Australian ships

Proposed section 267ZM provides penalties for a ship to which the Convention applies going to sea without a sewage certificate. Penalties for non-compliance with this requirement of up to \$10,000 and/or 4 years imprisonment for the ship's master and owner (if a natural person), and a maximum \$50,000 if the owner is a body corporate, are provided. Proposed sub-section (3) provides that the regulations may exempt ships in a prescribed class from this requirement.

Proposed Section 267ZN
Certificates to be carried on board Australian ships

Proposed section 267ZN provides that the owner shall ensure that a ship construction certificate, while in force, shall be carried on board the ship to which it applies. (Penalty \$1,000).

Proposed Section 267ZP
Production of certificates

Proposed section 267ZP requires that certificates be produced when a ship applies for clearance to leave an Australian port. The ship's master shall produce the certificate to a Customs Officer on request. A Customs Officer may refuse to grant the clearance or may detain the ship until the certificate is produced.

Proposed Section 267ZQ
Directions in relation to foreign ships

Proposed section 267ZQ provides for the Minister to give directions to foreign ships not constructed in accordance with Annex IV requirements. Sub-section (1) allows the Minister to direct, in writing, a foreign ship's master or owner that the ship shall comply with specified requirements when approaching, using or leaving Australian ports and off-shore terminals or to avoid those places entirely. This power is to be used only to protect the environment (267ZQ(2)). Non-compliance with sub-section (1) is an offence, and the penalties are not to exceed \$10,000 for the ship's master and owner (if a natural person), and \$50,000

if the owner is a corporate body (267ZQ(4)). The person charged has a defence if the non-compliance resulted from the need to save life at sea, or the direction is not possible of performance (267ZQ(5)).

Proposed Section 267ZR
Offences against Sub-sections 267ZM(1) or (2) and 267ZQ(4)
to be indictable

Proposed section 267ZR makes offences under sub-sections 267ZM(1) (taking ship to sea without the appropriate certificate), 267ZM (2) (taking ship to sea without a certificate which is in force) and 267ZQ(4) (non-compliance with direction given to the master or owner of a foreign ship) indictable offences.

CLAUSE 12
PROSECUTION OF OFFENCES

Sub-clause (1) inserts paragraph 4(e) in section 394 of the Principal Act to provide that offences against sub-sections 267G(3) or 267K(4) may be heard summarily upon agreement of all parties whereupon penalties should not exceed \$2,000 for natural persons and \$10,000 for bodies corporate.

Sub-clause (2) will, upon entry into force, allow certain offences in relation to Annex II of the Convention to be heard summarily, under similar conditions and subject to the same penalties.

Sub-clause (3) will, upon entry into force, allow certain offences in relation to Annex IV of the Convention to be heard summarily, under similar conditions and subject to the same penalties.

CLAUSE 13
PROCEEDINGS AGAINST CORPORATIONS

This clause inserts into the Principal Act a facilitative provision regarding proof of knowledge of a corporation where such knowledge is an element of an offence. Current drafting practice is that provisions of this type be included in legislation which provides for the prosecution of a corporate body.

CLAUSE 14
APPLICATIONS FOR REVIEW - DIVISIONS 12A AND 12C OF PART IV

This clause will amend Section 424B of the Principal Act to allow all unsuccessful applicants for the issue of a certificate or other persons adversely affected by a decision taken by the Minister or his delegate to apply to the Administrative Appeals Tribunal for a review of the decision.

The amendment will also ensure that all persons adversely affected by a discretionary decision taken in accordance with the various provisions listed in sub-section 424B(1) of the Principal Act are advised of their right of appeal to the Administrative Appeals Tribunal.

CLAUSE 15
PENALTIES

Clause 15 revises the level of penalties contained in the Principal Act. This is in line with a general review of penalties contained in Commonwealth legislation.

PART III

AMENDMENTS (MARPOL CONVENTION) OF THE PROTECTION OF THE SEA
(PREVENTION OF POLLUTION FROM SHIPS) ACT 1983

CLAUSE 16
PRINCIPAL ACT

The Principal Act for the purposes of Part III of the Bill is the Protection of the Sea (Prevention of Pollution from Ships) Act 1983.

CLAUSE 17
INTERPRETATION

Clause 17 amends section 3 of the Principal Act to provide that the text of the Convention, which is set out in Schedule 1 to the Principal Act, will contain Annexes III-V. Section 3 is also amended to include reference to the 1985 Amendments to Annex II, and to provide that the text of these amendments is included in the Schedules.

CLAUSE 18
PROHIBITION OF DISCHARGE OF OIL
OR OILY MIXTURES INTO SEA

Clause 18 amends section 9 of the Principal Act to include application to the Jervis Bay Territory. Section 9 generally makes provision concerning prohibition of the discharge of oil or oily mixture into the sea.

CLAUSE 19
OIL RESIDUES

Clause 19 amends section 10 of the Principal Act to include application to the Jervis Bay Territory. Section 10 ensures that oily residues are retained on board the ship until they can be discharged to an appropriate reception facility.

CLAUSE 20
DUTY TO REPORT CERTAIN INCIDENTS INVOLVING
OIL OR OILY MIXTURE

Clause 20 amends the Principal Act to provide that where an incident involving oil or oily mixture occurs in respect of an Australian ship and a foreign country is the nearest coastal state, the government of that country shall be notified. The amendments contained in this provision give effect to a change in reporting requirements included in the Convention by an Amendment adopted by the International Maritime Organization in December 1985.

CLAUSE 21
PROHIBITION OF DISCHARGE OF SUBSTANCES INTO THE SEA

Clause 21 amends section 21 of the Principal Act to take account of amendments to Annex II which provide for the mandatory pre-washing of cargo tanks, in accordance with an approved procedure, for a discharge in a Special Area. A number of minor textual amendments to section 21 are also made in line with Convention requirements, and application of the legislation to the Jervis Bay Territory is provided.

CLAUSE 22
CERTAIN LIQUID SUBSTANCES TO BE TREATED AS OIL

A new section 21A is inserted in the Principal Act to take account of a new Annex II Regulation which deals with oil-like noxious liquid substances. The new regulation states that an oil-like substance, which is identified as such by criteria developed by the International Maritime Organization, may be carried on board an oil tanker if certain conditions are satisfied.

CLAUSE 23
DUTY TO REPORT CERTAIN INCIDENTS INVOLVING
CERTAIN SUBSTANCES

Clause 23 amends the Principal Act to provide that where an incident involving a noxious liquid substance occurs in respect of an Australian ship and a foreign country is the nearest coastal state, the government of that country shall be notified. This provision reflects a new Convention requirement adopted in December 1985.

CLAUSE 24
CARGO RECORD BOOK TO BE RETAINED

Section 25 of the Principal Act is amended to provide that a Cargo Record Book is to be retained and be readily available for a period of 3 years from the date on which the last entry was made. This is a new Convention requirement.

CLAUSE 25
INSERTION OF NEW PARTS

Those new Parts dealing respectively with Annexes III, IV and V of MARPOL are inserted here. This legislation is based on a Commonwealth/State/Northern Territory complementary legislation regime. This Bill's provisions will therefore apply to discharges in the territorial waters of the Jervis Bay and external Territories from any ship, and to discharges from Australian ships beyond the territorial sea. The reporting provisions are a requirement of Article 8 of the Convention and will be applied by Commonwealth Law with a saving clause preserving State and Territory legislation. These arrangements have been agreed to by the States and Northern Territory.

New Part IIIA, which refers to Annex III of the Convention, is inserted after Part III of the Principal Act. The proposed new Part is similar to existing Parts in the Principal Act which deal with Annexes I and II of the Convention. The provisions of the proposed new Part are summarised below.

PART IIIA
PREVENTION OF POLLUTION BY PACKAGED HARMFUL SUBSTANCES

Proposed Section 26A
Interpretation

Unless expressly stated otherwise, the meanings of words used in this Part will be the same as those words when used in the Convention. In addition, a harmful substance is defined as being a substance identified as a marine pollutant in the International Maritime Dangerous Goods Code.

Proposed Section 26B
Duty to report certain incidents involving harmful substances

Sub-clause (1) provides that section 26B does not apply in relation to the sea near the Jervis Bay Territory or an external Territory to the extent that the law of that Territory makes provision giving effect to Protocol I of the Convention.

Sub-clause (2) provides that section 26B does not apply in relation to a prescribed incident involving a foreign ship unless the incident occurs in the sea near the Jervis Bay Territory or an external Territory.

Sub-clause (3) provides a penalty of \$5,000 if an Australian ship's master does not notify an officer, prescribed by the regulations, or, if the incident occurs near a foreign country, the report should be made to the Government of that country, of a discharge of a harmful substance from the ship into the sea. The purpose of this clause is to ensure that the incident is reported without delay so that combat measures can be planned and implemented. This provision also applies to the master of any foreign vessel in the territorial waters of the Jervis Bay Territory or an external Territory.

Sub-clause (4) provides a defence where it can be proved that the master was unable to notify the prescribed officer of the occurrence.

Sub-clause (5) provides that where the master is unable to report an occurrence referred to in sub-clause (3) or the ship is abandoned, then the owner, charterer, manager or operator of the ship is obliged to report the occurrence. Penalties of \$5,000 for a natural person or \$25,000 for a body corporate are provided for non-compliance with this requirement.

Sub-clause (6) provides defences for offences against sub-clause (5) where the person charged proves that he was not aware of either the relevant occurrence or he did not know or suspect that the master was unable to report the occurrence himself.

Sub-clause (7) ensures that defences available to a person charged with an offence against sub-clause (5) are not confined only to defences contained in sub-clause (6).

Sub-clauses (8) and (9) require the master or a person identified in Sub-clauses (3) and (5) respectively to provide a report in the prescribed form to a prescribed officer if requested to do so. These provisions are intended to ensure that the facts of any occurrence as known by the master or reporter of the incident are able to be obtained in order that a combat response can take full account of all the facts of the incident.

Sub-clause (10) provides a penalty of \$5,000 if a ship's master or other identifiable person makes a false or misleading statement in a notice or report to a prescribed officer acting on the authority of sub-clauses (3), (5), (8) or (9).

Sub-clause (11) provides that the term "prescribed incident", for the purposes of this section, means a discharge or the probability of a discharge from the ship of a harmful substance carried in packaged form. Discharges involving the washing overboard of a harmful substance in accordance with approved procedures are exempted from the definition. These procedures are to be defined in regulations or orders made pursuant to regulations.

CLAUSE 26
INSERTION OF NEW SECTIONS

New sections 26AA and 26AB are inserted after section 26 of the Principal Act. The proposed new sections are similar to existing sections in the Principal Act, which deal with Annexes I and II of the Convention. The provisions of the proposed new sections are summarised below.

Proposed Section 26AA
Notification of proposal to carry certain harmful
substances

This clause imposes an obligation on importers, exporters and the master of the ship which will carry a prescribed harmful substance to provide details of the shipment to a prescribed person. Penalties of \$5,000 for an individual and \$25,000 for a body corporate are consistent with penalties elsewhere in pollution legislation for an offence of this type.

Proposed Section 26AB
Prohibition of discharge by jettisoning of harmful
substances into the sea

Sub-clause (1) prohibits and penalises discharges by jettisoning of a harmful substance carried as cargo in packaged form, freight container, portable tank or road and rail tank wagon. Penalties for discharges in contravention of section 26C are not to exceed \$50,000 for the master and owner if the owner is not a corporate body, or \$250,000 if the owner is a corporate body. The prohibitions are subject to exemptions which follow Convention requirements.

Sub-clause (2) provides that sub-clause (1) does not apply in relation to the sea near a State.

Sub-clause (3) provides that sub-clause (1) does not apply in relation to the sea near the Jervis Bay Territory or an external Territory to the extent that the law of that Territory makes provision giving effect to Regulation 7 of Annex III to the Convention.

Sub-clause (4) exempts discharges from foreign ships unless the discharge occurs in the sea near the Jervis Bay Territory or an external Territory. This is in line with Convention requirements that for discharges on the high seas, ships are covered by the laws of their Flag State.

Sub-clause (5) exempts discharges made to secure the safety of a ship or the saving of life at sea.

Sub-clause (6) exempts discharges of harmful substances washed overboard in accordance with procedures authorised by Regulation 7(2) of Annex III. Such procedures will be prescribed in Regulations or Orders made under the Regulations.

Sub-clause (7) is similar to existing provisions in Parts II and III of the Principal Act in that it allows the prosecution of an offence under sub-clause (1) to allege and prove a discharge into the sea, and the defence to use sub-clauses (2), (3), (4), (5) or (6) to show that the discharge is exempt. This clause is constructed on these lines because of the difficulty of bringing an action concerning an incident that can occur on the high seas. In addition, if the provision were not worded in this way it would be incumbent on the prosecution to prove that the Convention conditions relating to discharges were not complied with in whole or in part. The Senate Standing Committee on the Scrutiny of Bills reported on similar provisions included in the Statute Law (Miscellaneous Provisions) Bill (No. 1) 1985. The Committee found that in the case of MARPOL legislation the onus of proof as set out here is acceptable.

CLAUSE 27
DUTY TO REPORT CERTAIN INCIDENTS
INVOLVING HARMFUL SUBSTANCES

Clause 27 amends section 26B of the Principal Act to provide that a notice or report given to a prescribed officer is not to be admitted in evidence in a prosecution under sub-clause 26AB(1) without consent.

CLAUSE 28
INSERTION OF NEW PARTS

New Parts IIIB and IIIC are inserted in the Principal Act after new Part IIIA. The proposed new Parts are similar to existing Parts in the Principal Act which deal with Annexes I and II of the Convention. The provisions of the proposed new Parts are summarised below.

PART IIIB
PREVENTION OF POLLUTION BY SEWAGE

Proposed Section 26C
Interpretation

Unless expressly stated otherwise, the meanings of words used in this Part will be the same as those words when used in the Convention.

Proposed Section 26D
Prohibition of discharge of sewage into the sea

Sub-clause (1) prohibits and penalises discharges of sewage from ships. Penalties for discharges in contravention of section 26F are not to exceed \$50,000 for the master and owner if the owner is not a corporate body, or \$250,000 if the owner is a corporate body. The prohibitions are subject to exemptions which follow Convention requirements.

Sub-clause (2) provides that sub-clause (1) does not apply in relation to the sea near a state.

Sub-clause (3) provides that sub-clause (1) does not apply in relation to the sea near the Jervis Bay Territory or an external Territory to the extent that the law of that Territory makes provision giving effect to Regulations 8 and 9 of Annex IV to the Convention.

Sub-clause (4) exempts discharges from foreign ships unless the discharge occurs in the sea near the Jervis Bay Territory or an external Territory. This is in line with Convention requirements that for discharges on the high seas, ships are covered by the laws of their Flag State.

Sub-clause (5) exempts discharges made to secure the safety of a ship or the saving of life at sea and discharges resulting from damage providing all reasonable precautions were taken to prevent the discharge.

Sub-clause (6) exempts discharges of sewage if certain specified conditions are satisfied.

If the sewage has been disinfected and comminuted in accordance with the regulations, the discharge may be made at a distance of not less than 4 nautical miles from the nearest land. Sewage which has not been processed in this way may be discharged at a distance of not less than 12 nautical miles from the nearest land.

Where sewage has been stored in holding tanks, the sewage must not be discharged instantaneously but may be discharged at a rate prescribed in the regulations provided the ship is proceeding en route at a speed of at least 4 knots.

Sub-clause (7) exempts discharges of sewage where the sewage has been treated in an approved sewage treatment plant.

Sub-clause (8) provides that discharges of sewage into the territorial sea of Australia or into the sea on the landward side of the territorial sea are exempted from the operation of the proposed Act. Discharges from an Australian ship made into the territorial sea of a foreign country are also exempted providing that the discharges comply with the law of that country.

Sub-clause (9) gives effect to the Convention requirement that when the sewage is mixed with wastes or waste water having different discharge requirements, the more stringent requirements will apply.

Sub-clause (10) is similar to existing provisions in Parts II and III of the Principal Act in that it allows the prosecution of an offence under sub-clause (1) to allege and prove a discharge into the sea, and the defence to use sub-clauses (2), (3), (4), (5), (6), (7), (8) or (9) to show that the discharge is exempt. The comments provided in connection with proposed sub-clause 26AB(7), above, also apply.

PART IIIC
PREVENTION OF POLLUTION BY GARBAGE

Proposed Section 26E
Interpretation

Unless expressly stated otherwise, the meanings of words used in this Part will be the same as those words when used in the Convention.

Proposed Section 26F
Prohibition of disposal of garbage into the sea

Sub-clause (1) prohibits and penalises discharges of garbage from ships. Penalties for discharges in contravention of section 26H are not to exceed \$50,000 for the master and owner if the owner is not a corporate body, or \$250,000 if the owner is a corporate body. The prohibitions are subject to exemptions which follow convention requirements.

Sub-clause (2) provides that sub-clause (1) does not apply in relation to the sea near a State.

Sub-clause (3) provides that sub-clause (1) does not apply in relation to the sea near the Jervis Bay Territory or an external Territory to the extent that the law of the Territory makes provision giving effect to Regulations 3, 5 and 6 of Annex V to the Convention.

Sub-clause (4) exempts discharges from foreign ships unless the discharge occurs in the sea near the Jervis Bay Territory or an external Territory. This is in line with convention requirements that for discharges on the high seas, ships are covered by the laws of their Flag State.

Sub-clause (5) exempts discharges made to secure the safety of a ship or the saving of life at sea.

Sub-clause (6) exempts, under certain conditions, discharges of dunnage, lining or packaging materials which will float, other than plastics. Such discharges may only be made when the ship is not within a Special Area and is as far as practicable and not less than 25 nautical miles from the nearest land.

Sub-clause (7) exempts, under certain conditions, discharges of garbage, not being plastics or garbage covered by sub-clauses (6) and (8). Such discharges may only be made when the ship is not within a Special Area and is as far as practicable and not less than 12 nautical miles from the nearest land. Where the garbage is passed through a comminuter or grinder and is ground down to a specified size, the discharge may be made at not less than 3 miles from the nearest land.

Sub-clause (8) exempts discharges of food wastes if the ship is as far as practicable and not less than 12 miles from the nearest land. Certain conditions specified in sub-clause (7) must also be satisfied.

Sub-clause (9) exempts discharges resulting from damage providing all reasonable precautions were taken to prevent the discharge.

Sub-clause (10) exempts the accidental loss of synthetic fishing nets and the materials used to repair such nets, providing all reasonable precautions were taken to prevent the loss.

Sub-clause (11) gives effect to Convention requirement that when the garbage is mixed with other discharges having different disposal or discharge requirements, the more stringent requirements shall apply.

Sub-clause (12) is similar to existing provisions in Parts II and III of the Principal Act in that it allows the prosecution of an offence under sub-clause (1) to allege and prove a discharge into the sea, and the defence to use sub-clauses (5), (6), (7), (8), (9), (10) or (11) to show that the discharge is exempt. The comments provided in connection with proposed sub-clause 26AB(7), above, also apply.

Sub-clause (13) provides that the term "plastics", for the purposes of this Section, includes synthetic ropes, synthetic fishing nets and plastic garbage bags.

CLAUSE 29
PROSECUTION OF OFFENCES AGAINST ACT

Clause 29 revises the level of certain penalties contained in section 28 of the Principal Act. This is in line with a general review of penalties contained in Commonwealth legislation.

Clause 29 also inserts into the Principal Act a facilitative provision regarding proof of knowledge of a corporation where such knowledge is an element of an offence. Current drafting practice is that provisions of this type be included in legislation which provides for the prosecution of a corporate body.

CLAUSE 30
APPLICATION OF CERTAIN PROVISIONS TO FOREIGN SHIPS

Clause 30 amends section 32 of the Principal Act to permit the regulation of oil record book requirements and prescribed operations in relation to foreign ships either flying the flag of or under the authority of a Party to the Convention while such ships are within Australian jurisdiction. This complies with MARPOL Convention requirements.

CLAUSE 31
REGULATIONS

Section 33 of the Principal Act is amended to allow for the making of regulations and orders which give effect to provisions of the Convention which are not covered by the Principal Act. This provision will permit the making of regulations and orders to effect certain requirements of Annexes III, IV and V of the Convention.

CLAUSE 32
ORDERS

Clause 32 contains a minor textual amendment to bring section 34 of the Principal Act into line with current drafting practice.

CLAUSE 33
PENALTIES

Clause 33 revises the level of penalties contained in the Principal Act. This is in line with a general review of penalties contained in Commonwealth legislation.

CLAUSE 34
SCHEDULES

The texts of Annexes III, IV and V of the Convention and the text of the 1985 Amendments to Annex II of the Convention are added as Schedules to the Principal Act.

PART IV - AMENDMENTS OF THE
PROTECTION OF THE SEA (CIVIL LIABILITY) ACT 1981

CLAUSE 35
PRINCIPAL ACT

The Principal Act for the purposes of Part IV of the Bill is the Protection of the Sea (Civil Liability) Act 1981.

CLAUSE 36
INTERPRETATION

Clause 36 amends the various definitions in section 3 of the Principal Act to include, where necessary, a reference to the Protocol of 1984 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969.

CLAUSE 37
CERTAIN PROVISIONS OF CONVENTION TO HAVE THE FORCE OF LAW

Section 8 of the Principal Act provides that certain parts of the Convention will have the force of law as part of the law of the Commonwealth. Clause 37 amends section 8 by adding reference to the relevant provisions of the 1984 Civil Liability Protocol, which effectively means that the Commonwealth accepts the Convention detail on liability limits and owners' compensation funds.

CLAUSE 38
CLAIMS FOR COMPENSATIONS

Clause 38 amends section 9 of the Principal Act to take account of the extended geographical scope of the Convention. Section 9 confers on the State/Territory Supreme Courts federal jurisdiction in the matter of compensation claims when the claims arise from incidents causing pollution damage or requiring preventative measures against such damage.

CLAUSE 39
PROSECUTION OF OFFENCES AGAINST SUB-SECTIONS
15(1), (2) AND (3) AND 22(3)

Clause 39 inserts into the Principal Act a facilitative provision regarding proof of knowledge of a corporation where such knowledge is an element of an offence. Current drafting practice is that provisions of this type be included in legislation which provides for the prosecution of a corporate body.

CLAUSE 40
SCHEDULE

Clause 40 amends the Principal Act by including a new Schedule which contains the text of the Protocol of 1984 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969.

PART V
AMENDMENTS OF THE PROTECTION OF THE SEA (SHIPPING LEVY
COLLECTION) ACT 1981

CLAUSE 41
PRINCIPAL ACT

The Principal Act for the purposes of Part V of the Bill is the Protection of the Sea (Shipping Levy Collection) Act 1981.

CLAUSE 42
INTERPRETATION

The definition of "tonnage" in the Principal Act is amended to cover the situation of a ship whose net tonnage has been determined in accordance with either the Tonnage Measurement Convention or the traditional method embodied in Regulations under the Navigation Act 1912. The term "Tonnage Measurement Convention" is defined as having the same meaning as in Part XA of the Navigation Act 1912.