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THE PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PROTECTION OF THE SEA (PREVENTION OF POLLUTION FROM SHIPS)
AMENDMENT BILL 1986

EXPLANATORY MEMORANDUM

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

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Outline

The object of the Protection of the Sea (Prevention of Pollution from Ships) Amendment Bill 1986 is to facilitate the implementation of the International Convention for the Prevention of Pollution from Ships, 1973 as amended by the Protocol of 1978 and the Amendments of 1984 (the MARPOL Convention).

The Bill will achieve this object of enabling Australian implementation of the MARPOL Convention by extending the scope of the Federal marine pollution legislation to cover all ships and open the way for early Australian ratification of the Convention.

Structure of Bill

The Bill comprises six main provisions which extend the operation of the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 (the Principal Act) to all ships in the Australian territorial sea and the sea on the landward side of the territorial sea. Saving provisions are incorporated to preserve the operation of State and Territory law within the appropriate jurisdictions.

The Bill also contains several minor consequential amendments.

Administration

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

Financial Impact Statement

There is no net budgetary impact arising from the Bill. There are no revenue or outlay implications and no increase in staffing levels is required.

NOTES ON CLAUSES

Clause 1 - Short Title

The short title of the Act will be the Protection of the Sea (Prevention of Pollution from Ships) Amendment Act 1986. The Principal Act is the Protection of the Sea (Prevention of Pollution from Ships) Act 1983.

Clause 2 - Commencement

Proposed sections 1 and 2, which are both purely formal will come into operation on the day the Act receives the Royal Assent. The other provisions of the Act will be brought into force by Proclamation.

Clause 3 - Interpretation

Paragraph 3(a) will amend sub-section 3(1) of the Principal Act by inserting a definition of "State" which includes the Northern Territory.

The drafting scheme of this Bill involves reference to "the sea near a State" and "the sea near an external Territory".

Paragraph 3(b) will insert a new sub-section 3(1A) providing that a reference to "the sea near a State" shall be read as a reference to the territorial sea of Australia adjacent to the State and the sea on the landward side of the territorial sea of Australia adjacent to the State.

New sub-section 3(1B) will include a similar provision in relation to the territorial sea adjacent to an external Territory.

Clause 4 - Act to bind Crown

This is a purely formal amendment of section 4 which will omit the reference to the Northern Territory which is not needed because of the inclusion of that Territory in the new definition of "State".

Clause 5 - Saving of other laws

This substituted saving provision (section 5) will clarify the interpretation of the Act by providing that it is to be read and construed as being in addition to any other law of the Commonwealth.

Sub-section 5(2) provides for a similar saving in respect of law of a State (including the Northern Territory) or an external Territory. This saving provision does not apply in relation to sections 9, 11, 21 and 22 of the Act. These provisions relate to (a) the discharge of oil, oily mixtures or noxious liquid substances into the sea and (b) the reporting to the appropriate authority of that discharge.

Clause 6 - Prohibition of discharge of oil or oily mixture
into sea

Sub-section 9(1) of the the Principal Act prohibits the discharge of oil or oily mixtures into the sea in line with the requirements of Annex I to the MARPOL Convention.

Clause 6 will amend this provision so that it will not apply in relation to the sea near a State or an external Territory to the extent that the law of that State or Territory makes provision giving effect to Regulations 9 and 11 of Annex I to

MARPOL 73/78. These Regulations contain provisions concerning the control of discharges of oil from ships and, specifically, the circumstances in which discharges are prohibited or permitted for operational, safety, or saving of life reasons. Clause 6 will also make consequential formal amendments.

Clause 7 - Oil residues

Clause 7 will omit the reference in section 10 to a law of the Northern Territory in consequence of the inclusion of that Territory in the new definition of "State". Specific provision is now made for an offence involving the law of an external Territory.

Clause 8 - Duty to report certain incidents involving oil
or an oily mixture

Section 11 of the Principal Act requires the master of an Australian ship to report prescribed incidents involving discharges into the sea of oil or an oily mixture. Section 11 gives effect to Article 8 and Protocol I of MARPOL which relate to the reporting of incidents involving the discharge of harmful substances.

Clause 8 will amend this provision so that it will not apply in relation to the sea near a State or Territory to the extent that the law of that State or Territory makes appropriate provision.

Clause 9 - Prohibition of discharge of substances into
the sea

This is a provision expressed in the same terms as clause 6, but relating to the discharge into the sea of noxious liquid substances in accordance with the requirements of Annex II to the MARPOL Convention.

Clause 10 - Duty to report incidents involving harmful
substances

This is a provision expressed in the same terms as clause 8, but relating to the obligation to report the unauthorized discharge into the sea of noxious liquid substances.

Clause 11 - Regulations

Clause 11 will omit the reference in sub-section 33(2) to a law of the Northern Territory as a consequence of the inclusion of that Territory in the new definition of 'State'. Specific provision is now made for an offence involving the law of an external Territory.

