

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Protection of the Sea (Prevention of Pollution from Ships) Bill 1983

Navigation (Protection of the Sea) Amendment Bill 1983

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport the Hon. P.F. Morris)

OUTLINE

PROTECTION OF THE SEA LEGISLATION PACKAGE

The two Bills in this package were introduced in the House of Representatives in the Budget Session 1982 but lapsed when both Houses were prorogued in February 1983.

Protection of the Sea (Prevention of Pollution from Ships) Bill

The Protection of the Sea (Prevention of Pollution from Ships) Bill 1982 will implement the provisions of Annexes I and II of the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL) as amended by the 1978 Protocol to that Convention. The Convention will come into force internationally on 2 October 1983.

Australia signed the Convention in 1974 and the Protocol in 1979 subject to ratification. The Countries currently party to the Convention or Protocol include the United Kingdom, the United States of America, Sweden, Norway, Yugoslavia, France, Liberia and the Federal Republic of Germany.

The 1973 Convention supersedes the International Convention for the Prevention of Pollution of the Sea by Oil 1954 (OILPOL) as amended, and bestows benefits and imposes liabilities on member states regarding pollution from ships.

The 1978 Protocol makes specific amendments to Annex I to the Convention and also permits accepting countries to defer the operation of Annex II for three years from the date that that Annex comes into force internationally.

This Bill will give effect to Annexes I and II to the Convention as amended by the Protocol. Annex I contains regulations for the prevention of pollution by oil and Annex II contains regulations for the control of pollution by noxious liquid substances carried in bulk. The remaining three Annexes deal respectively with pollution by harmful substances carried in packaged form, sewage and garbage. Questions concerning the requirements of these Annexes and whether Australia should adopt the Annexes are being examined by the Marine and Ports Council of Australia.

The Bill will repeal and replace the Protection of the Sea (Discharge of Oil from Ships) Act 1981 which gives effect to the 1954 International Convention for the Prevention of Pollution of the Sea by Oil 1954 as amended.

Navigation (Protection of the Sea) Amendment Bill

This Bill will repeal Division 12 of Part IV of the Navigation Act 1912 which was inserted by the Navigation (Protection of the Sea) Amendment Act 1981 to update OILPOL Convention provisions relating to construction, and size and location of oil cargo tanks in tankers.

This Bill will now provide that MARPOL Convention ship construction requirements will be imposed on owners of Australian ships via the Regulations.

All aspects of certification relating to construction and safety of ships are incorporated in the Navigation Act, and accordingly the implementation provisions for this proposal are also included in the Navigation Act.

PROTECTION OF THE SEA (PREVENTION OF POLLUTION
FROM SHIPS) BILL 1983
PART I - PRELIMINARY
CLAUSE 1
SHORT TITLE

This is the usual formal clause providing for the citation of an Act.

CLAUSE 2
COMMENCEMENT

This Clause provides that the Act shall come into force on various dates. Clauses 1 and 2 are to come into force on the date of Royal Assent.

The commencement dates for the remainder of the Bill have had to be unspecified for two reasons. In the first instance neither the Convention nor the Protocol are yet in force internationally although they will come into force internationally on 2 October 1983. In addition the timing of the necessary State and Northern Territory legislation cannot be accurately forecast. Following lodgement of an instrument of ratification of the treaty, a waiting period of 90 days is required before the Convention will come into force for Australia. Accordingly, specific dates for the coming into force of the Bill cannot be predicted.

Secondly, Part II of the Bill applies the provisions of Annex I of the Convention and Part III applies the provisions of Annex II. Under the terms of the 1978 Protocol to the MARPOL Convention, Australia intends to defer the coming into force of Part III until 3 years after the 1978 Protocol has come into force internationally. This provision has been incorporated in the MARPOL Protocol to give member countries time to provide port reception facilities in accordance with Annex II requirements.

CLAUSE 3
INTERPRETATION

Terms which are important to an interpretation of the Bill have been defined in Clause 3. Provision is also made for particular officers referred to throughout the Bill to be prescribed in the Regulations.

A reference to terms used in the Act and the Convention having the same meaning unless the contrary intention appears is a common device and effectively incorporates Convention definitions in the Bill.

CLAUSE 4
ACT TO BIND CROWN

This clause provides that the proposed Act will bind the Crown in right of the Commonwealth, the States, the Northern Territory and Norfolk Island. Sub-clauses (2) and (3) ensure that the Commonwealth, a State or Territory is not liable for prosecution, but that an agent or servant, for example a master of a ship owned by the Commonwealth or a State or Territory is liable for prosecution for an offence against the proposed Act.

CLAUSE 5
SAVING OF OTHER LAWS

This clause provides that the proposed Act will not derogate or take the place of other laws of the Commonwealth or States or Territory. It is to be read in addition to those laws.

CLAUSE 6
OPERATION OF ACT

This clause extends the operation of the proposed Act to every external Territory of Australia as well as inside and outside of Australia.

CLAUSE 7
DELEGATION

Clause 7 empowers the Minister to delegate his powers under the Act. Instruments of delegation are to be in writing signed by the Minister and powers so exercised are to be regarded as having been exercised by the Minister. The act of delegation will not, however, inhibit the exercise of those powers by the Minister.

CLAUSES 4 TO 7

The provisions contained in Clauses 4 to 7 are materially the same as those in Sections 5 to 8 of the Protection of the Sea (Discharge of Oil from Ships) Act 1981, which will be repealed and replaced by this Bill.

PART II - PREVENTION OF POLLUTION BY OIL

CLAUSE 8
INTERPRETATION

Part II of the Bill applies the provisions of Annex I of the 1973 MARPOL Convention as modified by the 1978 Protocol (MARPOL 1973-78). Clause 8, therefore, specifies that Convention and Annex I terms where occurring in Part II have the same meaning unless the contrary intention occurs.

CLAUSE 9
PROHIBITION OF DISCHARGE OF OIL OR OILY MIXTURES INTO SEA

This clause generally makes similar provision concerning prohibition of the discharge of oil or oily mixture into the sea as does the Protection of the Sea (Discharge of Oil from Ships) Act 1981. The differences in MARPOL Convention requirements are now reflected in this clause.

Sub-clause (1) prohibits and penalises discharges of oil or oily mixtures from Australian ships into the sea subject to the provisions of Sub-clauses (2) and (4). Penalties not exceeding \$50,000 may be imposed on the master and owner if the owner is not a corporate body, or \$100,000 if the owner is a corporate body.

Sub-clause (2) exempts from the operation of this proposed Act, discharges into the territorial sea of Australia, and into the sea on the landward side of that sea. This provision follows the principle established in the 1979 Offshore Constitutional Settlement, that the States and the Northern Territory are responsible for these waters. Discharges, made to save the ship, or unavoidable after all reasonable precautions have been taken, are also exempt. The exemptions included in Sub-clause (2) follow the provisions of Regulation 11 of Annex I to MARPOL 1973-78.

Sub-clause (3) gives effect to the requirements of paragraph (ii) of Sub-regulation 11(b) of Annex I to MARPOL 1973-78. This provision ensures that the defence available under the provisions of Sub-clause 9(2) relating to pollution resulting from damage to the ship will not be available if the damage can be proven to have been intentional.

Sub-clause (4) exempts certain types of discharges from penalty. The exemptions follow the provisions of Regulation 9 of Annex I to MARPOL 1973-78. The exemptions take account of the differing pollution potential between tankers, other large ships and small ships as well as the operating procedures of those types of ships. The provision does allow some operating discharges to be made from ships but imposes strict conditions as to oil content of the discharge and requires that no such operating discharge can take place within 50 nautical miles from the nearest land in the case of a tanker or within 12 nautical miles for other ships. The term "nearest land" has special significance since it refers to a term defined in the Convention to mean, amongst other things, the outer edge of the Great Barrier Reef. This definition has been carried over from the 1954 OILPOL Convention in which it was inserted at Australia's request. Considerable scientific expertise and research by the IMO Group of Experts on Scientific Aspects of Marine Pollution (GESAMP) was involved in determining the 50 and 12 mile rules.

Sub-clause (5) excludes from the interpretation of "oily mixture" in Sub-clause (4) any reference to mixtures containing chemicals or other substances hazardous to the marine environment including substances introduced for the purpose of avoiding obligations imposed by Sub-clause (9)(1). This clause reflects the requirements of Sub-regulation 9(5) of Annex I to MARPOL 1973-78 and effectively prohibits the discharge of such oily mixtures.

Sub-clause (6) allows the prosecution, in an action against an offender under Sub-clause (1), to allege and prove a discharge into the sea, and allows the defence to use Sub-clauses (2) or (4) 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.

It should be stated that Section 6 of the Pollution of the Sea by Oil Act 1972, Sub-section 9(4) of the Protection of the Sea (Discharge of Oil from Ships) Act 1981 and new Section 269N in Section 52 of the Navigation Amendment Act 1981 are precedents for this provision. The Crown would not institute proceedings if it were aware of the existence of Sub-clause 9(2) or 9(4) defences. Similarly, it is reasonable to expect

that a ship owner or master draw the attention of authorities to circumstances under which those defences would apply, thereby preventing institution of proceedings in the first place. It is therefore considered that this construction best ensures that only actions with a real chance of success are brought.

CLAUSE 10
OIL RESIDUES

Clause 10 gives effect to Sub-regulation 9(6) of Annex 1 to MARPOL 1973-78 and is designed to ensure that oily residues are retained on board the ship until they can be discharged to an appropriate reception facility.

The penalty levels are maintained at the maximum level for penalties imposed by this proposed Act because of the potential for pollution that these residues pose. In effect, the penalties become enforceable only when residues referred to are discharged in contravention of Convention requirements.

CLAUSE 11
DUTY TO REPORT DISCHARGE OF CERTAIN SUBSTANCES FROM
AUSTRALIAN SHIPS

Sub-clause (1) provides a penalty of \$5,000 if an Australian ship's master does not without delay notify an officer, prescribed by the Regulations, of a discharge of oil or oily mixture from the ship into the sea. The purpose of this clause is to ensure that the incident is reported so that combat measures can be planned and implemented.

Sub-clause (2) provides a defence where it can be proved that the master was unable to notify without delay the prescribed officer of the occurrence.

Sub-clause (3) provides that where the master is unable to report an occurrence referred to in Sub-clause (1) or the ship is abandoned, then the owner, charterer, manager or operator of the ship is obliged to report the occurrence. A penalty of \$5,000 is provided for non-compliance with this requirement.

Sub-clause (4) provides defences for offences against Sub-clause (3) 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 (5) ensures that defences available to a person charged with an offence against Sub-clause (3) are not confined only to defences contained in Sub-clause (4).

Sub-clauses (6) and (7) respectively require the master or a person identified in Sub-clause (3) to provide a report in the prescribed form to a prescribed officer if requested to do so. This requirement was also included in the Protection of the Sea (Discharge of Oil from Ships) Act 1981 and is intended to ensure that the facts of any occurrence as known by the master or reporter of the incident are officially recorded.

Sub-clause (8) exempts discharges into the territorial sea of Australia, and the sea on the landward side of that sea, from the operation of Sub-clauses (1) and (3). These areas come within the jurisdiction of the States and the Northern Territory.

Sub-clause (9) provides a penalty of \$5,000 if a person makes a false or misleading statement in a notice or report to a prescribed officer acting on the authority of Sub-clauses (1), (3), (6) or (7).

Sub-clause (10) provides that a notice or report given to a prescribed officer is not to be admitted in evidence in a prosecution under Sub-clause 9(1) without the charged person's consent. This provision is included to ensure that a person is not inhibited from making a report of an incident of oil discharge through a fear that the report may be used in evidence against him.

CLAUSE 12 OIL RECORD BOOK

This clause requires that every Australian ship shall carry an oil record book, and that each entry made in the book shall be in English and be signed by the ship's master. If no oil record book is carried on board, the ship's owner and master are each liable to be fined up to \$5,000 (\$10,000 for a corporation). A penalty of \$5,000 applies if a ship's master does not make appropriate entries for prescribed operations or occurrences.

CLAUSE 13 FALSE ENTRIES IN OIL RECORD BOOK

This clause provides a penalty of \$10,000 if false or misleading statements are made in an oil record book of an Australian ship. A higher level of penalty is provided in this case because of the more serious nature of the crime. Such an offence would include the commission of fraud.

CLAUSE 14 OIL RECORD BOOK TO BE RETAINED

Sub-clause (1) provides for an oil record book to be retained on board Australian ships for a period of twelve months after the date when the last entry was made and that the book be readily available for inspection at all reasonable times. Sub-clause (2) provides that if the oil record book is not so retained, the ship's owner and master are each liable to be fined up to \$5,000 (\$10,000 for a corporation).

Sub-clause (3) provides that the oil record book shall be retained a further two years to the period stipulated in Sub-clause (1) either in the ship or at the owner's registered office and that the book shall be available for inspection at all reasonable times. Sub-section (4) provides penalties of \$5,000 (\$10,000 for a corporation) for contravening Sub-clause (3).

Sub-clause (5) provides that an Australian ship's owner may periodically inform a prescribed officer of his or his agent's Australian residential or office address and that the address so notified will be regarded as the registered office of the owner of the ship for the purposes of Sub-clause (3).

Sub-clause (6) provides that when an Australian ship's owner or his agent has neither an office nor residential address in Australia, lodging of oil record books with a prescribed officer will be sufficient to satisfy the requirements of Sub-clause (3).

All of these matters are required by the MARPOL Convention or are necessary for the implementation of Convention requirements.

PART III - PREVENTION OF POLLUTION BY NOXIOUS SUBSTANCES

This Part follows the style and format of Part II of the Bill while giving effect to MARPOL Annex II requirements.

CLAUSE 15 INTERPRETATION

As stated above, Part III of the Bill applies the provisions of Annex II of the 1973 MARPOL Convention as modified by the 1978 Protocol (MARPOL 1973-78). Clause 15, therefore, specifies that Convention and Annex II terms, where occurring in Part III, have the same meaning unless the contrary intention occurs.

CLAUSE 16 APPLICATION OF ACT TO MIXTURE OF OIL AND LIQUID SUBSTANCES

This provision ensures that should a mixture contain any combination of oil and liquid substances, then both Parts II and III of the Bill will apply to the mixture. This will ensure that all discharge, reporting, and retention requirements for both oil and Annex II substances will be applied to the mixture.

CLAUSE 17 CATEGORIES OF NOXIOUS LIQUID SUBSTANCES

The various provisions of Clause 17 give effect to the requirements of Regulation 3 of Annex II to MARPOL 1973-78. The Bill intends that the various categories of noxious liquid substance contained in Appendix II be declared by regulation. This will allow mechanical changes to the list of noxious substances which can be expected to be made from time to time to be incorporated quickly.

In addition, Sub-clause (4) will permit an alteration to Convention classifications should evidence show that the Convention categorisations for particular substances are not appropriate. It is expected that this will occur rarely.

CLAUSE 18 APPENDIX III SUBSTANCES

Appendix III to Annex II contains a list of substances which have been found, on examination, to fall outside the harmful categories of substances in Appendix I. The substances listed in Appendix III are presently considered to present no harm to human health, marine resources, amenities or other legitimate uses of the sea (Regulation 4 of Annex II).

Clause 18 permits substances to be added to or deleted from that list by Regulation. Substances currently listed in Appendix III include, for example, citric juices, glycerine, milk, water and wine.

CLAUSE 19
PROVISIONAL ASSESSMENT OF SUBSTANCES

Regulation 3 of Annex II deals with categorisation of substances and those substances already assessed and found to have varying levels of toxicity are listed in Appendices II and III to Annex II.

Sub-regulation 4 provides that where it is proposed to carry a liquid substance in bulk which has not been categorised, the Governments of Parties to the Convention involved in the operation shall agree on a provisional assessment of the liquid substance and until full agreement between those Governments is reached, the substance shall be carried under the most severe conditions proposed. Within 90 days of the first carriage of the substance the Government is required to notify the International Maritime Organisation and provide details of the substance and the provisional assessment.

Clause 19, therefore, provides that the Minister may declare that the substance is categorised in a particular category of Annex II substances.

CLAUSE 20
NOTIFICATION OF PROPOSAL TO CARRY CERTAIN SUBSTANCES

This clause imposes an obligation on importers, exporters and the master of the ship which will carry a substance referred to in Clause 19, to notify a prescribed person so that an evaluation of the substance in accordance with the requirements of Regulation 3 of Annex II can be made.

Penalties of \$5,000 for an individual and \$10,000 for a body corporate are consistent with penalties elsewhere in pollution legislation for an offence of this type.

CLAUSE 21
PROHIBITION OF DISCHARGE OF SUBSTANCES INTO SEA

Sub-clause (1) prohibits and penalises discharges from Australian ships of any liquid substance or mixture containing such a substance being a substance listed in Appendix II (i.e. noxious substances able to cause pollution) and which is carried as cargo or part cargo in bulk. The prohibitions are subject to exemptions which follow the requirements of Regulations 4, 5 and 6 of Annex II.

Penalties for discharges in contravention of Clause 21 are not to exceed \$50,000 for the master and owner if the owner is not a corporate body, or \$100,000 if the owner is a corporate body.

Discharges of noxious liquid substances or mixtures 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. As for oil discharges in Part II, this provision follows the principle, reflected in the 1979 Offshore Constitutional Settlement, that these waters fall

within the jurisdiction of the States and the Northern Territory. Discharges made to secure the safety of a ship, saving life at sea, or unavoidable after all reasonable precautions have been taken are also exempted.

The exemptions included in paragraphs (2)(c) to (e), and Sub-clauses (4), (5), (6), (7), (8), (9) (10), (11) and (12) apply the exemption provisions contained in Regulations 4 and 5 of Annex II to MARPOL 1973-78.

Sub-clause (3) gives effect to the requirements of paragraph (ii) of Sub-regulation 6(b) of Annex II to MARPOL 1973-78. This provision ensures that the defence available under the provisions of Sub-clause 19(2) relating to pollution resulting from damage to the ship will not be available if the damage can be proven to have been intentional.

Sub-clause (13) ensures that the operational requirements for permitted discharges are not applied to substances or mixtures which are not noxious.

Sub-clause (14) is similar to Sub-clause 9(6) in Part II (relating to oil) 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), (4), (5), (6), (7), (8), (9), (10), (11) or (12) 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.

It is reiterated here that Section 6 of the Pollution of the Sea by Oil Act 1972, Sub-section 9(4) of the Protection of the Sea (Discharge of Oil from Ships) Act 1981, new Section 269N in Section 52 of the Navigation Amendment Act No 98 of 1979 and Sub-clause 9(6) of this Bill are precedents for this provision. The Crown would not institute proceedings if it were aware of the existence of any of the abovementioned defences. Similarly, it is considered that a ship owner or master would draw the attention of authorities to circumstances under which those defences would apply, thereby preventing institution of proceedings in the first place. It is therefore considered that this construction best ensures that only actions with a real chance of success are brought.

CLAUSE 22
DUTY TO REPORT DISCHARGE OF CERTAIN
SUBSTANCES FROM AUSTRALIAN SHIPS

This clause is similar to Clause 11 which makes provision for reporting discharges of oil or oil mixtures.

Sub-clause (1) will ensure that no obligation is imposed requiring a report to be made of the discharge of Appendix III to Annex II substances, that is, substances which have been evaluated and found to be of no danger when discharged.

Sub-clause (2) provides a penalty of \$5,000 if an Australian ship's master does not notify an officer, prescribed by the Regulations, of a discharge of Appendix II to Annex II substances or a mixture containing any such substances 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.

Sub-clause (3) provides a defence where it can be proved that the master was unable to notify without delay the prescribed officer of the occurrence.

Sub-clause (4) provides that where the master is unable to report an occurrence referred to in Sub-clause (2) or the ship is abandoned, then the owner, charterer, manager or operator of the ship is obliged to report the occurrence. A penalty of \$5,000 is provided for non-compliance with this requirement.

Sub-clause (5) provides defences for offences against Sub-clause (4) 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 (6) ensures that defences available to a person charged with an offence against Sub-clause (4) are not confined only to defences contained in Sub-clause (5).

Sub-clauses (7) and (8) respectively require the master or a person identified in Sub-clause (4) to provide a report in the prescribed form to a prescribed officer if requested to do so. This requirement was also included in the Protection of the Sea (Discharge of Oil from Ships) Act 1981 and Clause 10 of this Bill and is intended to ensure that the facts of any occurrence as known by the master or reporter of the incident are officially recorded.

Sub-clause (9) exempts discharges into the territorial sea of Australia, and the sea on the landward side of that sea, from the operation of Sub-clauses (2) and (4). These areas come within the jurisdiction of the States and the Northern Territory.

Sub-clause (10) provides a penalty of \$5,000 if a ship's master makes a false or misleading statement in a notice or report to a prescribed officer acting on the authority of Sub-clauses (2), (4), (7) or (8).

Sub-clause (11) provides that a notice or report given to a prescribed officer is not to be admitted in evidence in a prosecution under Sub-clause 21(1) without the charged person's consent. This provision is included to ensure that a person is not inhibited from making a report of a discharge through a fear that the report may be used in evidence against him.

CLAUSE 23 CARGO RECORD BOOK

This clause requires that every Australian ship that carries liquid substances other than oil in bulk shall carry a cargo record book, and that each entry relating to a prescribed operation or occurrence made in the book shall be in English and be signed by the officer supervising the operation.

The master will be required to sign each page. If no cargo record book is carried on board, the ship's owner and master are each liable to be fined up to \$5,000 (\$10,000 for a corporation). A penalty of \$5,000 applies if a ship's master does not make appropriate entries for prescribed operations or occurrences.

This clause reflects the requirements of Regulation 9 of Annex II to MARPOL 1973-78.

CLAUSE 24
FALSE ENTRIES IN CARGO RECORD BOOK

This clause provides a penalty of \$10,000 if false or misleading statements are made in a cargo record book of an Australian ship. A higher level of penalty is provided in this case because of the more serious nature of the crime. Such an offence would include the commission of fraud.

CLAUSE 25
CARGO RECORD BOOK TO BE RETAINED

Sub-clause (1) provides for a cargo record book to be retained on board Australian ships for a period of twelve months after the date when the last entry was made and that the book be readily available for inspection at all reasonable times. Sub-clause (2) provides that if the cargo record book is not so retained, the ship's owner and master are each liable to be fined up to \$5,000 (\$10,000 for a corporation).

Sub-clause (3) provides that the oil record book shall be retained a further twelve months to the period stipulated in Sub-clause (1) either in the ship or at the owner's registered office and that the book shall be available for inspection at all reasonable times. Sub-clause (4) provides penalties of \$5,000 (\$10,000 for a corporation) for contravening Sub-clause (3).

Sub-clause (5) provides that the owner of an Australian ship may periodically inform a prescribed officer of his or his agent's residential or office address and that the address so notified will be regarded as the registered office of the owner of the ship for the purposes of Sub-clause (3).

Sub-clause (6) provides that when the owner of an Australian ship or his agent has neither an office nor residential address in Australia, lodging of oil record books with a prescribed officer will be sufficient to satisfy the requirements of Sub-clause (3).

All of these matters are required by the MARPOL Convention or are necessary for the implementation of Convention requirements.

CLAUSE 26
CLEANING OF CARGO TANKS OF SHIPS

Regulation 8 of Annex II makes specific provision for loading and unloading procedures in relation to the various categories of noxious liquid substances. Appropriate entries are required to be made in the cargo record book in relation to these procedures and Regulation 8 stipulates that the contracting country shall provide surveyors so as to ensure that these requirements are complied with.

Clause 24 intends that since these matters are of an operational nature and that operational procedures are being constantly refined, it is desirable that Regulation 8 of Annex II be given effect by way of regulations.

PART IV - MISCELLANEOUS

The provisions included in Clauses 27 to 34 are materially similar to the provisions of Sections 15 to 22 of the Protection of the Sea (Discharge of Oil from Ships) Act 1981.

CLAUSE 27 POWERS OF INSPECTORS

Sub-clause (1) defines what an inspector may do in ascertaining whether a ship complies with either this proposed Act, parts of the Convention that deal with foreign ships, or laws of other countries that give effect to the Convention and deal with foreign ships. An inspector may, inter alia, board a ship, test equipment, inspect parts of the ship, check the oil or cargo record book, examine substances on board, and require people to answer questions that relate to these matters.

Sub-clause (2) provides a penalty of \$2,000 for non-compliance with a requirement by an inspector under Sub-clause (1), or making false or misleading statements in answering questions as required under Sub-clause (1).

Sub-clause (3) provides that an inspector, in carrying out his Sub-clause (1) responsibilities, shall not detain or unnecessarily delay a ship from going to sea.

These provisions are necessary to ensure that Convention obligations are carried out.

CLAUSE 28 PROSECUTION OF OFFENCES AGAINST ACT

Sub-clause (1) provides that offences other than offences against Sub-clause 27(2) (above) or against the regulations are indictable while Sub-clause (2) provides that a court of summary jurisdiction may determine the charges providing that the court, prosecutor and defendant agree. The penalties are fines not exceeding \$2,000 for a person who is not a corporate body, and \$5,000 for a person being a corporate body. Offences against Sub-clause 27(2) or any provisions of the Regulations shall be dealt with summarily.

CLAUSE 29 NO TIME LIMIT FOR PROSECUTIONS

This clause provides that prosecutions for offences against this proposed Act may be brought at any time. This provision is necessary to overcome the possibility that owners or masters might await the statute of limitations period and then continue trading to Australia.

CLAUSE 30
EVIDENCE

This clause provides for any record kept in pursuance of this proposed Act, or a certified copy of an entry in that record, to be admitted as prima facie evidence. Documents purporting to be a record or certified copy will be taken as such unless the contrary is proved.

CLAUSE 31
EVIDENCE OF ANALYST

This clause provides that certificates of analysts appointed by the Minister to examine substances shall be admissible as prima facie evidence. Sub-clause (3) provides that 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 (Sub-clause (4)). The analyst may be cross-examined on matters in the certificate as witness for the prosecution (Sub-clause (5)).

Analysts may be asked to examine oil from the various parts of a ship and to compare it with oil recovered from the sea or shore for the purposes of determining the source of the oil. The decision to bring an action under certain provisions of this Bill may rely on scientific analysis of oil or noxious substances.

CLAUSE 32
APPLICATION OF CERTAIN PROVISIONS TO FOREIGN SHIPS

This clause will permit the regulation of oil record book requirements and prescribed operations to non-convention ships within the Australian jurisdiction. An exemption from the provisions of such regulations is provided for ships which are in the jurisdiction for reasons of securing the safety of the ship or human life or for preventing damage to the ship or its cargo.

CLAUSE 33
REGULATIONS

This clause provides for regulations to be made prescribing matters required or permitted or necessary or convenient for carrying out or giving effect to this proposed Act. Regulations shall cover the fitting of ships to prevent oil or noxious liquid escapes, the fixing of fees and penalties, exemptions from the operation of the provisions of the Act or Regulations and the making of orders in relation to ships' fittings or appliances and ventilation procedures. Regulations shall not be inconsistent with the Act, nor affect the powers of the States or the Northern Territory in relation to ships defined in Sub-clause 33(4).

Sub-clause (2) exempts certain ships from the Regulations. These are intra-State trading ships, Australian fishing vessels on non-overseas voyages, and pleasure craft.

Sub-clauses (3), (4) and (5) contain deeming and definition provisions relating to proceedings for an offence, ships and voyages.

CLAUSE 34
ORDERS

This clause provides that orders may be made in pursuance of the Regulations. References in orders shall apply as if they are references in Regulations, and references in Regulations shall apply as if they are references in the Act. Orders shall not be deemed to be statutory rules, and shall not be used so as to exceed the power conferred by the Act. The Act shall prevail if there is an inconsistency between an Order and the Act.

It is intended that the Orders will be used to notify such matters as the types of oily water separating and oil content monitoring equipment that is approved by the International Maritime Organisation and/or Australia for use in ships.

A provision identical to this is included in the Protection of the Sea (Discharge of Oil from Ships) Act 1981 and was incorporated for the same reasons.

CLAUSE 35
REPEAL

This clause effects the repeal of the Protection of the Sea (Discharge of Oil from Ships) Act 1981 which implemented the provisions of the 1954 OILPOL Convention. The proposed Act will now give effect to MARPOL 1973-78 provisions. Article 9 of MARPOL 1973-78 states that MARPOL supersedes OILPOL as between parties to OILPOL. It is the intention of the Government to denounce OILPOL so that MARPOL can be applied to all foreign flag ships whether or not they fly the flag of a country party to MARPOL.

A transitional clause is included so as to ensure that the application of the repealed Act will continue to matters which are in progress at the time of repeal.

NAVIGATION (PROTECTION OF THE SEA)
AMENDMENT BILL 1983

PART I - PRELIMINARY

CLAUSE 1
SHORT TITLE

This is the usual formal clause providing for the citation of an Act.

CLAUSE 2
COMMENCEMENT

This clause allows for the Act to come into operation in stages. Clauses 1, 2 and Part III (machinery provisions) will come into operation upon the Act receiving Royal Assent. The remaining provisions will be proclaimed to come into force on the same day as Part I of the Protection of the Sea (Prevention of Pollution from Ships) Bill. These clauses give effect to the survey and ship construction matters required by Annex I to MARPOL 1973-78.

Clause 7 contains provisions relating to ships which carry noxious liquid substances in bulk, and makes similar provisions concerning construction and survey as Clause 6 does for oil-carrying ships. This clause applies Annex II to MARPOL 1973-78 requirements. As mentioned in the Explanatory Notes for the Commencement Clause for the Protection of the Sea (Prevention of Pollution from Ships) Bill, Australia will defer the date of operation of Annex II, and therefore of Clause 7, for the period allowed by the 1978 MARPOL Protocol, namely three years from the date that Annex II comes into force internationally. This provision was included to give member countries time to provide port reception facilities in accordance with Annex II requirements.

PART II - AMENDMENTS OF THE NAVIGATION ACT 1912

CLAUSE 3

Provides that for the purposes of Part II the 'Principal Act' is the Navigation Act 1912.

CLAUSE 4
INTERPRETATION

This clause removes references to the 1954 OILPOL Convention and inserts an appropriate definition of the MARPOL Convention in Section 187A of the Navigation Act 1912. Section 187A of the Principal Act is the interpretation provision for Part IV - Ships and Shipping.

CLAUSE 5
REGULATIONS GIVING EFFECT TO CONVENTIONS - DISCRETION
OF GOVERNOR-GENERAL AND MINISTER

This provision removes reference to the 1954 OILPOL Convention and substitutes a MARPOL reference in Section 191A which deems that where a Convention confers a discretionary power to take any action under the terms of the Convention, then the Governor-General shall have that power and the

Minister will have the power to vary requirements regarding fittings or equipment if he is satisfied that the change is no less effective than the Convention requirement.

CLAUSE 6

Clause 6 repeals Division 12 of Part IV of the Principal Act and inserts a new Division 12 entitled "Ships Carrying or Using Oil". The clause inserts a number of proposed new sections in the Principal Act.

The new Division 12 will come into force simultaneously with Part II of the Protection of the Sea (Prevention of Pollution from Ships) Bill 1983.

It will be noted that reference to persons subject to penalty differ from such references in the other Bill in the Legislation Package. The terms "natural person" and "body corporate" are used here to preserve internal consistency within the Navigation Act 1912.

DIVISION 12 SHIPS CARRYING OR USING OIL

Proposed Section 266 Interpretation

This provision defines some important terms used in Division 12 which have different meanings when used elsewhere in the Navigation Act. To a great extent the meanings of words used in Division 12 will be the same as those words when used in the MARPOL 1973-78 Convention.

The terms "Annex I", "Australian ship", and "foreign ship" have been defined in identical terms to the definition of these terms in the Protection of the Sea (Prevention of Pollution from Ships) Bill so as to maintain consistency within the legislation package.

The "ship construction certificate" defined is a document which by virtue of proposed Section 267B will be required to be carried by all ships to which the proposed Act will apply. The certificate will confirm that each ship is built and equipped in accordance with Convention requirements.

Proposed Section 267 Application of Division

This provision preserves the operation of State and Northern Territory law concerning matters with which this Bill deals in relation to ships to which paragraph (a) of Sub-section 2(1) of the Navigation Act 1912 refers.

Proposed Section 267A Regulations to give effect to Regulations 13 to 19 (inclusive) of Annex I

Regulations 13 to 19 of Annex I to MARPOL 1973-78 deal with construction and fitting of ships including:

- . size and arrangement of oil cargo tanks and ballast tanks;
- . provision of certain operational capabilities including crude oil washing systems and oil discharge monitoring and control systems;
- . provision of approved facilities such as tanks for residues; pumping, piping and discharge arrangements; and fitting of standard discharge connections so that port reception facilities will be able to accept ship waste oil and oily mixtures.

The proposed section also anticipates that the regulations made under this authority may authorise the Minister to make orders. It is intended that the orders will be used to impose operational requirements, for example, specifying the type of oily water separating equipment to be used in tankers.

Proposed Section 267B
Ship Construction Certificates

Proposed Section 267B empowers the Minister to issue a ship construction certificate if he is satisfied that the ship has been constructed in accordance with the requirements of Regulations 13 to 19 of Annex I to MARPOL 1973-78. The issue of such certificates is required by Regulation 5 of Annex I.

Proposed Section 267C
International Oil Pollution Prevention Certificates

This provision gives effect to Regulation 6 of Annex I which provides that where a party to MARPOL 1973-78 requests another party to issue a certificate, the second party may, after appropriate surveys and provided the ship is constructed in accordance with Annex I requirements, issue the prescribed certificate.

The certificate to be prescribed is contained in Appendix II, to Schedule 2 of the Protection of the Sea (Prevention of Pollution from Ships) Bill 1982.

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

Proposed Section 267D 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 (267D(1)). The Minister may cancel a ship construction certificate if the certificate was fraudulently obtained, issued on false information, if the ship has been damaged or altered so that compliance with Annex I is affected, or proposed Section 267E survey requirements have not been fulfilled (267D(5)). Penalties not exceeding \$500 for a natural person and \$1,000 for a body corporate are provided.

Proposed Sub-section 267D(6) provides that a cancelled certificate is of no further effect after service of notice in writing to that effect and 267D(7) authorises the Minister to require that a cancelled certificate be delivered up and that the Minister may detain the ship until that requirement is complied with.

Proposed Section 267E
Ships to be surveyed periodically

Proposed Section 267E requires that a survey of a ship be made at least once during the period in which a ship construction certificate is in force. Penalties not exceeding \$2,000 for a natural person and \$5,000 for a body corporate are provided for non-compliance.

Proposed Section 267F
Cancellation of certificate if ship ceases to be registered etc

Proposed Section 267F provides that a ship construction certificate ceases to have effect when the ship to which it refers ceases to be an Australian ship.

Proposed Section 267G
Certificates required for Australian ships

Proposed Section 267G provides penalties for a ship to which the MARPOL 1973-78 Convention applies (that is, any ship capable of carrying or using oil) going to sea without a ship construction 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 \$40,000 if the owner is a body corporate, are provided.

The regulations may, however, exempt certain ships or classes of ships from this requirement (267G(4)).

Proposed Section 267H
Certificate to be carried on board Australian ships

Proposed Section 267H 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 \$200).

Proposed Section 267J
Production of certificates

Proposed Section 267J requires that certificates be produced when a ship applies for clearance to leave an Australian port. The ship's master shall produce the ship construction certificate to a Customs Officer on request. A Customs Officer may refuse to grant the clearance or detain the ship until the certificate is produced. (Penalty \$200).

Proposed Section 267K
Directions in relation to foreign ships

Proposed Section 267K provides for the Minister to give directions to foreign ships not constructed in accordance with Annex I 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 (267K(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 \$40,000 if the owner is a corporate body (267K(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 (267K(5)).

Proposed Section 267L
Offences against Sub-sections 267G(2) and (3) or 267K(4)
to be indictable

Proposed Section 267L makes offences under Sub-sections 267G(3) (taking ship to sea without the appropriate certificate) and 267K(4) (non-compliance with direction given to the master or owner of a foreign ship) indictable offences.

Section 394 of the Navigation Act 1912 was amended by the Navigation (Protection of the Sea) Amendment Act 1981 to provide that offences against Sub-sections 267G(1) and 267K(4) are indictable but may nevertheless be heard summarily upon agreement of all parties and that the respective penalties will thereupon not exceed \$2,000 and \$5,000. Clause 7 of this Bill will amend Section 394 of the Principal Act in relation to proposed Section 267G.

CLAUSE 7 - NEW DIVISION INSERTED

Division 12A
SHIPS CARRYING NOXIOUS LIQUID SUBSTANCES IN BULK

Proposed Section 267M
Interpretation

This provision defines some important terms used in Division 12A which have different meanings when used elsewhere in the Navigation Act. To a great extent the meanings of words used in Division 12 will be the same as those words when used in the MARPOL 1973-78 Convention.

The terms "Annex II", "Australian Ship" and "foreign ship" have been defined in identical terms to the definition of these terms in the Protection of the Sea (Prevention of Pollution from Ships) Bill so as to maintain consistency within the legislation package.

The "chemical tanker construction certificate" defined is a document which by virtue of proposed Section 267Q will be required to be carried by all tankers to which the proposed Act will apply. The certificate will confirm that each tanker is built and equipped in accordance with Convention requirements.

Proposed Section 267N
Application of Division

This provision preserves the operation of State and Northern Territory law concerning matters with which this Bill deals in relation to ships to which paragraph (a) of Sub-section 2(1) of the Navigation Act 1912

refers. These ships are the responsibility of the States and the Northern Territory under the provisions of the 1979 Offshore Constitutional Settlement.

Proposed Section 267P
Regulations to give effect to Regulation 13 of Annex II

Regulation 13 of Annex II to MARPOL 1973-78 deals with construction and fitting of ships for minimising accidental pollution. This clause, therefore, ensures that matters of a practical or operational nature can be given effect by regulation.

The proposed section also anticipates that the regulations made under this authority may authorise the Minister to make orders. It is intended that the orders will be used to impose operational requirements, for example, specifying particular equipment to be used in chemical tankers.

Proposed Section 267Q
Chemical tanker construction certificates

Proposed Section 267Q empowers the Minister to issue a chemical tanker construction certificate if he is satisfied that the tanker has been constructed in accordance with the requirements of Regulation 13 of Annex II to MARPOL 1973-78. The issue of such certificates is required by Regulation 11 of Annex II.

Proposed Section 267R
International Pollution Prevention Certificates for
the Carriage of Noxious Liquid Substances in Bulk

This provision gives effect to Regulation 11(3) of Annex II which provides that where a party to MARPOL 1973-78 requests another party to issue a certificate, the second party may, after appropriate surveys, and provided the ship is constructed in accordance with Annex II requirements, issue the prescribed certificate.

The certificate to be prescribed is contained in Appendix V to Annex II in Schedule 1 of the Protection of the Sea (Prevention of Pollution from Ships) Bill 1982.

Proposed Section 267S
Alteration, &c, of construction of ships
and cancellation of certificates

Proposed Section 267S 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. The Minister may cancel a chemical tanker construction certificate if the certificate was fraudulently obtained, issued on false information, if the tanker has been damaged or altered so that compliance with Annex II is affected, or proposed Section 267T survey requirements have not been fulfilled. Penalties not exceeding \$500 for a natural person and \$1,000 for a body corporate are provided.

Proposed Section 267T
Ships to be surveyed periodically

Proposed Section 267T requires that a survey of a tanker be made at least once during the period in which a chemical tanker construction certificate is in force. Penalties not exceeding \$2,000 for a natural person and \$5,000 for a body corporate are provided for non-compliance.

Proposed Section 267U
Cancellation of certificate if ship ceases
to be an Australian ship

Proposed Section 267U provides that a chemical tanker construction certificate ceases to have effect when the ship to which it refers ceases to be an Australian ship.

Proposed Section 267V
Certificates required for Australian ships

Proposed Section 267V provides penalties for a ship, which is constructed or adapted in such a way as to be able to carry as cargo, or part cargo, in bulk any substance that for the purposes of Part III of the Protection of the Sea (Prevention of Pollution from Ships) Bill 1982 is a substance in Category A, B, C or D going to sea without a chemical tanker construction certificate. Up to \$10,000 and/or 4 years imprisonment is the penalty for the ship's master and owner (if a natural person), and a maximum \$40,000 fine is provided if the owner is a body corporate.

The regulations may, however, exempt certain ships or classes of ships from this requirement (267V(2)).

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

Proposed Section 267W provides that the owner shall ensure that a chemical tanker construction certificate, while in force, shall be carried on board the ship to which it applies. (Penalty \$200).

Proposed Section 267X
Production of Certificates

Proposed Section 267X requires that certificates be produced when a ship applies for clearance to leave an Australian port. The ship's master shall produce the chemical tanker construction certificate to a Customs Officer on request. A Customs Officer may refuse to grant the clearance or detain the ship until the certificate is produced. (Penalty \$200).

Proposed Section 267Y
Directions in relation to foreign ships

Proposed Section 267Y provides for the Minister to give directions to foreign ships not constructed in accordance with Annex II 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. 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 \$40,000 if the owner is a body corporate. The person charged has a defence if the non-compliance resulted from the need to save life at sea, or it is not possible to comply with the direction.

Proposed Section 267Z
Offences against Sub-sections 267V(1) and
267Y(4) to be indictable

Proposed Section 267Z makes offences under Sub-sections 267V(1) (taking ship to sea without the appropriate certificate) and 267Y(4) (non-compliance with direction given to master or owner of a foreign ship) indictable offences.

Clause 7 of this Bill will amend Section 394 of the Principal Act in relation to proposed Sections 267V and 262Y.

CLAUSE 8
PROSECUTION OF OFFENCES

This clause provides that although offences against Sub-sections 267G(2) and (3), 267V(1) and 267Y(4) are indictable by virtue of proposed Sections 267L and 267Z, they may nevertheless, under the provisions of Paragraph 394(4)(d) of the Navigation Act 1912 be heard summarily upon agreement of all parties whereupon penalties should not exceed \$2,000 for natural persons and \$5,000 for bodies corporate.

PART III - AMENDMENTS OF THE
NAVIGATION (PROTECTION OF THE SEA) AMENDMENT ACT 1981

CLAUSE 9
PRINCIPAL ACT

The Navigation (Protection of the Sea) Amendment Act 1981 is cited as the Principal Act for Part III Amendments were to be made to the 1981 Act which was designed to implement the 1971 Amendments to the OILPOL Convention. Since this legislation package will now implement the equivalent MARPOL provisions, the 1981 provisions (which have not yet been proclaimed) will now be repealed

CLAUSE 10

REPEAL

CLAUSE 11
PROSECUTION OF OFFENCES

These two clauses repeal the unproclaimed Sections of the 1981 Act referred to above.