

1994

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

TRANSPORT AND COMMUNICATIONS LEGISLATION AMENDMENT
BILL (NO. 3) 1993

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

(Circulated by authority of the Minister for Transport,
the Hon Laurie Brereton MP)



TRANSPORT AND COMMUNICATIONS LEGISLATION AMENDMENT BILL
(NO. 3) 1993

OUTLINE

The amendments proposed to the Bill are primarily technical in nature and are designed to clarify those provisions of the Bill that relate to taking action, including detention, in respect of foreign ships which have caused, or are suspected to have caused, a pollution breach.

The purpose of the amendments to the Bill is to amend the part of the Bill relating to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* to:

- explicitly state that the Act applies in the Exclusive Economic Zone (EEZ);
- clarify provisions which require foreign vessels to provide information to determine if a pollution breach has occurred;
 - ensure there is power to inspect vessels in the EEZ which are suspected of having caused a pollution breach;
 - provide an express power to bring a vessel into port;
- ensure that proceedings in Australia against a foreign vessel will be suspended if proceedings for the same offence are taken in the flag State of the vessel.

There is also a related amendment to section 22 of the *Protection of the Sea (Civil Liability) Act 1981*. That section provides that a ship may be detained if an amount under section 21 of the Act is unpaid. Section 22 is to be amended to provide that it applies to a foreign ship while it is in the EEZ.

FINANCIAL IMPACT STATEMENT

The proposed amendments will have no direct impact on Commonwealth revenue or expenditure.

NOTES ON AMENDMENTS

Amendment 1

Subclause 2(3) provides for the commencement of amendments to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*. This amendment to subclause 2(3) is consequential upon the amendment in Amendment 2.

Amendment 2

This amendment adds a new subclause to the commencement clause to provide that amendments to subsection 26AB(4) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (included in Amendment 4) will not commence until the commencement of section 26 of the *Protection of the Sea Legislation Amendment Act 1986*. That section will insert section 26AB into the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

Amendment 3

This amendment will amend section 22 of the *Protection of the Sea (Civil Liability) Act 1981* (the *Civil Liability Act*). Section 22 provides that a ship may be detained if an amount under section 21 of the Act is unpaid. Subsection 22(2) provides that section 22 applies to a foreign ship only while the ship is in Australian waters. To accord with the provisions of United Nations Convention on the Law of the Sea (UNCLOS), subsection 22(2) is to be amended to provide that it also applies to a foreign ship while it is in the EEZ.

Section 22 is also to be amended to allow for a ship that has been detained to be escorted to a port. This will ensure consistency with the amendments proposed to section 27 of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

Amendment 4

This amendment will amend the Bill in a number of respects relating to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (the *POPS Act*).

Definitions of "exclusive economic zone", "Law of the Sea Convention" and of "territorial sea" are removed from sections 27A and 27B and included in the Interpretation section (section 3) of the *POPS Act*.

Section 6 of the *POPS Act* provides that the *POPS Act* applies both within and outside Australia and extends to every external Territory. That section is being amended to make it clear that the *POPS Act* applies to the EEZ.

Sections 9, 11, 21, 22, 26AB, 26B and 26F of the POPS ACT relate to the discharge or disposal of certain substances into the sea and to the reporting of incidents of discharge or disposal. Those sections do not apply to a foreign ship unless the ship is in the sea near a State, the Jervis Bay Territory or an external Territory. Each section is being amended so that the sections will also apply to a foreign ship that is in the EEZ.

A new section 26G is to be inserted into the POPS Act. That section gives power to the Australian Maritime Safety Authority to require the master of a foreign ship in the territorial sea or in the EEZ to provide specified information if there are clear grounds for believing that a contravention of the POPS Act has occurred in relation to the ship while it was in the EEZ.

Section 27 of the POPS Act provides inspectors with a power of inspection of ships to ascertain if there has been a breach of the POPS Act or other related laws (including a law of a country other than Australia). The proposed new subsection 27(1A) will authorise the inspection of a foreign ship in relation to an act or omission in the EEZ if 2 conditions are met. Those conditions are:

- (i) that there are clear grounds for believing that the act or omission was a substantial discharge or disposal causing or threatening to cause significant pollution of the marine environment; and
- (ii) a requirement under the proposed new section 26G has not been complied with, or information purportedly in compliance with such a requirement is manifestly at variance with the evident factual situation.

The above restrictions on inspection of foreign ships will apply only while the ship is navigating in the territorial sea or the EEZ; that is, there is no such restrictions on the inspection of a foreign ship while it is at a port.

Proposed new section 27A provides for detention of foreign ships in connection with pollution breaches. That proposed section is being amended to provide that if a ship is detained, the Australian Maritime Safety Authority may escort it to a port.

A new section 27C, which relates to the failure to comply with requirements for information under foreign laws, is being inserted. Paragraph 3 of article 220 of UNCLOS relates to a violation of international rules and standards for the prevention, reduction and control of pollution from ships. If the master or owner of an Australian ship, which is in the waters of a foreign country, fails to give to that foreign country information relating to the identity and port of registry of the ship, last and next port of call and other relevant information required to establish

if there has been a violation of that foreign country's laws relating to pollution, the master and owner are liable to a maximum penalty of a fine of 500 penalty units (currently \$50,000). This proposed penalty is the same as that provided in existing subsection 11(1) for failure to report certain incidents involving oil or oily mixtures.

Proposed subsection 29(2) provides that a prosecution relating to a foreign ship must be brought within 3 years of the act or omission to which the prosecution relates. This proposed subsection is being amended to provide that such a prosecution must be suspended if action in relation to the act or omission is brought in the flag State of the ship and must be terminated when the action in the flag State has been brought to a conclusion.

