

1987-88-89-90

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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*(Presented and read a first time, 16 May 1990)*

(SENATOR DUNN)

A BILL

FOR

An Act to amend the Coastal Waters (State Powers) Act 1980  
and the Coastal Waters (Northern Territory Powers) Act  
1980 to protect the environment of coastal waters

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART 1 - PRELIMINARY

5 Short title

1. This Act may be cited as the Environmental Protection of Coastal Waters (State and Northern Territory Powers) Amendment Act 1990.

Commencement

10 2. This Act commences on the day on which it receives the Royal Assent.

PART 2 - AMENDMENTS OF THE COASTAL WATERS  
(STATE POWERS) ACT 1980

Principal Act

3. In this Part, "Principal Act" means the Coastal Waters (State Powers) Act 1980.

Interpretation

4. Section 3 of the Principal Act is amended:

(a) by adding at the end of the definition of "coastal waters of the State" in subsection (1); and 'coastal waters of a State' and 'coastal waters of the Northern Territory' have corresponding meanings."; and

(b) by inserting in subsection (1) the following definitions:

"'environment' includes all aspects of the surroundings of human beings, whether affecting them as individuals or in their social groupings, and 'environmental' has a corresponding meaning;

'environmentally sensitive operation' means an operation that is being, or is likely to be, carried on:

(a) in the coastal waters of a State or in a part of those waters; or

(b) outside the coastal waters of a State, or of a part of those waters;

being an operation that affects, or would, if carried on, affect, to a significant extent, the environment of the coastal waters of the State or of that part of those waters, as the case may be;"; and

5 (c) by adding at the end the following subsections:

"(3) Without limiting the generality of the definition of 'environmentally sensitive operation' in subsection (1), an operation by way of the discharge of sewage or an industrial effluent in or into the  
10 coastal waters of a State, the dumping of wastes in those waters or fishing in those waters shall be deemed to be an environmentally sensitive operation.

"(4) In this Act, unless the contrary intention appears, a reference to the coastal waters of a State  
15 shall be read as including a reference to the sea-bed and subsoil beneath, and the airspace above, those coastal waters."

5. After section 6 of the Principal Act the following sections are inserted:

20 **Formulation of codes of practice**

"6A.(1) The Minister may, from time to time, arrange for the formulation of:

- 25 (a) proposed codes of practice for regulating or controlling environmentally sensitive operations;  
or  
(b) proposed variations of codes of practice approved by orders under subsection 6C(1).

"(2) The Minister shall ensure that there is afforded to the appropriate Minister of the State concerned an opportunity to consult with the Minister or another Minister in relation to the formulation under subsection (1) of a proposed code of practice, or a proposed variation of a code of practice, regulating or controlling environmentally sensitive operations in, or related to, the coastal waters of the State or a part of those waters.

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Minister to furnish proposed code of practice to State concerned

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"6B. Where a proposed code of practice for regulating or controlling environmentally sensitive practices in, or related to, the coastal waters of a State or a part of those waters is formulated under section 6A or a variation of such a code of practice is formulated, the Minister:

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(a) shall cause to be furnished to the appropriate Minister of the State, and make available, or arrange to be made available, for public comment, the proposed code of practice or the proposed variation, as the case may be; and

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(b) shall ensure that the Minister to whom the proposed code of practice or the proposed variation is so furnished, or a person nominated by that Minister, is afforded an opportunity to consult with the Minister, another Minister or a person nominated by the Minister in relation to the proposed code of practice or variation.

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Codes of practice

"6C.(1) Subject to subsection (2), the Governor-General may, from time to time, by order in writing:

- 5 (a) approve a code of practice for regulating or controlling environmentally sensitive operations; and
- 10 (b) approve variations of such a code of practice (including a code of practice as previously varied); and
- (c) revoke such a code of practice (including a code of practice as varied) or a variation of such a code of practice.

15 "(2) The Governor-General shall not make an order under subsection (1) approving a code of practice or a variation of a code of practice unless the Governor-General has been informed by the Minister that subsection 6A(2) and section 6B have been

20 complied with in respect of the code of practice or variation.

"(3) A code of practice may:

- 25 (a) specify standards to be observed, practices and procedures to be followed and measures (including measures for an in relation to the restoration of the environment of the coastal waters of a State, or of a part of those waters from the effects of an environmentally sensitive operation) to be taken with respect to such an operation; and

6 **Environmental Protection of Coastal Waters**  
**(State and Northern Territory Powers) No. , 1990**

- (b) recommend practices and procedures that may be followed, and measures that may be taken, to further the achievement of standards referred to in paragraph (a); and
- (c) make provision for and in relation to the prohibition of the doing of an act or thing that is, in whole or in part, an environmentally sensitive operation; and 5
- (d) make provision for and in relation to the licensing and supervising of environmentally sensitive operations; and 10
- (e) make provision for an in relation to the giving of directions to particular persons for the purposes of the code; and
- (f) make provisions for an in relation to exemptions from the application of the code. 15

"(4) An order under subsection (1) shall specify a date, not being earlier than 6 months after the date of the making of the order, as the date on and after which section 6D operates in respect of the order. 20

"(5) An order under subsection (1) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

**Regulations for carrying into effect a code of practice 25**

"6D.(1) Subject to subsection (3), where, after the date on and after which this section operates in respect of an order under section 6C approving a code of practice related to the coastal waters of a State or a part of those waters, the Governor-General is of

5 the opinion that the laws of that State do not make provision for regulating or controlling environmentally sensitive operations in that State in the manner prescribed by the code, or that those laws make provision for regulating or controlling those operations in part only in the manner prescribed by the code, the regulations may make provision necessary or convenient for carrying out the code, in whole or in part, in that State.

10       "(2) Subject to subsection (3), where, after the date on and after which this section operates in respect of an order under section 6C approving a variation of a code of practice related to the coastal waters of a State or a part of those waters, the  
15 Governor-General is of the opinion that the laws of that State do not make provision for regulating or controlling environmentally sensitive operations in that State in the manner prescribed by that code as so varied, or those laws make provision for regulating or  
20 controlling environmentally sensitive operations in that State in part only in the manner prescribed by that code as so varied, the regulations may make provision necessary or convenient for carrying out the code as so varied, in whole or in part, in that State.

"(3) It is not necessary for the laws of a State to make provision for regulating or controlling environmentally sensitive operations in the State in the manner recommended in an order under section 6C as provided by paragraph 6C(3)(b) or make provision for carrying out practices, procedures or measures so recommended.

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"(4) Regulations made in pursuance of subsection (1) or (2) may make provision for carrying out a code of practice in a State by providing that all or some of the provisions of the code (either with or without modifications specified in the regulations) are to have the force of law in the State.

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"(5) Regulations made in pursuance of subsection (1) or (2) that make provision for carrying out a code of practice in a State do not cease to have effect by reason that, after the making of the regulations, the laws of that State make provision for regulating or controlling environmentally sensitive operations in that State, in whole or in part, in the manner prescribed in the code.

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"(6) Where regulations made in pursuance of subsection (1) or (2) make provision for carrying out a code of practice in a State:



(a) the regulations may provide that they are intended to deal exhaustively with a matter to which they relate, and the regulations have effect accordingly; and

5 (b) except to the extent required by a provision so made, this section and the regulations shall not be construed as intended to exclude or limit the operation of the provisions of any laws of the State concerned in so far as those provisions are  
10 capable of operating concurrently with the regulations.

"(7) Regulations made in pursuance of subsection (1) or (2) that make provision for carrying out a code of practice continue in force, subject to any later  
15 regulations, notwithstanding approval by an order under subsection 6C(1) of a variation of that code after the making of the regulations.

"(8) A reference in subsection (2), (3), (4), (5), (6) or (7) to a code of practice shall, where  
20 variations of a code of practice have been approved by an order or orders under subsection 6C(1), be read as a reference to the code of practice as varied by the order or orders.

"(9) On the date on an after which this section operates in respect of an order under section 6C revoking a code of practice, or a variation of such a code, any regulations that make provision for carrying out the code or the variation, as the case may be, shall be deemed to have been repealed by another regulation.

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"(10) A reference in this section to carrying out a code of practice or a variation of such a code shall be read as including a reference to giving effect to, or securing the observance of, the code or variation.

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#### Regulations

"6E.(1) The Governor-General may make regulations prescribing all matters required or permitted to be prescribed by section 6D, and in particular:

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- (a) prohibiting the doing of an act or thing absolutely; and
- (b) prohibiting the doing of an act or thing except in pursuance of a licence, permit or authority, or in accordance with an approval, granted under the regulations; and
- (c) making provision for an in relation to the terms and conditions to which a licence, permit, authority or approval granted under the regulations is to be subject; and

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- (d) making provision for and in relation to the granting of exemptions, either unconditionally or subject to conditions, from the provisions of the regulations; and
- (e) providing for the recovery of costs and expenses, and, fixing the fees to be paid, in respect of any matters under the regulations; and
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- (f) empowering the Minister or other persons to give directions to particular persons for the purposes of the regulations; and
- (g) empowering the Minister to make provision, by order, with respect to any matter with respect to which provision may be made by the regulations, and
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- (h) prescribing the manner in which notices, orders, directions or instructions under the regulations may be given or in which documents may be served.

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"(2) The regulations may prescribe penalties not exceeding imprisonment for a period not exceeding 6 years or a fine not exceeding \$20,000, or both.

"(3) For the purposes of subsection (2), a contravention of, or a failure to comply with, an order made under the regulations shall be deemed to be an offence against the regulations.

"(4) The regulations may specify that an order made under the regulations is to be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

Extended operation of sections 6A to 6E 5

"6F. Where an operation that is being carried on, or is likely to be carried on:

- (a) in the coastal waters of a State or in a part of those waters; or
- (b) within a State; 10

affects, or would, if carried on, affect, to a significant extent, the environment of the coastal waters of the Northern Territory, or of a part of those waters;

- (c) that operation is an environmentally sensitive operation for the purpose of this Act; and 15
- (d) sections 6A to 6E (inclusive) apply in relation to the operation as if references in those sections to the coastal waters of the State included references to the coastal waters of the Northern Territory." 20



(b) by inserting in subsection (1) the following definitions:

"`environment' includes all aspects of the surroundings of human beings, whether affecting them as individuals or in their social groupings, and `environmental' has a corresponding meaning; `environmentally sensitive operation' means an operation that is being, or is likely to be, carried on:

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(a) in the coastal waters of the Territory or in a part of those waters; or

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(b) outside the coastal waters of the Territory or of a part of those waters;

being an operation that affects, or would, if carried on, affect, to a significant extent, the environment of the coastal waters of the Territory or of that part of those waters, as the case may be;"; and

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(c) by adding at the end the following subsections:

"(3) Without limiting the generality of the definition of `environmentally sensitive operation' in subsection (1), an operation by way of the discharge of sewage or an industrial effluent in or into the coastal waters of the Territory, the dumping of wastes in those waters or fishing in those waters shall be deemed to be an environmentally sensitive operation.

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"(4) In this Act, unless the contrary intention appears, a reference to the coastal waters of the Territory shall be read as including a reference to the sea-bed and subsoil beneath, and the airspace above, those coastal waters."

9. After section 6 of the Principal Act the following sections are inserted:

**Formulation of codes of practice**

"6A.(1) The Minister may, from time to time, arrange for the formulation of:

- (a) proposed codes of practice for regulating or controlling environmentally sensitive operations; or
- (b) proposed variations of codes of practice approved by orders under subsection 6C(1).

"(2) The Minister shall ensure that there is afforded to the appropriate Minister of the Territory an opportunity to consult with the Minister or another Minister in relation to the formulation under subsection (1) of a proposed code of practice, or a proposed variation of a code of practice, regulating or controlling environmentally sensitive operations in, or related to, the coastal waters of the Territory or a part of those waters.

**Minister to furnish proposed code of practice to Territory**

"6B. Where a proposed code of practice for regulating or controlling environmentally sensitive practices in, or related to, the coastal waters of the Territory or a part of those waters is formulated under section 6A or a variation of such a code of practice is formulated, the Minister:

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(a) shall cause to be furnished to the appropriate Minister of the Territory and make available, or arrange to be made available, for public comment, the proposed code of practice or the proposed variation, as the case may be; and

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(b) shall ensure that the Minister to whom the proposed code of practice or the proposed variation is so furnished, or a person nominated by that Minister, is afforded an opportunity to consult with the Minister, another Minister or a person nominated by the Minister in relation to the proposed code of practice or variation.

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**Codes of practice**

"6C.(1) Subject to subsection (2), the Governor-General may, from time to time, by order in writing:

(a) approve a code of practice for regulating or controlling environmentally sensitive operations; and

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- (b) approve variations of such a code of practice (including a code of practice as previously varied); and
- 5 (c) revoke such a code of practice (including a code of practice as varied) or a variation of such a code of practice.

10 "(2) The Governor-General shall not make an order under subsection (1) approving a code of practice or a variation of a code of practice unless the Governor-General has been informed by the Minister that subsection 6A(2) and section 6B have been complied with in respect of the code of practice or variation.

"(3) A code of practice may:

- 15 (a) specify standards to be observed, practices and procedures to be followed and measures (including measures for an in relation to the restoration of the environment of the coastal waters of the Territory or of a part of those waters from the effects of an environmentally sensitive operation) to be taken with respect to such an operation; and
- 20 (b) recommend practices and procedures that may be followed, and measures that may be taken, to further the achievement of standards referred to in paragraph (a); and
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- (c) make provision for and in relation to the prohibition of the doing of an act or thing that is, in whole or in part, an environmentally sensitive operation; and
- (d) make provision for and in relation to the licensing and supervising of environmentally sensitive operations; and 5
- ( ) make provision for an in relation to the giving of directions to particular persons for the purposes of the code; and 10
- (f) make provisions for an in relation to exemptions from the application of the code.

"(4) An order under subsection (1) shall specify a date, not being earlier than 6 months after the date of the making of the order, as the date on and after which section 6D operates in respect of the order. 15

"(5) An order under subsection (1) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

**Regulations for carrying into effect a code of practice 20**

"6D.(1) Subject to subsection (3), where, after the date on and after which this section operates in respect of an order under section 6C approving a code of practice related to the coastal waters of the Territory or a part of those waters, the 25

5 Governor-General is of the opinion that the laws of the Territory do not make provision for, regulating or controlling environmentally sensitive operations in the Territory in the manner prescribed by the code, or that those laws make provision for regulating or controlling those operations in part only in the manner prescribed by the code, the regulations may make provision necessary or convenient for carrying out the code, in whole or in part, in the Territory.

10       \*(2) Subject to subsection (3), where, after the date on and after which this section operates in respect of an order under section 6C approving a variation of a code of practice related to the coastal waters of the Territory or a part of those waters, the  
15 Governor-General is of the opinion that the laws of the Territory do not make provision for regulating or controlling environmentally sensitive operations in the Territory in the manner prescribed by that code as so varied, or those laws make provision for regulating  
20 or controlling environmentally sensitive operations in the Territory in part only in the manner prescribed by that code as so varied, the regulations may make provision necessary or convenient for carrying out the code as so varied, in whole or in part, in the Territory.

"(3) It is not necessary for the laws of the Territory to make provision for regulating or controlling environmentally sensitive operations in the Territory in the manner recommended in an order under section 6C as provided by paragraph 6C(3)(b) or make provision for carrying out practices, procedures or measures so recommended.

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"(4) Regulations made in pursuance of subsection (1) or (2) may make provision for carrying out a code of practice in the Territory by providing that all or some of the provisions of the code (either with or without modifications specified in the regulations) are to have the force of law in the Territory.

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"(5) Regulations made in pursuance of subsection (1) or (2) that make provision for carrying out a code of practice in the Territory do not cease to have effect by reason that, after the making of the regulations, the laws of the Territory make provision for regulating or controlling environmentally sensitive operations in the Territory, in whole or in part, in the manner prescribed in the code.

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"(6) Where regulations made in pursuance of subsection (1) or (2) make provision for carrying out a code of practice in the Territory:

(a) the regulations may provide that they are intended to deal exhaustively with a matter to which they relate, and the regulations have effect accordingly; and

5 (b) except to the extent required by a provision so made, this section and the regulations shall not be construed as intended to exclude or limit the operation of the provisions of any laws of the Territory in so far as those provisions are  
10 capable of operating concurrently with the regulations.

"(7) Regulations made in pursuance of subsection (1) or (2) that make provision for carrying out a code of practice continue in force, subject to any later  
15 regulations, notwithstanding approval by an order under subsection 6C(1) of a variation of that code after the making of the regulations.

"(8) A reference in subsection (2), (3), (4), (5), (6) or (7) to a code of practice shall, where  
20 variations of a code of practice have been approved by an order or orders under subsection 6C(1), be read as a reference to the code of practice as varied by the order or orders.

"(9) On the date on an after which this section operates in respect of an order under section 6C revoking a code of practice, or a variation of such a code, any regulations that make provision for carrying out the code or the variation, as the case may be, shall be deemed to have been repealed by another regulation.

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"(10) A reference in this section to carrying out a code of practice or a variation of such a code shall be read as including a reference to giving effect to, or securing the observance of, the code or variation.

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#### Regulations

"6E.(1) The Governor-General may make regulations prescribing all matters required or permitted to be prescribed by section 6D, and in particular:

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- (a) prohibiting the doing of an act or thing absolutely; and
- (b) prohibiting the doing of an act or thing except in pursuance of a licence, permit or authority, or in accordance with an approval, granted under the regulations; and
- (c) making provision for an in relation to the terms and conditions to which a licence, permit, authority or approval granted under the regulations is to be subject; and

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- (d) making provision for and in relation to the granting of exemptions, either unconditionally or subject to conditions, from the provisions of the regulations; and
- (e) providing for the recovery of costs and expenses, and, fixing the fees to be paid, in respect of any matters under the regulations; and
- 10 (f) empowering the Minister or other persons to give directions to particular persons for the purposes of the regulations; and
- (g) empowering the Minister to make provision, by order, with respect to any matter with respect to which provision may be made by the regulations, and
- 15 (h) prescribing the manner in which notices, orders, directions or instructions under the regulations may be given or in which documents may be served.

20 "(2) The regulations may prescribe penalties not exceeding imprisonment for a period not exceeding 6 years or a fine not exceeding \$20,000, or both.

"(3) For the purposes of subsection (2), a contravention of, or a failure to comply with, an order made under the regulations shall be deemed to be an offence against the regulations.

"(4) The regulations may specify that an order made under the regulations is to be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

**Extension of operation of section 6A to 6E**

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"6F. Where an operation that is being carried on, or is likely to be carried on:

- (a) in the coastal waters of the Territory or in a part of those waters; or
- (b) within the Territory;

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affects, or would, if carried on, affect, to a significant extent, the environment of the coastal waters of a State, or of a part of those waters:

- (c) that operation is an environmentally sensitive operation for the purpose of this Act; and
- (d) sections 6A to 6E (inclusive) apply in relation to the operation as if references in those sections to the coastal waters of the Territory included references to the coastal waters of the State."

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**Savings**

10. Section 7 of the Principal Act is amended by adding at the end the following subsection:

5           “(2) Without limiting the generality of paragraph  
(1)(C), nothing in this Act shall be taken to give any  
force or effect to a provision of a law of a State  
that makes provision for carrying out, or giving  
effect to, or for securing the observance of, a code  
of practice approved under section 6C to the extent  
10       that the provision is inconsistent with, and cannot  
operate together with, a provision of a law of the  
Commonwealth other than a regulations made under this  
Act.”.















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