

1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 5 March 1981

(*Minister for Transport*)

A BILL

FOR

An Act to amend the *Navigation Act 1912*, and for related purposes

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

Short title, &c.

1. (1) This Act may be cited as the *Navigation (Protection of the Sea) Amend-*
ment Act 1981.

0 (2) The *Navigation Act 1912*¹ is in this Act referred to as the Principal Act.

Commencement

2. (1) Sections 1, 2 and 8 shall come into operation on the day on which this
Act receives the Royal Assent.

5 (2) Sections 3, 4, 5 and 7 shall come into operation on a date to be fixed
by Proclamation for the purposes of this sub-section, being a date not earlier
than the date on which the amendments to the International Convention for
the Prevention of Pollution of the Sea by Oil, 1954 concerning tank arrange-
ments and limitation of tank size that were adopted on 15 October 1971 by
the Assembly of the Inter-Governmental Maritime Consultative Organization
0 come into force.

(3) Section 6 shall come into operation on the day on which the *Protection*
of the Sea (Powers of Intervention) Act 1981 comes into operation.

Interpretation

3. Section 187A of the Principal Act is amended—

(a) by inserting after the definition of “the Prevention of Collisions Convention” in sub-section (1) the following definition:

“ ‘the Prevention of Pollution of the Sea by Oil Convention’ means—

(a) if section 3 of the *Navigation (Protection of the Sea) Amendment Act* 1981 comes into force on or after the date fixed by Proclamation for the purposes of section 10 of the *Protection of the Sea (Discharge of Oil from Ships) Act* 1981—the 1954 Convention as amended by the 1962 Amendments, the 1969 Amendments, the 1971 (Great Barrier Reef) Amendments and the 1971 (Tanker) Amendments; or

(b) in any other case—the 1954 Convention as amended by—

(i) the 1962 Amendments, the 1969 Amendments and the 1971 (Tanker) Amendments; and

(ii) on and after the date fixed by Proclamation for the purposes of section 10 of the *Protection of the Sea (Discharge of Oil from Ships) Act* 1981—the 1971 (Great Barrier Reef) Amendments;”;

(b) by inserting before the definition of “valid Safety Convention certificate” in sub-section (1) the following definitions:

“ ‘the 1954 Convention’, ‘the 1962 Amendments’, ‘the 1969 Amendments’, ‘the 1971 (Great Barrier Reef) Amendments’ and ‘the 1971 (Tanker) Amendments’ have the same respective meanings as in the *Protection of the Sea (Discharge of Oil from Ships) Act* 1981;”.

Regulations giving effect to Conventions—discretion of Governor-General and Minister

4. Section 191A of the Principal Act is amended by inserting in sub-sections (1) and (2) “, the Prevention of Pollution of the Sea by Oil Convention” after “the Prevention of Collisions Convention”.

5. After Division 11 of Part IV of the Principal Act the following Division is inserted:

“Division 12—Tankers

Interpretation

“266. (1) In this Division, unless the contrary intention appears—

‘Australian tanker’ means—

(a) a tanker registered in Australia; or

(b) an unregistered tanker having Australian nationality;

'foreign tanker' means a tanker that is not an Australian tanker;
'tanker construction certificate' means a certificate issued under section 267B;
'tanker exemption certificate' means a certificate issued under section 267C;
5 'the tanker Annex' means the Annex to the Prevention of Pollution of the
Sea by Oil Convention referred to in Article VI bis of that Convention.

“(2) Except in so far as the contrary intention appears, an expression that is used in this Division and in the Prevention of Pollution of the Sea by Oil Convention (whether or not a particular meaning is assigned to it by that Convention) has, in this Division, the same meaning as in that Convention.

10 **Application of Division**

“267. (1) Section 2 does not have effect in relation to the provisions of this Division.

15 “(2) The provisions of this Division do not apply in relation to a ship referred to in paragraph 2 (1) (a) to the extent that a law of a State or of the Northern Territory makes provision giving effect to Article VI bis of the Prevention of Pollution of the Sea by Oil Convention in relation to that ship.

20 “(3) A reference in this section to the provisions of this Division shall be read as including a reference to the provisions of any regulations made for the purposes of sub-section 267A (1) and of any orders made in pursuance of any such regulations.

Regulations to give effect to Article VI bis of Pollution of the Sea by Oil Convention

25 “267A. (1) The regulations may make provision for and in relation to giving effect to Article VI bis of the Prevention of Pollution of the Sea by Oil Convention.

“(2) Without limiting the generality of sub-section (1), regulations made for the purposes of that sub-section may empower the Minister to make orders with respect to any matter for or in relation to which provision may be made by the regulations by virtue of this section.

30 “(3) Section 426 applies to orders made in pursuance of regulations made by virtue of sub-section (1) of this section.

Tanker construction certificates

35 “267B. Where, on receipt of declarations of survey in respect of an Australian tanker, the Minister is satisfied that the tanker is constructed in accordance with the provisions of the tanker Annex, he may, whether or not the tanker is required by Article VI bis of the Prevention of Pollution of the Sea by Oil Convention to be constructed in accordance with the provisions of the tanker Annex, issue in respect of the tanker a tanker construction certificate, in the prescribed form, attesting such compliance.

Tanker exemption certificates

“267C. Where the Minister is satisfied that an Australian tanker is not required by Article VI bis of the Prevention of Pollution of the Sea by Oil Convention to be constructed in accordance with the provisions of the tanker Annex and is not so constructed, he may issue in respect of the tanker a tanker exemption certificate, in the prescribed form, certifying that the tanker is not required to be so constructed.

Alteration, &c., of construction of tankers and cancellation of certificates

“267D. (1) Where the construction of an Australian tanker in respect of which a tanker construction certificate is in force is altered, or such a tanker is damaged, in a manner which affects its compliance with the provisions of the tanker Annex, the master or owner of the tanker shall, within 7 days after the construction of the tanker is altered or the tanker is damaged, as the case may be, give a notice in writing of the alteration or damage to such person, and in such form, as are prescribed and, if a notice is not so given, the master and the owner of the tanker are each guilty of an offence punishable on conviction by a fine not exceeding—

- (a) in the case of the master—\$500;
- (b) in the case of the owner, if the owner is a natural person—\$500; and
- (c) in the case of the owner, if the owner is a body corporate—\$1,000.

“(2) Where a notice required to be given under sub-section (1) is not given within the period referred to in that sub-section, the following provisions of this sub-section have effect:

- (a) the obligation to give the notice continues, notwithstanding that that period has expired, until the notice is given;
- (b) the master and the owner of the tanker are each guilty of a separate and further offence in respect of each day during which the notice is not given, being a day after the expiration of that period;
- (c) the penalty applicable to each such separate and further offence is a fine not exceeding—
 - (i) in the case of the master—\$500;
 - (ii) in the case of the owner, if the owner is a natural person—\$500; and
 - (iii) in the case of the owner, if the owner is a body corporate—\$1,000.

“(3) Charges against the same person for any number of offences under paragraph (2) (b) relating to a single notice may be joined in the same information or complaint.

“(4) If a person is convicted of 2 or more offences under paragraph (2) (b) relating to a single notice, the court may impose one penalty in respect of both or all of those offences, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if a penalty were imposed in respect of each offence separately.

“(5) Where the Minister has reason to believe that—

- (a) the report of a surveyor in respect of an Australian tanker in respect of which a tanker construction certificate or tanker exemption certificate is in force was fraudulently or erroneously made or obtained;
- 5 (b) a tanker construction certificate or a tanker exemption certificate has been issued in respect of an Australian tanker upon false or erroneous information;
- 10 (c) the construction of an Australian tanker in respect of which a tanker construction certificate is in force has been altered, or such a tanker has been damaged, in a manner which affects its compliance with the provisions of the tanker Annex; or
- (d) the owner of an Australian tanker in respect of which a tanker construction certificate is in force has failed to comply with section 267E in respect of the tanker,

15 he may, by instrument in writing, cancel the certificate.

“(6) Where the Minister cancels a tanker construction certificate, or a tanker exemption certificate, issued in respect of an Australian tanker, the certificate is of no force or effect after the Minister has given notice in writing of the cancellation to the owner, agent or master of the tanker.

20 “(7) Where a tanker construction certificate, or a tanker exemption certificate, issued in respect of an Australian tanker is cancelled under this section, the Minister may, by notice in writing given to the owner, agent or master of the tanker, require the certificate to be delivered up to the Minister or to such other person as the Minister specifies, and the Minister may detain
25 the tanker until the requirement is complied with.

Tankers to be surveyed periodically

30 “267E. (1) The owner of an Australian tanker in respect of which a tanker construction certificate is in force shall, at least once during each period that is a prescribed period in relation to the tanker for the purposes of this section, cause the tanker to be surveyed for the purpose of ensuring its compliance with the provisions of the tanker Annex.

35 “(2) Where the owner of an Australian tanker in respect of which a tanker construction certificate is in force fails to comply with sub-section (1) in relation to the tanker and to a period that is a prescribed period in relation to the tanker, the owner is guilty of an offence punishable on conviction by a fine not exceeding—

- (a) if the owner is a natural person—\$2,000; and
- (b) if the owner is a body corporate—\$5,000.

Cancellation of certificates if ship ceases to be a tanker, &c.

40 “267F. A tanker construction certificate or a tanker exemption certificate ceases to have effect if the tanker in respect of which it was issued—

- (a) ceases to be a tanker;
- (b) ceases to be registered in Australia; or
- (c) ceases to have Australian nationality.

Certificates required for Australian tankers

“267G. (1) The master of an Australian tanker shall not take the tanker to sea, and the owner of an Australian tanker shall not permit the tanker to be taken to sea, unless there is in force in respect of the tanker—

- (a) a tanker construction certificate; or 5
- (b) a tanker exemption certificate.

Penalty—

- (a) in the case of the master—\$10,000, or imprisonment for 4 years, or both;
- (b) in the case of the owner, if the owner is a natural person—\$10,000, or imprisonment for 4 years, or both; and 10
- (c) in the case of the owner, if the owner is a body corporate—\$40,000.

“(2) The regulations may exempt tankers included in a prescribed class of tankers from the application of sub-section (1), either absolutely or subject to conditions. 15

Certificates to be carried on board Australian tankers

“267H. The owner of an Australian tanker in respect of which a tanker construction certificate or a tanker exemption certificate is in force shall cause the certificate to be carried on board the tanker.

Penalty: \$200. 20

Production of certificates

“267J. Where—

- (a) application is made to an officer of Customs in respect of an Australian tanker for a clearance under the Customs Act for a voyage from a port in Australia; and 25
- (b) the master of the tanker would contravene sub-section 267G (1) if he took the tanker to sea without there being in force in respect of the tanker a tanker construction certificate or a tanker exemption certificate,

the master of the tanker shall, if so required by the officer of Customs, produce to the officer of Customs the tanker construction certificate or tanker exemption certificate in force in respect of the tanker, and the officer of Customs may refuse to grant the clearance, and the tanker may be detained, until the certificate is produced to him. 30

Penalty: \$200. 35

Directions in relation to foreign tankers

“267K. (1) Subject to sub-section (2), where the Minister is of the opinion that a foreign tanker is not constructed in accordance with the provisions of the tanker Annex (whether or not the tanker is required by Article VI bis of the Prevention of Pollution of the Sea by Oil Convention to be so constructed), the 40

Minister may, by notice in writing addressed to the master or the owner of the tanker and served in accordance with the regulations, direct—

- (a) that the tanker shall not enter any port, or a specified port or specified ports, in Australia;
- 5 (b) that the tanker shall not use any off-shore terminal, or a specified off-shore terminal or specified off-shore terminals, in Australia;
- (c) that the tanker comply with specified requirements while it is entering, is in or is leaving any port, or a specified port or specified ports, in Australia; or
- 10 (d) that the tanker comply with specified requirements while it is approaching, is using or is leaving any off-shore terminal, or a specified off-shore terminal or specified off-shore terminals, in Australia.

“(2) The Minister shall not exercise his powers under sub-section (1) except to the extent that it appears to him necessary or expedient to do so for the protection of the environment.

“(3) Nothing in this section shall be taken to prevent the issuing of more than one direction under sub-section (1) in relation to a tanker.

“(4) If a direction under sub-section (1) is contravened or not complied with in relation to a tanker, the master and the owner of the tanker are each guilty of an offence punishable on conviction by a fine not exceeding—

- (a) in the case of the master—\$10,000;
- (b) in the case of the owner, if the owner is a natural person—\$10,000; and
- (c) in the case of the owner, if the owner is a body corporate—\$40,000.

“(5) In proceedings for an offence against sub-section (4) by reason of a contravention of, or failure to comply with, a direction under sub-section (1), it is a defence if it is proved—

- (a) that the contravention of, or non-compliance with, the direction resulted from the need to save life at sea or was due to an emergency involving a threat to a person’s life; or
- 30 (b) that compliance with the direction was not possible.

Offences against sub-sections 267G (1) and 267K (4) to be indictable offences

“267L. An offence against sub-section 267G (1) or 267K (4) is an indictable offence.”.

35 **Repeal of Part VIIA**

6. (1) Part VIIA of the Principal Act is repealed.

(2) Notwithstanding the repeal of Part VIIA of the Principal Act effected by sub-section (1), the provisions of that Part continue to apply, after the commencement of this section, in relation to an escape of oil that occurred or commenced before the commencement of this section as if that Part had not been repealed.

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Prosecution of offences

7. Section 394 of the Principal Act is amended by inserting in paragraph (d) of sub-section (4) “267G (1), 267K (4) or” after “sub-section”.

Regulations

8. Section 425 of the Principal Act is amended by inserting after sub-section (5B) the following sub-section: 5

“(5C) Where a provision of an order made in pursuance of the regulations is inconsistent with a provision of this Act or the regulations, the latter shall prevail and the former shall, to the extent of the inconsistency, be of no force or effect.”. 10

NOTE

1. No. 4, 1913, as amended. For previous amendments, see No. 32, 1919; No. 1, 1921; No. 8, 1925; No. 8, 1926; No. 49, 1934; No. 30, 1935; No. 1, 1943; No. 80, 1950; No. 109, 1952; No. 96, 1953; No. 46, 1956; No. 36, 1958; No. 96, 1961; No. 1, 1965; No. 93, 1966; No. 60, 1967; No. 62, 1968; Nos. 1 and 117, 1970; No. 28, 1972; No. 216, 1973 (as amended by No. 20, 1974); Nos. 91 and 157, 1976; Nos. 98 and 155, 1979; Nos. 70 and 87, 1980; and No. , 1981.