

1986

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

ENVIRONMENT PROTECTION (SEA DUMPING) AMENDMENT BILL 1986

EXPLANATORY MEMORANDUM

(circulated by authority of the Minister for Arts, Heritage and
Environment, the Hon Barry Cohen, MP)

OUTLINE

The primary purpose of the Bill is to amend certain provisions of the Environment Protection (Sea Dumping) Act 1981 (the Act) to prohibit the dumping at sea of radioactive material. By this amendment the existing legislation for the regulation of sea dumping will be made to reflect the Government's policy of vigorous opposition to the dumping of radioactive material at sea, and further to conform with the international obligations Australia will assume under its treaty obligation. The South Pacific Nuclear Free Zone (SPNFZ) Treaty was signed by the Prime Minister on behalf of Australia at Rarotonga in August 1985. The draft Convention for the Protection of the Natural Resources and Environment of the South Pacific Region is currently being drafted, and expected to be completed by late 1986. Both of these international agreements include inter alia provisions which will prohibit the disposal at sea of radioactive material.

Other, minor amendments to the existing legislation are intended to improve the co-ordination of State and Commonwealth legislation where State legislation is introduced to control sea dumping operations in coastal waters.

Financial Implications

There are no direct cost implications arising from these amendments.

NOTES ON CLAUSES

Clause 1 - Short Title etc.

Formal. Provides for citation.

Clause 2 - Commencement

This clause provides that the legislation will come into operation on a day to be fixed by Proclamation.

Clause 3 - Approved procedures

This clause amends section 6 of the Principal Act to enable approved administrative procedures to be made giving the Minister the power to require the supply by Commonwealth Government departments and authorities of information for the purpose of consideration of the need for environmental impact statements or public environment reports. This represents a strengthening of the current position under the Act.

This clause also provides that approved administrative procedures may be made authorizing the Minister to direct the preparation or obtaining, and submission to the Minister, of Public Environment Reports. Such reports are expected to be a less involved and less costly form of documentation for environmental impact assessment than that provided for by Environmental Impact Statements.

This clause further amends section 6 to refer throughout to Public Environment Reports

Clause 4 - Minister to furnish certain information

This clause amends section 10 of the Principal Act to require the Minister to advise a person who has by written notice sought information as to the action taken or proposed for ensuring consideration of the environmental aspects of a matter deemed environmentally significant as soon as practicable and at the latest 3 months from the date of the notice.

Clause 5 - Inquiries by Commissioners

This clause amends section 11 of the Principal Act to enable the Minister to direct a Commission of Inquiry to report its findings and recommendations to the Minister within a particular time period.

Clause 6 - Minor and Consequential Amendments

This clause refers to a Schedule to the Bill which effects minor amendments to the Principal Act, the majority of which related to the introduction into the Act of gender neutral language. This conforms with current drafting practice.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 : Short title etc

Formal. Defines the Environment Protection (Sea Dumping) Act 1981 as the Principal Act.

Clause 2 : Long Title

Amends the long title of the Principal Act by inserting a reference to the prohibiting of the dumping into the sea, and incineration at sea, of radioactive materials.

Clause 3 : Interpretation

Inserts into section 4 of the Principal Act a definition of "radioactive material" to mean material that has an activity of more than 35 becquerels per gram. The clause also inserts a new sub-section which clarifies the meaning of dumping for the purposes of the Act to include the disposal of matter or things from a ship, aircraft or platform into the subsoil or seabed beneath the sea.

Clause 4 : Declaration by Minister in relation to coastal waters of a State, etc

Section 9 of the Principal Act provides for the "rolling back" of the Act by declaration of the Minister in circumstances where the Minister is satisfied that the law of a State or of the Northern Territory will give effect to the London Dumping Convention in relation to coastal waters of that State or Territory. Thus certain provisions of the Principal Act will not apply once a declaration under section 9 is in force.

Sub-clause 4(a) proposes to amend sub-section 9(1) of the Principal Act by omitting "shall" and substituting "may" which has the effect of providing the Minister with a discretion as to the "rolling back" of the Principal Act where the Minister is satisfied that the relevant State or Territory legislation gives effect to the Sea Dumping Convention.

Sub-clauses 4(b) and 4(c) would amend section 9 of the Principal Act to the effect that where there is a declaration by the Minister under section 9, only specified sections of the Principal Act viz. those relating to the grant of a permit for the loading, dumping and incineration at sea, of non-radioactive waste, will be disapplied. The application of the provisions relating to the prohibition on dumping of radioactive waste (see clause 5) shall not be affected by a declaration by the Minister under section 9 as proposed to be amended.

Sub-clause 4(b) also removes an anomaly in respect of the issuance of a permit for loading of material for dumping in coastal waters where a declaration under section 9 is in force.

Clause 5 : Dumping, loading and incineration at sea, of radioactive material prohibited

This clause inserts four new sections. Proposed new sections 9A, 9B and 9C prohibit respectively the dumping, loading for dumping, and incineration at sea, of radioactive material. The prohibition applies to Australian vessels, aircraft and platforms and to any aircraft, vessels or platforms in Australian waters. Where there is an offence against proposed sections 9A, 9B and 9C, the owner and the person in charge of the vessel, aircraft or platform and the owner of the radioactive material involved are each guilty of an offence.

Proposed section 9D provides penalties for offences against proposed section 9A, 9B and 9C to be a fine not exceeding \$50,000 if the offender is a natural person

and a fine not exceeding \$100,000 if the offender is a corporate body

Clause 6 : Dumping of wastes or other matter

Section 10 of the Principal Act defines as an offence the dumping of material except in accordance with a permit. Clause 6 amends that section to apply to non-radioactive material since the dumping of radioactive material is to be prohibited by section 9A (see clause 5).

Clause 7 : Loading of wastes or other matter, etc, for dumping, etc

Section 12 of the Principal Act defines as an offence the loading of waste or matter on any vessel or aircraft in Australia or in Australian waters for the purpose of dumping, or loading on any Australian vessel or aircraft except in accordance with a permit. Clause 7 amends that section to apply to non-radioactive material since the loading of radioactive material is to be prohibited by proposed section 9B (see clause 5).

Clause 8 : Incineration at sea

Section 14 of the Principal Act defines as an offence the incineration at sea of certain materials except in accordance with a permit and prohibits the incineration at sea of certain other materials.

Clause 8 amends that section to apply to non-radioactive material since the incineration of that material is to be prohibited by proposed section 9C (see clause 5).

Clause 9 : Defences to charge of an offence

Section 15 of the Principal Act provides for defences against charges of offences under the Act such as dumping without a permit. This clause amends subsection 15(3) to provide, as for non-radioactive

material, that a person alleged to have dumped radioactive waste may claim that the dumping of such material was necessary to avert a threat to human life or to the safety of a vessel, aircraft or platform at sea, or in the circumstance of force majeure, caused by stress of weather.

Clause 10 : Liability for expenses incurred by the Commonwealth resulting from dumping

This clause amends section 17 of the Principal Act to enable the Commonwealth to recover the expenses incurred by it in repairing or mitigating damage arising out of the dumping of radioactive material.

Clause 11 : Grant of Permit

Section 19 of the Principal Act empowers the Minister with the discretion to grant a permit. Sub-section 19(6) specifies those matters which the Minister shall have regard to in granting a permit. This clause amends that sub-section to ensure the Minister shall have regard to any treaty or convention to which Australia is a party that relates to the dumping, loading or incineration at sea of waste or other matter.

Sub-clause 11(b) inserts a new sub-section to put beyond doubt that nothing in the Act shall be read as implying that a permit for dumping, loading or incineration at sea of radioactive material may be granted.

Clause 12 : Repeal

Repeals section 22 of the Principal Act which provides for procedures in respect of a permit granted for the dumping or loading of radioactive waste. The proposed repeal is consequential upon the prohibition on dumping, loading, or incinerating at sea, of radioactive material (see clause 5).

Clause 13 : Injunction

Amends section 33 of the Principal Act in order to provide, as for non-radioactive materials, that an injunction may be granted to restrain a person from dumping, loading or incinerating at sea radioactive material.

Clause 14 : Indictable offences

Amends section 37 of the Principal Act to provide, as for non-radioactive material, that an offence against proposed section 9A, 9B or 9C is an indictable offence and, by virtue of an amendment to sub-section 19(3), the offence may be heard in a court of summary jurisdiction attracting a maximum fine of \$2000 in the case of a natural person or \$5000 in the case of a body corporate.

