

Pollution of Waters by Oil and Noxious Substances (Amendment) Bill

EXPLANATORY MEMORANDUM

Outline

This Bill provides for the full implementation by Victorian legislation of the International Convention for the Prevention of Pollution from Ships, 1973 and its Protocol of 1978. In providing for this, the Bill makes substantial amendments to the **Pollution of Waters by Oil and Noxious Substances Act 1986**. The Bill also heavily increases penalties for key pollution offences both in that Act and in the **Marine Act 1988**. Other penalties have been increased to levels consistent with relevant penalties in complementary Commonwealth legislation relating to the Convention.

Notes on Clauses

PART 1—PRELIMINARY

Clause 1 sets out the purposes of the Act.

Clause 2 provides for the Act to come into operation on a day or days to be proclaimed.

PART 2—AMENDMENT OF POLLUTION OF WATERS BY OIL AND NOXIOUS SUBSTANCES ACT 1986

Clause 3 provides that the **Pollution of Waters by Oil and Noxious Substances Act 1986** is the Principal Act for the purposes of Part 2.

Clause 4 provides for the amendment of certain definitions in the Principal Act. The amendments made by sub-clause (1) (a) and (b) and (3) are consequential on the insertion of Annexes III, IV and V to the Convention into the Act. The amendment effected by sub-clause (1) (c) is consequential on the inclusion of amendments to the Convention into the Schedules in the Act. Sub-clause (2) ensures that a reference to a prescribed officer in the Act includes, where appropriate, a person holding a prescribed office in a Commonwealth department or public authority in addition, where appropriate, to a person holding a prescribed office in the Victorian public service or in a public authority such as the Port of Melbourne Authority. Lastly, sub-clause (3) provides that as with a discharge of oil, an oily mixture, a liquid substance or a mixture containing a liquid substance, a discharge or disposal of a harmful substance, sewage or garbage is by virtue of the amendment made by sub-clause (3), deemed to be a discharge or disposal into State waters if those pollutants eventually enter State waters even if the discharge or disposal occurred outside those waters.

Clause 5 substitutes a new sub-section (1) in section 8 of the Principal Act. This increases the maximum penalties applicable to the master and owner of a ship from which a discharge of oil or an oily mixture occurred in State waters to, on conviction—

if the offender is a natural person—a fine of up to 1000 penalty units or two year's imprisonment or both; or

if the offender is a body corporate—a fine of up to 5000 penalty units.

The offence under this sub-section is now classed as an indictable offence and not a summary offence. The existing penalties under the Principal Act are 500 penalty units for a natural person and 1000 penalty units for a body corporate. However, the operative penalties under the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 of the Commonwealth which is hereafter referred to in this Part as “the Commonwealth Act”, are 500 penalty units for a natural person and 2500 penalty units for a body corporate.

Clause 6 substitutes a new sub-section (1) in section 9 of the Principal Act. This increases the maximum penalties applicable to the master and owner of a ship which fails to retain oil residues on board the ship when it is in State waters. Penalties are increased to the same levels specified in clause 5. Comparisons with the existing penalties in the Principal Act and in the Commonwealth Act are the same. Also, this offence now becomes an indictable offence.

Clause 7 amends section 10 of the Principal Act.

Sub-clause (a) increases the maximum penalty for a master of a ship who fails to report or report as prescribed under section 10 (1) of the Principal Act, a prescribed incident, such as the discharge of oil from a ship. The maximum penalty for this offence is now 500 penalty units or one year’s imprisonment or both. The existing penalty for this offence under the Principal Act and the Commonwealth Act is 50 penalty units.

Sub-clause (b) provides that an offence against section 10 (1) of the Principal Act is now classified as an indictable offence.

Sub-clause (c) increases the maximum penalty for the owner, charterer, manager or operator of a ship who fails to report a prescribed incident, such as the discharge of oil from that ship where the master of the ship is unable to report the incident or the incident occurs in circumstances in which the ship is abandoned, to 500 penalty units or one year’s imprisonment or both in the case of a natural person and 1000 penalty units for a body corporate. The existing penalty for this offence under the Principal Act is 50 penalty units. Under the Commonwealth Act the maximum penalty is 50 penalty units for a natural person and 250 penalty units for a body corporate. The offence is now also classified as an indictable offence.

Sub-clause (d) amends section 10 (8) of the Principal Act to provide that a person giving notification or report of a prescribed incident such as a discharge of oil must not knowingly or recklessly make a statement that is false or misleading in a material particular. This amendment is identical to that made to the Commonwealth Act.

Clause 8 amends section 11 (4) (b) of the Principal Act which provides an offence where an oil record book is not carried on a ship. The maximum penalty which can be handed down where the offender is a body corporate is increased from 100 penalty units in the Principal Act to 250 penalty units. This brings that penalty up to the same level for the equivalent offence in the Commonwealth Act.

Clause 9 substitutes new sections 13 (1) and (2) in the Principal Act. These provide that the oil record books of a ship must be retained, kept in specified places for a specified period and be available for inspection. The prime amendments made by the clause are to sub-section (2) and provide that if an oil record book of a ship is not retained as required by sub-section (1), the master and the owner of the ship are each guilty of an offence. Previously, only the owner could be guilty of this offence. Further, the maximum penalty where the offender is a body corporate is increased from 100 to 250 penalty units. Both these amendments are consistent with amendments to the Commonwealth Act.

Clause 10 amends section 18 of the Principal Act.

Sub-clause (1) increases the maximum penalties under section 18 (1) of the Principal Act applicable to the master and owner of a ship from which a discharge into State waters of a liquid substance or a mixture containing a liquid substance which is part of a substance or mixture being carried as cargo or part cargo in bulk, to the same levels specified in clause 5. Comparisons with the existing penalties in the Principal Act and in the Commonwealth Act are the same as explained in the note to that clause. Also, this offence now becomes an indictable offence.

Sub-clause (2) amends various provisions in section 18 of the Principal Act to take account of amendments to Annex II to the Convention which provide for the mandatory pre-washing of cargo tanks, in accordance with an approved procedure and for a discharge of noxious substances in a Special Area. These various amendments reflect identical changes made to the Commonwealth Act.

Clause 11 inserts a new section 18A into the Principal Act. The new section is inserted to take account of a new Regulation in Annex II to the Convention which deals with oil-like noxious liquid substances. The new Regulation states that an oil-like substance, which is identified as such by criteria developed by the International Maritime Organization, may be carried on board an oil tanker if certain conditions are satisfied. The new section is inserted as a result of the insertion of an identical section in the Commonwealth Act.

Clause 12 amends section 19 of the Principal Act.

Sub-clause (a) increases the maximum penalty for a master of a ship who fails to report or report as prescribed under section 19 (1) of the Principal Act, a prescribed incident such as the discharge of a liquid substance or a mixture containing a liquid substance, to the same level specified in clause 7 (a). Comparisons with the existing penalties in the Principal Act and the Commonwealth Act are the same as those mentioned in clause 7 (a).

Sub-clause (b) provides that an offence against section 19 (1) of the Principal Act is now classified as an indictable offence.

Sub-clause (c) increases the maximum penalty for the owner, charterer, manager or operator of a ship who fail to report under section 19 (3) of the Principal Act a prescribed incident, such as the discharge of a liquid substance or a mixture containing a liquid substance, to the same level specified in clause 7 (c). Comparisons with the existing penalties in the Principal Act and the Commonwealth Act are the same as detailed in the note to that sub-clause. The offence established by section 19 (3) now also becomes an indictable offence.

Sub-clause (d) amends section 19 (8) of the Principal Act to provide that a person giving notification or report of a prescribed incident such as a discharge of a liquid substance or a mixture containing a liquid substance must not knowingly or recklessly make a statement that is false or misleading in a material particular. This amendment is identical to that made to the Commonwealth Act.

Clause 13 amends section 20 (4) of the Principal Act which provides an offence where a cargo record book is not carried on a ship. The maximum penalty where the offender is a body corporate is increased from 100 to 250 penalty units. This brings the penalty to the same level for the equivalent offence in the Commonwealth Act.

Clause 14 amends section 22 of the Principal Act.

Sub-clause (a) amends section 22 (2) (b) to increase the maximum penalty for a body corporate where a cargo record book of a ship has not been retained in the ship in accordance with section 22 (1). The penalty is increased from 100 penalty units to 250

penalty units. The penalty will now be at the same level for the equivalent offence in the Commonwealth Act.

Sub-clause (b) amends section 22 (3) to increase the period for which a ship's cargo record books must be retained from one year to two years subject to the requirements of that sub-section. This amendment makes the Principal Act consistent with the Commonwealth Act.

Sub-clause (c) amends section 22 (4) (b) to increase the maximum penalty able to be awarded against a body corporate for failing to retain a cargo record book of a ship in accordance with section 22 (3). The penalty is increased from 100 penalty units to 250 penalty units to ensure the penalty under the Principal Act is the same as that for the corresponding offence in the Commonwealth Act.

Clause 15 inserts a new Division 2A into Part 2 of the Principal Act. The new Division contains provisions which give effect to Annex V of the Marpol Convention in State waters.

New section 23A ensures that unless the contrary intention appears, expressions used in the new Division have the same meaning as in Annex V.

In new section 23A—

Sub-clause (1) prohibits and penalises disposals of garbage from ships. Penalties for disposals in contravention of the Division are not to exceed 1000 penalty units or imprisonment for 2 years, or both, for the master and owner of a ship if the owner is not a corporate body, or 5000 penalty units if the owner is a corporate body. The existing penalties in the Commonwealth Act are 500 penalty units for a natural person and 2500 penalty units for a body corporate. An offence against this sub-clause is an indictable offence. Also the prohibitions on disposal of garbage are subject to exemptions which follow Convention requirements.

Sub-clause (2) exempts disposals of garbage which are made to ensure the safety of a ship or the saving of life at sea.

Sub-clause (3) exempts, under certain conditions, disposals of dunnage, lining or packaging materials which will float, other than plastics. Those disposals can only be made when the ship is not within a Special Area, is as far as practicable and not less than 25 nautical miles from the nearest land and the disposal does not take place when a ship is alongside or within 500 metres of a fixed or floating platform engaged in mineral resources activity.

Sub-clause (4) exempts, under certain conditions, disposals of garbage which are not plastics or garbage covered by sub-clauses (3) and (5). Those disposals may only be made when a ship is not within a Special Area and is as far as practicable and not less than 12 nautical miles from the nearest land. Where the garbage is passed through a comminuter or grinder and is ground down to a specified size, the disposal may be made at not less than 3 miles from the nearest land as long as the disposal does not occur when the ship is alongside or within 500 metres of a fixed or floating platform engaged in mineral resources activity.

Sub-clause (5) exempts disposals of food wastes if the ship is as far as practicable and not less than 12 miles from the nearest land and the disposal does not occur when the ship is alongside or within 500 metres of a fixed or floating platform engaged in mineral resources activity. Certain conditions specified in sub-clause (4) must also be satisfied.

Sub-clause (6) exempts disposals of garbage resulting from damage to a ship or its equipment as long as all reasonable precautions were taken to prevent the disposal.

Sub-clause (7) exempts the accidental loss of synthetic fishing nets and the materials used to repair such nets, providing all reasonable precautions were taken to prevent the loss.

Sub-clause (8) gives effect to the Convention requirement that when the garbage is mixed with other discharges having different disposal or discharge requirements such as oil or oily mixtures, the more stringent requirements will apply.

Sub-clause (9) allows the prosecution of an offence under sub-clause (1) to allege and prove a disposal into the sea and for the defence to use sub-clauses (2), (3), (4), (5), (6), (7) or (8) to show that the discharge is exempt.

Sub-clause (10) provides that the term “plastics” for the purposes of new section 23A, includes synthetic ropes, synthetic fishing nets and plastic garbage bags.

Clause 16 inserts a new Division 2B into Part 2 of the Principal Act. The new Division contains provisions which give effect, in conjunction the new provisions inserted by clause 30, to Annex III of the Marpol Convention in State waters. The new Division is consistent with corresponding provisions in the Commonwealth Act.

New section 23C defines “harmful substance” as a substance which is identified as a marine pollutant in the International Maritime Dangerous Goods Code. Further, unless the contrary intention appears, expressions used in the new Division have the same meaning as in Annex III.

In new section 23D—

Sub-clause (1) provides a penalty of up to 500 penalty units or imprisonment for one year or both, if the master of a ship does not notify an officer prescribed by the regulations of a discharge of a harmful substance into the sea. As with requirements to notify discharges in other areas, the purpose of this is to ensure that the incident is reported without delay so that combat measures can be planned and implemented. The existing penalty in the Commonwealth Act for this offence is 50 penalty units.

Sub-clause (2) provides a defence where it can be proved that the master was unable to notify 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 (2) or the ship is abandoned, then the owner, charterer, manager or operator of the ship is obliged to report the occurrence. Penalties of up to 500 penalty units or one year’s imprisonment for a natural person or 1000 penalty units for a body corporate are provided for non-compliance with this requirement. The existing Commonwealth penalties are 50 penalty units for a natural person and 250 penalty units for a body corporate.

Sub-clause (4) provides defences for offences against sub-clause (3) where the person charged proves that he or she was not aware of either the relevant occurrence or he or she did not know or suspect that the master was unable to report the occurrence.

Sub-clause (5) ensures that the 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) 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. These provisions are intended to ensure that the facts of any occurrence as known by the master or reporter of the incident are able to be obtained in order that a combat response can take full account of all the facts of the incident.

Sub-clause (8) provides a penalty of 50 penalty units if a ship's master or other identifiable person makes a false or misleading statement in a notice or report to a prescribed officer.

Sub-clause (9) provides that a notice given to a prescribed officer under sub-clauses (1) or (3) or a report given under sub-clauses (6) or (7), must not, without the consent of the person charged, be admitted in evidence in a prosecution for an offence against new section 23E.

Sub-clause (10) provides that the term "prescribed incident", for the purposes of new section 23D, means a discharge or the probability of a discharge from the ship of a harmful substance carried in packaged form. Discharges involving the washing overboard of a harmful substance in accordance with approved procedures are exempted from the definition. These procedures are to be defined in regulations.

In new section 23E—

Sub-clause (1) prohibits and penalises discharges by jettisoning of a harmful substance carried as cargo in packaged form, freight container, portable tank or road and rail tank wagon. Penalties for discharges in contravention of new section 23E are not to exceed 1000 penalty units or imprisonment for 2 years, or both, for the master and owner if the owner is not a corporate body, or 5000 penalty units if the owner is a corporate body. These penalties are consistent with other penalties for discharges as provided in relevant parts of the Bill. The existing Commonwealth penalties for this offence are 500 penalty units for a natural person and 2500 penalty units for a corporate body. It should be noted that the discharge prohibitions are subject to exemptions which follow the requirements of the Marpol Convention.

Sub-clause (2) exempts discharges made to secure the safety of a ship or the saving of life at sea.

Sub-clause (3) exempts discharges of harmful substances washed overboard in accordance with procedures authorised by regulation 7 (2) of Annex III. These procedures will be prescribed in Regulations.

Sub-clause (4) is similar to existing provisions in Divisions 1 and 2 of Part 2 of the Principal Act in that it allows the prosecution of an offence under sub-clause (1) to allege and prove a discharge into State waters, and the defence to use sub-clauses (2) or (3) to show that the discharge is exempt.

Clause 17 inserts a new Division 2C into Part 2 of the Principal Act. This new Division contains provisions which give effect, in conjunction with the new provisions inserted by clause 31, to Annex IV of the Marpol Convention in State waters.

New section 23F provides that unless expressly stated otherwise, the meanings of words used in the Division have the same meaning as those words when used in Annex IV.

In new section 23G—

Sub-clause (1) prohibits and penalises discharges of sewage from ships. Penalties for discharges in contravention of sub-clause (1) are not to exceed 1000 penalty units or imprisonment for 2 years, or both, for the master and owner if the owner is not a corporate body, or 5000 penalty units if the owner is a corporate body. These penalties are consistent with other penalties for discharges as provided in relevant parts of the Bill. The existing Commonwealth penalties for this offence are 500 penalty units for a natural person and 2500 penalty units for a corporate body. It should be noted that the discharge prohibitions are subject to exemptions which follow the requirements of the Marpol Convention.

Sub-clause (2) exempts discharges made to secure the safety of a ship or the saving of life at sea and discharges resulting from damage as long as all reasonable precautions were taken to prevent the discharge.

Sub-clause (3) exempts discharges of sewage if certain specified conditions are satisfied. If the sewage has been disinfected and comminuted in accordance with the regulations, the discharge may be made at a distance of not less than 4 nautical miles from the nearest land. Sewage which has not been processed in this way may be discharged at a distance of not less than 12 nautical miles from the nearest land. Where sewage has been stored in holding tanks, the sewage must not be discharged instantaneously but may be discharged at a rate prescribed in the regulations provided the ship is proceeding en route at a speed of at least 4 knots.

Sub-clause (4) exempts discharges of sewage where the sewage has been treated in an approved sewage treatment plant.

Sub-clause (5) gives effect to the Convention requirement that when the sewage is mixed with wastes or waste water having different discharge requirements such as a noxious liquid substance, the more stringent requirements will apply.

Sub-clause (6) is similar to existing provisions in Divisions 1 and 2 of Part 2 of the Principal Act 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), (3), (4) or (5) to show that the discharge is exempt.

Clause 18 inserts new sections 24A to 24E into the Principal Act.

New section 24A specifically provides that an officer of a Port Authority (i.e. the Port of Melbourne Authority, the Port of Geelong Authority and the Port of Portland Authority) or a person authorised by an Authority, can prosecute for offences under the Principal Act and regulations made under the Act. The giving of this power to Port Authorities recognises their important role in the prevention and detection of pollution offences and the need for speedy initiation of proceedings for an offence where appropriate.

New section 24B provides that money recovered through a fine for an offence against the Principal Act or the regulations can be retained by a Port Authority if it conducts the prosecution.

New section 24C provides for indictable offences under the Principal Act to be heard summarily subject to various conditions.

New section 24D provides that nothing in the **Pollution of Waters by Oil and Noxious Substances Act 1986** affects the operation of sections 45, 46 and 47 of the **Marine Act 1988** in relation to matters to which the former Act also applies.

New section 24E enables a Port Authority to provide either solely or jointly with another person, arrange to be provided or direct the provision of, reception facilities for the purposes of receiving pollutants from ships in accordance with the requirements of the Marpol Convention. Regulations may be made to prescribe charges and impose conditions for the use of those reception facilities. Provision is also made for notices to be served on specified persons so that reception facilities in respect of oil, oily mixtures, mixtures containing liquid substances or oil residues or residues of liquid substances are kept to a satisfactory standard, in good order and condition and are made available to ships to dispose of residues. Failure to comply with a requirement made by a notice is an offence with a maximum penalty of 250 penalty units. This provision is in the same terms as section 45 of the **Marine Pollution Act 1987** of New South Wales.

Clause 19 amends section 26 of the Principal Act to enable summonses for offences against Part 2 of the Act to be served on the agent of the owner, charterer, manager or operator of a ship in addition to the agent of the ship. A summons served on any of those agents is deemed to have been served on the owner or master of the ship.

Clause 20 repeals section 33 of the Principal Act which is redundant as a result of the repeal of the **Navigable Waters (Oil Pollution) Act 1960**.

Clause 21 amends section 36 (1) of the Principal Act to enable the regulations under the Principal Act to give effect to Regulations 22 to 25 (inclusive) of Annex I to the Convention. This maintains conformity with the corresponding provision in the Navigation Act 1912 of the Commonwealth which is hereafter referred to as “the Commonwealth Act”.

Clause 22 amends section 37 of the Principal Act to enable a survey authority to issue a ship construction certificate in respect of an oil tanker if the authority is satisfied it is constructed in accordance with the provisions in Annex I to the Convention. This follows an identical amendment made to the Commonwealth Act.

Clause 23 increases various penalties in section 38 of the Principal Act so they are consistent with penalties for the corresponding offences in the Commonwealth Act.

Clause 24 increases the penalty for a body corporate which commits an offence under section 39 of the Principal Act to 100 penalty units consistent with the penalty for the corresponding offence in the Commonwealth Act.

Clause 25 increases the penalties in section 40 of the Principal Act to the same level as those applying for the corresponding offences in the Commonwealth Act. An offence against sub-section (2) or (3) is now an indictable offence.

Clause 26 amends section 43 of the Principal Act to enable a survey authority to issue a chemical tanker construction certificate in respect of a ship if the authority is satisfied that it is constructed in accordance with the provisions of Annex II to the Convention. This follows an identical amendment made to the Commonwealth Act.

Clause 27 increases various penalties in section 44 of the Principal Act so they are consistent with penalties for the corresponding offences in the Commonwealth Act.

Clause 28 increases the penalty for a body corporate which commits an offence under section 45 (1) to 100 penalty units consistent with the penalty for the corresponding offence in the Commonwealth Act.

Clause 29 increases the penalties in section 46 of the Principal Act to the same level as those applying for the corresponding offences in the Commonwealth Act. An offence against sub-section (1) is now an indictable offence.

Clause 30 inserts a new Division 4 into Part 3 of the Principal Act. This new Division contains provisions which give effect, in conjunction with the new provisions inserted by clause 16, to Annex III of the Marpol Convention in State waters.

New section 48 provides that the Division applies only to specified classes of ships and vessels. This accords with the division of jurisdiction which applies as between the Commonwealth, the States and the Northern Territory. Also, unless the contrary intention appears “Annex III” where mentioned in the Division means Annex III to the Marpol Convention. Further, an expression used in the Division has, unless the contrary intention appears, the same meaning as in the Convention. Finally, a ship is not to be taken to comply with Annex III unless it complies with the regulations and orders referred to in new section 49.

New section 49 provides that the regulations made under the Principal Act may give effect to Regulations 1 to 6 (inclusive) of Annex III which deal with application, packaging, marking and labelling, documentation, stowage and quantity limitations. The regulations may also empower the Minister to make orders which are subject to disallowance by Parliament and are deemed to be statutory rules for the purposes of specified sections of the **Interpretation of Legislation Act 1984** and the **Subordinate Legislation Act 1962**. Orders made must not be beyond power and if they are inconsistent with Part 3 of the Principal Act or the regulations, they are, to the extent of the inconsistency, of no force or effect.

Clause 31 inserts a new Division 5 into Part 3 of the Principal Act. This new Division contains provisions which give effect, in conjunction with the new provisions inserted by clause 17, to Annex IV of the Marpol Convention in State waters.

New section 50 provides that the Division applies only to specified classes of ships and vessels. This accords with the division of jurisdiction which applies as between the Commonwealth, the States and the Northern Territory. Unless the contrary intention appears, "Annex IV" means Annex IV to the Convention. An expression used in the Division has, unless the contrary intention appears, the same meaning as in the Convention. Finally, a ship is not to be taken to comply with Annex IV unless it complies with the regulations and orders referred to in new section 51.

New section 51 provides that the regulations made under the Principal Act may give effect to Regulations 3 and 11 of Annex IV which deal with surveys and discharge connections. The section provides for the same power in the Minister to make orders on the same terms detailed in respect of new section 49 which is inserted by clause 30.

New section 52 empowers the Minister to issue a Sewage Pollution Prevention Certificate if he or she is satisfied that the ship has been constructed in accordance with the requirements of Annex IV to the Convention. The issue of such certificates is required by Regulation 4 of Annex IV. When a ship is not in a Victorian port or an off-shore terminal in Victoria when a certificate expires, the Minister may extend the certificate to allow the ship to complete its voyage. An extension must not be for a period exceeding 5 months.

New section 53 deals with alterations or damage to ships. Under sub-clause (1), a ship's owner or master must give notice to a prescribed person of any alteration or damage. The Minister may cancel a sewage certificate if the certificate was fraudulently obtained, issued on false information, if the ship has been damaged or altered so that compliance with Annex IV is affected, or proposed section 54 survey requirements have not been fulfilled. Penalties not exceeding 10 penalty units for a natural person and 50 penalty units for a body corporate are provided. Under sub-sections (4) and (5), a certificate cancelled by the Minister is of no further force after notice has been served on the owner, agent or master of the ship, and the Minister may require the cancelled certificate to be surrendered.

New section 54 requires that a survey of a ship be made at least once during the period in which a sewage certificate is in force. Penalties not exceeding 20 penalty units for a natural person and 100 penalty units for a body corporate are provided for non-compliance.

New section 55 provides that the master of a ship must not begin a voyage unless a sewage certificate is in force in respect of the ship. The penalty for non-compliance is 100 penalty units or imprisonment for 4 years, or both. Also, the owner of a ship must not permit a ship to begin a voyage unless a sewage certificate is in force for the ship. The penalty for non-compliance by an owner is 100 penalty units or imprisonment for 4 years, or both, if the owner is a natural person. If the owner is a body corporate, the

maximum penalty is 500 penalty units. The section also allows for the regulations to exempt ships in a prescribed class, either absolutely or subject to conditions. It also requires that a sewage certificate be carried on board the ship. “Sewage certificate” is defined for the purposes of the section.

Clause 32 amends the Principal Act to insert Annex V to the Convention into Schedule 1 of that Act.

Clause 33 amends the Principal Act to insert Annex III to the Convention into Schedule 1 of that Act.

Clause 34 amends the Principal Act to insert Annex IV to the Convention into Schedule 1 of that Act.

Clause 35 amends the Principal Act to insert new Schedules concerning amendments to the Convention. Schedule 4 provides for amendments to Annex II (Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk). Schedule 5 provides for amendments to Protocol I to the Convention which relate to provisions concerning reports on incidents involving harmful substances.

PART 3—AMENDMENT OF MARINE ACT 1988

Clause 36 provides that the **Marine Act 1988** is the Principal Act for the purposes of Part 3.

Clause 37 amends section 36 of the Principal Act in order to increase penalties for discharges of oil, oily mixtures or undesirable substances from any place on land or during a transfer operation. To make penalties consistent with the new penalties inserted by the Bill for discharges under the **Pollution of Waters by Oil and Noxious Substances Act 1986**, they have been increased from 500 penalty units to a maximum of 1000 penalty units or imprisonment for two years in the case of a natural person and to a maximum of 5000 penalty units where the offender is a body corporate.

Clause 38 amends section 37 of the Principal Act to increase penalties for discharges into State waters of oil, oily mixtures or an undesirable substance from a vessel from 500 penalty units to the same levels specified in clause 37.

Clause 39 amends section 38 of the Principal Act by adding a new sub-section (a) to that section. The amendment provides for an expanded definition of “prohibited discharge” and ensures that the clean-up and cost recovery provisions contained in the section apply to any prohibited discharge or disposal of pollution which occurs contrary to either the **Marine Act 1988** or the **Pollution of Waters by Oil and Noxious Substances Act 1986**.

Clause 40 inserts a new section 38A into the Principal Act. The new section ensures that an appropriate authority (i.e. a Port Authority) or a public statutory authority which undertakes analytical work or related work in relation to a pollution discharge is, subject to the requirements of the new section, able to be awarded the reasonable market costs of that work by a court.

Clause 41 amends section 41 of the Principal Act. It introduces a new requirement for the owner or master of a vessel to provide notification of prohibited pollution discharges. Previously this requirement only existed where a discharge occurred from land in which case the occupier of the land had a duty to report the discharge. A new sub-section (1) to section 41 now ensures that all these persons (i.e. occupier of places, masters and owners of vessels) must report a discharge. Failure to notify can result in a penalty of up to 500 penalty units or imprisonment for one year, or both, for a natural person or a penalty of up to 1000 penalty units for a body corporate. These new penalties are the same as those

proposed in the Bill for failure to notify discharges under the **Pollution of Waters by Oil and Noxious Substances Act 1986**. The clause makes a number of consequential amendments to section 41 (2) and (4) as a result of the new notification duty being placed on owners and masters of vessels.

Clause 42 amends section 45 of the Principal Act by adding a new sub-section (6). The new sub-section ensures that Ministerial powers of intervention in respect of a prohibited discharge of pollution or a likely discharge extends to a discharge or disposal which occurs or is likely to occur contrary to either the **Marine Act 1988** or the **Pollution of Waters by Oil and Noxious Substances Act 1986**.

Clause 43 amends section 47 (6) of the Principal Act. This sub-section provides for the maximum liability applicable to a tanker in relation to an incident that resulted in the escape of oil from a tanker without fault. The current quantum of liability is either (a) an amount calculated by multiplying the amount of \$120 by the tonnage factor applicable to the tanker; or (b) the amount of \$12,600,000, whichever is the less. This method of determining liability arises out of Article V, paragraph 1 (as amended) of the International Convention on Civil Liability for Oil Pollution Damage 1969 and its Protocol. Whereas the Convention expresses maximum liability in terms of units of account which have a particular meaning under the Convention and ensures amounts are kept up to date, the **Marine Act 1988** in section 47 (6) adopts the method of prescribing maximum liability in static dollar terms. The amounts currently provided in the Principal Act are almost half of the amounts which would apply if the method of calculation in the Convention was provided for, and therefore the figures are increased to reflect existing calculations in Australian dollar terms.

Clause 44 amends section 110 (1) of the Principal Act to make it consistent with new section 24C as inserted into the **Pollution of Waters by Oil and Noxious Substances Act 1986** by clause 18 of the Bill.

PART 4—AMENDMENT OF MAGISTRATES' COURT ACT 1989

Clause 45 amends the **Magistrates' Court Act 1989** to take account of various offences under the **Pollution of Waters by Oil and Noxious Substances Act 1986** being made indictable by the Bill with provision for them to be heard summarily (see clause 18, new section 24C).

