

[Act 2002 No 75]



New South Wales

## Marine Legislation Amendment (Marine Pollution) Bill 2002

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to amend the *Marine Pollution Act 1987*:

- (a) to amend the definition of *ship* to include any vessel of any type whatsoever capable of being used on or in water (except a pleasure vessel), and to include platforms and floating docks, and
  - (b) to increase a number of the penalties under the Act, including increasing the penalty for a discharge of oil or an oily mixture or a noxious substance from a ship:
    - (i) from \$220 000 to \$500 000 if the offender is an individual, and
    - (ii) from \$1.1 million to \$10 million if the offender is a body corporate, and
  - (c) to provide separate offences whereby a person whose act causes a discharge of oil or an oily mixture or a noxious substance from a ship can be prosecuted in relation to the discharge, and
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- (d) to restrict the defence of damage in relation to a discharge of oil or an oily mixture or a noxious substance, and
- (e) to require certain ships in State waters to be adequately insured against oil pollution, and to carry evidence of that insurance on board, and
- (f) to permit an inspector to detain a ship if he or she has reasonable grounds to believe that the ship does not have adequate insurance or does not carry on board evidence of that insurance, and
- (g) to permit a summons against a crew member of a ship to be served on the agent of the ship, and
- (h) to expand the definition of *appropriate person* with regard to pollution relating to transfer operations, and
- (i) to make other minor amendments.

The Bill also amends the *Ports Corporatisation and Waterways Management Act 1995* to require all penalties recovered under the marine legislation to be either paid to a Port Corporation if a member of staff of the Port Corporation prosecuted the offence or issued the penalty notice or paid to the Waterways Fund in any other case.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Marine Pollution Act 1987* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Ports Corporatisation and Waterways Management Act 1995* set out in Schedule 2.

## Schedule 1 Amendment of Marine Pollution Act 1987

### Definition of ship

**Schedule 1 [1]** amends the definition of *ship* in section 3 to mean a vessel of any type whatsoever capable of being used on or in water (except a pleasure vessel) including a hydrofoil boat, an air-cushion vehicle, a submersible or submarine, a

floating craft, a fixed or floating platform, a barge (whether self-propelled or not), a sea-plane and a floating dock (whether self-propelled or not).

### **Increase in penalties**

**Schedule 1 [4], [5], [9]–[14], [18], [19], [25]–[28] and [32]–[35]** increase the penalties for offences relating to a discharge of oil or an oily mixture or a noxious substance and for other related offences, including a failure or delay in reporting such a discharge or failure to co-operate in providing information. The penalty for a discharge of oil or an oily mixture or a noxious substance from a ship is increased from \$220 000 (2 000 penalty units) to \$500 000 if the offender is an individual and from \$1.1 million (10 000 penalty units) to \$10 million if the offender is a body corporate.

### **Defence of damage**

**Schedule 1 [7]** amends section 8 (3) to restrict the defence of damage which is available to the master or owner of a ship that has discharged oil or an oily mixture into State waters. This defence is available if the discharge was caused by damage to the ship or its equipment and all reasonable steps have been taken after the discharge. Currently, only damage arising in circumstances where the master or owner has acted with intent to cause the damage or has acted recklessly and with knowledge of the possible consequences has been excluded from this defence. The amendment will mean that the following types of damage will now be excluded from the defence, namely, damage arising as a result of the master, owner, or a person acting under the direction of the master or owner, acting with intent to cause the damage, acting recklessly or acting negligently, damage arising as a result of a failure to maintain the ship or its equipment, damage arising as a result of wear and tear and defects that develop during the normal operation of the ship or its equipment. **Schedule 1 [21]** makes a similar amendment to section 18 in relation to discharges of substances into State waters. **Schedule 1 [6] and [20]** make consequential amendments.

### **Offences by persons causing discharges**

**Schedule 1 [3]** amends section 8 by restricting prosecutions under that section to the master or owner of the ship from which the discharge occurred. Any other person whose act causes a discharge of oil or an oily mixture into State waters from a ship is now to be prosecuted under proposed section 8A rather than section 8. Section 8A is inserted by **Schedule 1 [8]**.

The new provision contains two offences, the first offence is a strict liability offence against any crew member of the ship or person involved in the operation or

Explanatory note

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maintenance of the ship whose act causes a discharge. For the offence to be made out the prosecution need only allege and prove that a discharge of oil or an oily mixture occurred from a ship into State waters and the crew member or person involved in the operation or maintenance of the ship caused the discharge. The second offence applies to each person responsible for the discharge. A person is responsible if that person, or another person acting under the direction of that person, commits an act that causes the discharge and the act is committed with intent to cause the discharge, recklessly with the knowledge that a discharge would probably result, or negligently.

In both offences a person may be fined up to \$500 000 in the case of an individual and \$10 million in the case of a body corporate.

Certain discharges are exempt from both offences and these exemptions mirror those found in section 8. A prosecution under section 8A does not affect the prosecution of the master or owner of a ship (or both of them) under section 8, however a person is not liable to be convicted of more than one offence under section 8 and the new provisions in respect of the same discharge. **Schedule 1 [17]** and **[22]** make similar changes in relation to discharges of substances into State waters from ships. **Schedule 1 [15], [23], [24]** and **[29]** make consequential amendments.

### **Insurance**

**Schedule 1 [16]** inserts a new Division 2 into Part 2 requiring certain ships, when in State waters, to have adequate insurance. If a ship does not have adequate insurance, or carry on board evidence of that insurance in an approved form, the master and owner of the ship are each guilty of an offence and may be fined up to \$55 000 in the case of an individual and \$110 000 in the case of a body corporate. Adequate insurance means insurance or financial security against damage that may be caused by a discharge from the ship of oil or an oily mixture as determined or approved by the Minister, or a relevant insurance certificate that is required to be carried under the *Protection of the Sea (Civil Liability) Act 1981* of the Commonwealth. An inspector may detain a ship if the inspector has reasonable grounds to believe that a ship does not have adequate insurance or carry evidence of that insurance on board. If a detained ship leaves a port or other place at which it is detained before it is released from detention, the master and owner of the ship are each guilty of an offence and may be fined up to \$55 000 in the case of an individual and \$110 000 in the case of a body corporate. **Schedule 1 [2]** makes a consequential amendment.

### **Other matters**

**Schedule 1 [30], [31] and [37]–[39]** make several minor amendments to clarify that in relation to a discharge that results from a transfer operation there may be more than one appropriate person for the purpose of certain proceedings. The amendment to section 25 also includes the addition of two new persons as appropriate persons. Appropriate person will now include, in relation to a discharge from a ship, the person in charge of the transfer operation of the ship, and in relation to a discharge from a pipeline, the owner of the pipeline.

**Schedule 1 [36]** makes a statute law revision amendment.

**Schedule 1 [40]** amends section 52B to permit the security taken by the Minister under section 52 or 52A to be applied in payment of any costs order, in favour of any person, made against the master or owner of a ship in proceedings for an offence in relation to a discharge.

**Schedule 1 [41]–[43]** permit a summons against a crew member of a ship to be served on the agent of the ship.

**Schedule 1 [44]** contains a savings and transitional provision.

### **Schedule 2 Amendment of Ports Corporatisation and Waterways Management Act 1995**

**Schedule 2 [1]** inserts a new section 21A which provides that penalties recovered for offences against the marine legislation in prosecutions brought by (or as a result of penalty notices issued by) members of staff of a Port Corporation are to be paid to the Port Corporation and become the property of the Port Corporation. **Schedule 2 [2]** amends section 42 to provide that all penalties recovered for offences against the marine legislation are to be paid into the Waterways Fund except those payable to a Port Corporation under proposed section 21A.