

Act No. 299

## MARINE POLLUTION BILL 1987

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The Miscellaneous Acts (Marine Pollution) Amendment Bill 1987 is cognate with this Bill.

The objects of this Bill are—

- (a) to enact uniform legislation to implement in the State the International Convention for the Prevention of Pollution from Ships, 1973; and
- (b) to repeal the Prevention of Oil Pollution of Navigable Waters Act 1960 and to re-enact some of the provisions of that Act.

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#### PART 1—PRELIMINARY

Clause 1 (Short title) specifies the short title of the proposed Act.

Clause 2 (Commencement) provides that the proposed Act will commence on a day or days to be appointed by proclamation.

Clause 3 (Interpretation) defines certain words and expressions.

Clause 4 (Act to bind Crown) provides that the Act binds the Crown.

Clause 5 (Saving of other laws) requires the proposed Act to be read and construed as being in addition to and not in derogation of any other law of the State.

Clause 6 (Delegation) gives the Minister and the Maritime Services Board power to delegate their functions under the proposed Act.

#### PART 2—POLLUTION BY OIL

The proposed Part implements Annex I to the Convention which deals with pollution by oil, oily mixtures and oil residues.

Clause 7 (Interpretation) gives words used in the proposed Part the same meaning as they have in Annex I to the Convention.

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Clause 8 (Prohibition of discharge of oil or oily mixtures into State waters) makes the master and owner of a ship, and a person who causes a discharge, guilty of an offence if a discharge of oil or an oily mixture occurs from a ship into State waters. The proposed section also contains defences and exceptions to the offence. The liability of a person who causes a discharge is an addition to the uniform legislation intended to make third parties involved in discharges liable for their actions. Similar provision is made in clause 18.

Clause 9 (Oil residues) makes the master and owner of a ship guilty of an offence if certain oil residues are not retained on board the ship while it is in State waters.

Clause 10 (Duty to report certain incidents involving oil or an oily mixture) requires a master of a ship, or in certain circumstances the owner or other persons associated with the ship, to report a discharge, or an incident involving the probability of a discharge, of oil or an oily mixture into State waters.

Clause 11 (Oil record book) requires oil record books to be carried on oil tankers and ships of a gross tonnage of 400 tons or more and entries to be made in such books.

Clause 12 (False entries in oil record book) makes it an offence to make an entry that is false or misleading in an oil record book.

Clause 13 (Oil record book to be retained) requires oil record books to be kept with the ship or in the owner's registered office for 3 years after the date of the last entry in the book.

### PART 3—POLLUTION BY NOXIOUS SUBSTANCES

The proposed Part implements Annex II to the Convention which deals with pollution by liquid substances or mixtures containing liquid substances.

Clause 14 (Interpretation) defines certain words and expressions for the purposes of the proposed Part.

Clause 15 (Application of Act to mixture of oil and liquid substance) applies both Parts 2 and 3 of the proposed Act to a mixture containing oil and a liquid substance or oil and liquid substances.

Clause 16 (Categories of noxious liquid substances) enables additional liquid substances to be deemed to be designated and categorised under the Convention by regulations, so that the provisions of the proposed Act will apply to them. It also enables liquid substances to be deemed not to be so designated or to be categorised in a different category.

Clause 17 (Appendix III substances) enables additional liquid substances to be deemed to be listed, or deemed not to be listed, in Appendix III to Annex II to the Convention, by regulations.

Clause 18 (Prohibition of discharge of substances into State waters) makes the master and owner of a ship, and a person who causes a discharge, guilty of an offence if a discharge of a liquid substance, or a mixture containing a liquid substance, being carried as cargo or part cargo in bulk, occurs from a ship into State waters. The proposed section also contains defences and exceptions to the offence.

Clause 19 (Certain liquid substances to be treated as oil) regulates the carriage of certain substances, such as vegetable oils, in oil tankers.

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Clause 20 (Duty to report certain incidents involving certain substances) requires a master of a ship, or in certain circumstances, the owner or other persons associated with the ship, to report a discharge, or an incident involving the probability of a discharge, of a liquid substance or a mixture containing a liquid substance, being carried as cargo or part cargo in bulk, into State waters.

Clause 21 (Cargo record book) requires cargo record books to be carried on trading ships proceeding on intra-state voyages that carry liquid substances in bulk and entries to be made in such books.

Clause 22 (False entries in cargo record book) makes it an offence to make an entry that is false or misleading in a cargo record book.

Clause 23 (Cargo record book to be retained) requires cargo record books to be kept on a ship and in the owner's registered office for certain periods after the date of the last entry in the book.

Clause 24 (Cleaning of tanks of ships) enables regulations to be made to give effect to Regulation 8 of Annex II to the Convention.

#### PART 4—POLLUTION RELATING TO TRANSFER OPERATIONS

The proposed Part contains provisions outside the terms of the Convention which were formerly covered by the Prevention of Oil Pollution of Navigable Waters Act 1960.

Clause 25 (Interpretation) defines certain words and expressions for the purposes of the proposed Part.

Clause 26 (Discharges to which Part applies) confines the operation of the proposed Part to discharges of oil, oily mixtures, liquid substances or mixtures containing liquid substances from ships, places on land, purpose-built pipelines or apparatus used in or in connection with transfer operations. The proposed Part does not apply to discharges to which proposed Part 2 or 3 applies or discharges occurring beyond a certain point on land.

Clause 27 (Prohibition of discharges to which Part applies) makes the appropriate person (as defined by clause 25), and a person who causes a discharge, guilty of an offence if a discharge to which the proposed Part applies occurs. The proposed section also contains defences and exceptions to the offence.

Clause 28 (Duty to report discharge) requires the appropriate person in relation to a discharge to report it.

Clause 29 (Keeping of records relating to transfer etc.) requires certain records to be kept in relation to transfer operations.

Clause 30 (Joint and several liability—pipelines) makes the owner of a pipeline and the lessee, licensee or user of any lease, licence or other right of user for the pipeline jointly and severally liable when a discharge occurs from a pipeline.

Clause 31 (Several liability—ships) deems a discharge to have occurred from all ships involved in a discharge which occurs from 2 or more ships and where it is not reasonably practicable to identify the substance discharged from a particular ship.

Clause 32 (Restrictions on transfer of oil etc. at night) regulates the transfer of oil, oily mixtures, liquid substances and mixtures containing liquid substances to or from a ship in State waters between sunset and sunrise.

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**PART 5—SHIPS CARRYING OR USING OIL OR CARRYING NOXIOUS LIQUID SUBSTANCES**

The proposed Part implements the provisions of the Convention specifying survey requirements for ships.

**Division 1—Preliminary**

Clause 33 (Interpretation) defines certain words and expressions for the purposes of the proposed Part.

Clause 34 (Application of Part) applies the proposed Part to trading ships proceeding on intra-state voyages, Australian fishing vessels proceeding on voyages other than overseas voyages and pleasure vessels.

**Division 2—Ships carrying or using oil**

Clause 35 (Regulations to give effect to Regulations 13 to 19 (inclusive) of Annex I) enables regulations and orders to be made to give effect to Convention requirements relating to oil tankers and other ships carrying oil and oily mixtures.

Clause 36 (Ship construction certificates) enables ship construction certificates to be issued for ships constructed in accordance with Annex I to the Convention.

Clause 37 (Alteration etc. of construction of ships and cancellation of certificates) requires the master or owner of a ship to notify the Maritime Services Board of any alteration or damage to the ship affecting its compliance with Annex I to the Convention. The proposed section also provides for the cancellation of ship construction certificates in certain circumstances.

Clause 38 (Ships to be surveyed periodically) requires ships having a ship construction certificate to be surveyed at prescribed intervals.

Clause 39 (Requirement for ship construction certificates) prohibits trading ships proceeding on intra-state voyages, Australian fishing vessels proceeding on voyages other than overseas voyages and pleasure vessels, that are oil tankers of 150 tons gross tonnage or more or ships of 400 tons gross tonnage or more, from beginning a voyage unless they have a ship construction certificate.

**Division 3—Prevention of pollution from ships carrying noxious substances in bulk**

Clause 40 (Regulations to give effect to Regulation 13 of Annex II) enables regulations and orders to be made to give effect to Convention requirements relating to ships carrying noxious liquid substances in bulk.

Clause 41 (Chemical tanker construction certificates) enables chemical tanker construction certificates to be issued for ships constructed in accordance with Annex II to the Convention.

Clause 42 (Alteration etc. of construction of ships and cancellation of certificates) requires the master or owner of a ship to notify the Maritime Services Board of any alteration or damage to the ship affecting its compliance with Annex II to the Convention. The proposed section also provides for the cancellation of chemical tanker construction certificates in certain circumstances.

Clause 43 (Ships to be surveyed periodically) requires ships having a chemical tanker construction certificate to be surveyed at prescribed intervals.

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Clause 44 (Requirement for chemical tanker construction certificates) prohibits trading ships proceeding on intra-state voyages, that are constructed or adapted to carry liquid substances as cargo or part cargo in bulk, from beginning a voyage unless they have a chemical tanker construction certificate.

## PART 6—MISCELLANEOUS

Clause 45 (Reception facilities) empowers the Board to provide or arrange for the provision of reception facilities in accordance with the Convention. The Board may also issue notices relating to the provision, maintenance and availability of such facilities.

Clause 46 (Recovery of costs and expenses with respect to pollution by oil) empowers the Board to take action or cause action to be taken in relation to discharges or probable discharges of oil or oily mixtures, and to recover the costs and expenses of such action.

Clause 47 (Recovery of costs and expenses with respect to pollution by noxious substances) empowers the Board to take or cause action to be taken in relation to discharges or probable discharges of liquid substances or mixtures containing liquid substances, and to recover the costs and expenses of such action.

Clause 48 (Prevention of pollution) empowers the Board to issue notices directing other people to take action in relation to discharges or probable discharges.

Clause 49 (Service of notices) provides for the manner of service of notices issued under clause 48.

Clause 50 (Non-compliance with notice) makes it an offence to fail to comply with a notice issued under clause 48 and gives the Maritime Services Board power to carry out the requirements of such a notice.

Clause 51 (Recovery of damages) gives a person (including the Board) a right to recover damages arising from discharges to which the Act applies.

Clause 52 (Additional provisions relating to recovery of costs and expenses) provides that certain costs and expenses will be charges on ships.

Clause 53 (Powers of inspectors etc.) sets out the powers of inspectors and certain other authorised persons under the proposed Act.

Clause 54 (Time limit for prosecution) provides for prosecutions under the proposed Act.

Clause 55 (Proceedings for offences etc.) sets out the courts in which proceedings for offences against the proposed Act may be taken and the levels of penalties that may be imposed by a Local Court.

Clause 56 (Offences for corporations) makes directors of corporations liable, in certain circumstances, for contraventions by corporations of the proposed Act.

Clause 57 (Service of summonses) sets out the manner in which a summons for an offence against the proposed Act may be served.

Clause 58 (Evidence) relates to the use of records and documents, notices and statements as evidence in legal proceedings.

Clause 59 (Evidence of analysts) relates to the use of certificates by analysts as evidence in legal proceedings.

Clause 60 (Immunity of inspectors) gives inspectors and other persons immunity from liability for acts done in good faith in discharge of the proposed Act.

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Clause 61 (Regulations) enables regulations to be made for the purposes of the proposed Act.

Clause 62 (Orders) sets out certain formal provisions applying to orders made under regulations under the proposed Act.

Clause 63 (Prescribing matters by reference to other instruments) enables regulations under the proposed Act to apply, adopt or incorporate subordinate legislation under any other Act or Commonwealth Act.

Clause 64 (Repeals, savings and transitional) gives effect to the schedule of repeals and savings and transitional provisions.

Schedules 1-5 contain the provisions of the Convention, as amended.

Schedule 6 sets out the Acts repealed by the proposed Act and contains savings and transitional provisions necessary as a result of the enactment of the proposed Act.

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