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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**MARITIME LEGISLATION AMENDMENT (PREVENTION OF POLLUTION
FROM SHIPS) BILL**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and Regional Services,
the Honourable Mark Vaile, MP)

MARITIME LEGISLATION AMENDMENT (PREVENTION OF POLLUTION FROM SHIPS) BILL

OUTLINE

The Maritime Legislation Amendment (Prevention of Pollution from Ships) Bill is necessary to align Australian requirements with our international obligations as a member State of the International Maritime Organization (IMO) and a party to the International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL). The IMO adopted revised texts of Annex I (prevention of pollution by oil) and Annex II (prevention of pollution by noxious liquid substances) of MARPOL in October 2004 and these revised instruments enter into force internationally on 1 January 2007.

Annex I – Regulations for the Prevention of Pollution by Oil

The revised Annex I *Regulations for the prevention of pollution by oil* incorporates the various amendments adopted since MARPOL entered into force in 1983, including the amended regulations on the phasing-in of double hull requirements for oil tankers. It also separates, in different chapters, the construction and equipment provisions from the operational requirements and makes clear the distinctions between the requirements for new ships and those for existing ships. The revision provides a more user-friendly, simplified text.

New requirements in the revised Annex I include the following:

- Pump-room bottom protection: on oil tankers of 5,000 tonnes deadweight and above constructed on or after 1 January 2007, the pump-room shall be provided with a double bottom.
- Accidental oil outflow performance - applicable to oil tankers delivered on or after 1 January 2010; construction requirements to provide adequate protection against oil pollution in the event of stranding or collision.

The Bill amends Division 12 of the *Navigation Act 1912* and the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* to give effect to these revised provisions.

Annex II – Regulations for the Prevention of Pollution by Noxious Liquid Substances

The revised Annex II, *Regulations for the control of pollution by noxious liquid substances in bulk* includes a new four-category categorization system for noxious and liquid substances.

The new categories are:

- **Category X:** Noxious Liquid Substances which, if discharged into the sea from tank cleaning or deballasting operations, are deemed to present a major hazard to either marine resources or human health and, therefore, justify the prohibition of the discharge into the marine environment;

Category Y: Noxious Liquid Substances which, if discharged into the sea from tank cleaning or deballasting operations, are deemed to present a hazard to either marine resources or human health or cause harm to amenities or other legitimate uses of the sea and therefore justify a limitation on the quality and quantity of the discharge into the marine environment;

- **Category Z:** Noxious Liquid Substances which, if discharged into the sea from tank cleaning or deballasting operations, are deemed to present a minor hazard to either marine resources or human health and therefore justify less stringent restrictions on the quality and quantity of the discharge into the marine environment; and
- **Other Substances:** substances which have been evaluated and found to fall outside Category X, Y or Z because they are considered to present no harm to marine resources, human health, amenities or other legitimate uses of the sea when discharged into the sea from tank cleaning for deballasting operations. The discharge of bilge or ballast water or other residues or mixtures containing these substances are not subject to any requirements of MARPOL Annex II.

The revised Annex includes a number of other significant changes. Improvements in ship technology, such as efficient stripping techniques, has made possible significantly lower permitted discharge levels of certain products which have been incorporated into Annex II. For ships constructed on or after 1 January 2007 the maximum permitted residue in the tank and its associated piping left after discharge will be set at a maximum of 75 litres for products in categories X, Y and Z - compared with previous limits which set a maximum of 100 or 300 litres, depending on the product category.

Alongside the revision of Annex II, the marine pollution hazards of thousands of chemicals have been evaluated, resulting in a hazard profile which indexes the substance according to its bio-accumulation; bio-degradation; acute toxicity; chronic toxicity; long-term health effects; and effects on marine wildlife and on benthic habitats.

As a result of the hazard evaluation process and the new categorization system, vegetable oils which were previously categorized as being unrestricted will now be required to be carried in chemical tankers. The revised Annex includes provision for the Administration to exempt ships certified to carry individually identified vegetable oils, subject to certain provisions relating to the location of the cargo tanks carrying the identified vegetable oil.

The Bill amends Division 12 of the *Navigation Act 1912* and the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* to give effect to these revised provisions.

Financial impact statement

There is no financial impact arising from this Bill.

NOTES ON CLAUSES

Clause 1: Short Title

1. This is a formal provision specifying the title of the proposed Act.

Clause 2: Commencement

2. Clause 2 provides that sections 1 to 3 commence the day on which the Act receives Royal Assent. Schedules 1 and 2 commence the later of 1 January 2007 and the day after the Act receives Royal Assent.

Clause 3: Schedule(s)

3. The *Navigation Act 1912* and *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* as set out in Schedule 1 and 2 to the Bill.

SCHEDULE 1 - AMENDMENTS DEALING WITH PREVENTION OF POLLUTION BY OIL

NAVIGATION ACT 1912

Item 1 - Interpretation

Item 1 refers to the definition of ship construction certificate, and reflects a change in the numbering of the regulations in Annex 1 to the International Convention for the Prevention of Pollution from Ships 1973/78.

Item 2 – Application of Division

Item 2 amends the reference to the re-numbered regulations of Annex I that do not apply if given effect by complementary State/Northern Territory legislation. These are regulations 12, 13, 14, 16, 18, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34 and 35.

Item 3 – Subsection 267(3)

This item amends the numbering of the provision referred to in this subsection.

Items 4 – Section 267A

Item 4 removes the excess numbering in the provision.

Item 5 – Transitional provision

Item 5 provides that a ship construction certificate issued before these amendments commence will be accepted as valid until the certificate expires. This reflects decisions taken by the International Maritime Organization regarding transition to the revised regulations.

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Item 6 – Subparagraphs 9(1)(c)(I) and (1B)(b)(i)

Item 6 relates to the prohibition of discharge of oil or oily mixtures and reflects a change in the numbering of the regulations in Annex 1 to the International Convention for the Prevention of Pollution from Ships 1973/78 that do not apply if given effect by complementary State and Northern Territory legislation.

Item 7 – Subsection 12(5)

Item 7 clarifies the role of the master of the ship in ensuring that appropriate entries are made, in the oil record book by the officer or person in charge of the operation.

Item 8 – Paragraph 12(6)(b)

Item 8 clarifies the role of the officer in charge of the operation when making an entry in a ship's oil record book.

**SCHEDULE 2 – AMENDMENTS DEALING WITH PREVENTION OF
POLLUTION BY NOXIOUS LIQUID SUBSTANCES**

NAVIGATION ACT 1912

Item 1 – Application of Division

Item 1 sets out the provisions giving effect to the design, construction, equipment and operations under Annex II to the International Convention for the Prevention of Pollution from Ships 1973/78.

Item 2 – Subsection 267N(3)

This item amends the numbering of the provision referred to in this subsection.

Item 3 – Section 267P

Item 3 removes the excess numbering in the provision and references to regulation 11 of Annex II to the International Convention for the Prevention of Pollution from Ships 1973/78.

Items 4 – Subsection 267V(1)

Item 4 amends the reference to the categories of noxious liquid substances to reflect the re-classification of substances included in the amended Annex II to the International Convention for the Prevention of Pollution from Ships 1973/78.

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Item 5 – Subsection 3(1)

Item 5 inserts a new definition for “approved form” approved by the Australian Maritime Safety Authority under section 3A.

Item 6 – After section 3

Item 6 provides for the Australian Maritime Safety Authority to approve, in writing, a form as set out in the provisions of the Act.

An approval made under subsection 3A(1) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. This provision is merely declaratory and has been included in the Bill to assist readers.

Item 7 – Interpretation

Item 7 removes the definition of liquid substance as the term is no longer required for the purposes of the amended Annex II to the International Convention for the Prevention of Pollution from Ships 1973/78.

Item 8 - Interpretation

Item 8 inserts a new definition for “Procedures and Arrangements Manual” in accordance with appendix 4 of Annex II to the International Convention for the Prevention of Pollution from Ships 1973/78.

Item 9 – Sections 17, 18, 19 and 20

Item 9 creates an offence provision that prohibits the carriage of substances that have not been categorized or provisionally assessed. Proposed subsection 17(1) provides that a person commits an offence if the person engages in conduct or is negligent that results in the prohibited carriage of substances that have not been categorized or provisionally assessed. Proposed subsection 17(2) provides that the master or owner of an Australian ship each commits an offence if substances that have not been categorized or provisionally assessed is carried as cargo or part cargo in bulk on the ship. Proposed subsection 17(3) provides for strict liability offence under subsection 17(2).

This item imposes collective responsibility on both the shipowner and the master of the ship because of the shared responsibility of the shipowner and the master of the ship, and the difficulty in ascertaining who is most directly responsible for the offence. While the master of the ship has immediate responsibility for the ship, he or she is subject to the direction of the shipowner.

The maximum penalty within this item has been developed to discourage shipping operators from attempting to avoid compliance with the proposed Act as a cost saving measure. The maximum penalty is proportionate to discourage non-compliance and takes into consideration the levels of cost savings that such shipping operators may achieve and the perceived likelihood of non-compliant ships being identified and prosecuted. These provisions are consistent with other penalty provisions in similar maritime legislation.

It is appropriate to use strict liability for the offence because the Defendant is the best placed person to provide evidence on whether any culpability should be attached to the physical offence. The elements of the offence that deal with the intention of the master of the ship or shipowner and whether or not the act was committed as a result of intention or negligence or was the result of an honest and reasonable mistake will be specifically and exclusively within the Defendant's knowledge, making it easier and less costly for the Defendant to disprove an unjust charge than for the Prosecutor to make out the fault elements of a just charge. In these circumstances it would be difficult and costly for the Prosecutor to attempt to prove the fault elements for many of the maritime offences in this Bill, and so the effectiveness of the regulatory regime established by the Bill may be undermined if the offences were not offences of strict liability.

Item 10 – Subparagraph 21(1)(c)(i)

Item 10 updates the references to regulations to reflect a change in the numbering of the regulations in Annex II to the International Convention for the Prevention of Pollution from Ships 1973/78 that do not apply if given effect by complementary State or Northern Territory legislation. These provisions deal with exceptions, categorization and listing of Noxious Liquid Substances and Other Substances and control of discharges of residues of Noxious Liquid Substances.

Item 11 – Subsection 21(1B)

Item 11 amends the numbering of a provision referred to in this subsection.

Item 12 – Subparagraph 21(1B)(b)(i)

Item 12 updates the references to regulations to reflect a change in the numbering of the regulations in Annex II to the International Convention for the Prevention of Pollution from Ships 1973/78 that do not apply if given effect by complementary State/NT legislation. These provisions deal with strict liability offences relating to exceptions, categorization and listing of Noxious Liquid Substances and Other Substances and control of discharges of residues of Noxious Liquid Substances.

Item 13 – Subsections 21(4) to (15)

This item replaces existing provisions to reflect the new requirements specified in revised Annex II to the International Convention for the Prevention of Pollution from Ships 1973/78.

Item 14 – Section 21A

This item repeals the section and substitutes a new section 21A covering the Procedures and Arrangements Manual. It also provides for strict liability offences under subsections 21A(1) and 21A(2). The master and the owner of an Australian ship each commit an offence if the ship does not have on board the prescribed manual, and the same applies to a foreign ship.

This item imposes collective responsibility on both the shipowner and the master of the ship because of the shared responsibility of the shipowner and the master of the ship and the difficulty in ascertaining who is most directly responsible for the offence. While the master of the ship has immediate responsibility for the ship, he or she is subject to the direction of the shipowner.

The maximum penalty within this item has been developed to discourage shipping operators from attempting to avoid compliance with the proposed Act as a cost saving measure. The maximum penalty is proportionate to discourage non-compliance and takes into consideration the levels of cost savings that such shipping operators may achieve and the perceived likelihood of non-compliant ships being identified and prosecuted. These provisions are consistent with other penalty provisions in similar maritime legislation.

It is appropriate to use strict liability for the offence because the Defendant is the best placed person to provide evidence on whether any culpability should be attached to the physical offence. The elements of the offence that deal with the intention of the master of the ship or shipowner and whether or not the act was committed as a result of intention or negligence or was the result of an honest and reasonable mistake will be specifically and exclusively within the Defendant's knowledge, making it easier and less costly for the Defendant to disprove an unjust charge than for the Prosecutor to make out the fault elements of a just charge. In these circumstances it would be difficult and costly for the Prosecutor to attempt to prove the fault elements for many of the maritime offences in this Bill, and so the effectiveness of the regulatory regime established by the Bill may be undermined if the offences were not offences of strict liability.

Item 15 – Definition of liquid substances

This item omits a reference to a list of substances in Appendix III to Annex II, including milk and wine that are not included in the term 'liquid substance'. This reference is replaced by Chapter 2 - Categorization of noxious liquid substances, Regulation 6.1.4 - Other substances, as found in the International Bulk Chemical Code.

Item 16 – Subsection 22(10) (paragraphs (a) and (b) of the definition of prescribed incident

This item amends the reference of prescribed incident, in relation to a ship, to update the subsections referred to that are not contained within the definition.

Item 17 – Section 26

This item reflects a change in the numbering of the regulations in Annex II to the International Convention for the Prevention of Pollution from Ships 1973/78 dealing with cleaning of tanks.