

TRANSPORT OPERATIONS (MARINE POLLUTION) BILL 1994

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The principal objective of this Bill is to protect Queensland's marine and coastal environment by minimising deliberate and negligent discharges of ship-sourced pollutants into coastal waters.

Primarily, it is intended to achieve this objective by giving effect to relevant regulations of the International Convention for the Prevention of Pollution by Ships (MARPOL), a global convention which Australia has ratified.

The objective is also to be accomplished through:

- the inclusion of intervention powers where a marine casualty poses grave and imminent danger to the Queensland coastline or related Queensland interests;
- enhancing, through a structured education process, industry and community awareness of the impacts of ship sourced pollutants on Queensland's marine and coastal environment;
- providing a legislative approach which is complementary to the Commonwealth and the other States; and
- the imposition of severe penalties for pollution offences.

It is also intended to make the legislation easier to understand and consistent with the *Transport Planning and Coordination Act 1994*.

Reasons for the Bill

The *Pollution of Waters by Oil Act 1973* has been in operation since 1960. The Act was revised in 1973 to incorporate a now superseded international pollution prevention convention, while the penalties were increased substantially in 1992 through the introduction of an amendment Act.

The *Pollution of Waters by Oil Act 1973* is inadequate in a number of areas:

- contaminants other than oil are not included;
- modern environmental and international marine pollution prevention and control standards are not satisfied;
- the prevailing marine international pollution prevention convention and associated ship management conventions, ratified by Australia, are not acknowledged;
- the quantity of petroleum products and other harmful substances now carried by sea is not acknowledged;
- thus the present day risk is not recognised; and
- the Act is not responsive to the needs of the community.

In defining the overall reasons for the Bill, a number of fundamental operational and administrative changes from the existing legislation are identified.

These are:

- the introduction of increased controls on ship-sourced pollution in Queensland's coastal waters by oil, noxious liquid substances, harmful substances, and garbage, through adoption of the MARPOL Convention.

(The existing *Pollution of Waters by Oil Act 1973* covers oil and oil products only, originating from places on land, as well as from ships. The *Environmental Protection Act 1994*, administered by the Minister for Environment and Heritage, will now legislate to control all forms of pollution originating from places on land into all State waters);

- regulation of sewage discharge control through adopting draft MARPOL regulations for large ships and enacting domestic provisions for small and medium craft; and

- the *Transport Operations (Marine Pollution) Bill 1994* applies to all ships within an area of jurisdiction defined as coastal waters.
- (The existing legislation covers all State waters, including inland waters. The new *Environmental Protection Act 1994* will legislate to control pollution in inland waters and pollution from land sources into coastal waters).

Of special interest consequently, is an explanation of MARPOL and Queensland's coastal waters.

The International Convention for the Prevention of Pollution from Ships (MARPOL)—

- MARPOL was convened by the International Maritime Organisation to establish universally accepted maritime transport standards relating to ship construction, equipment and operating procedures, survey, classification and inspection, in respect of pollution control.
- The Convention has been accepted internationally, ratified by Australia and places obligations on ship owners and masters to meet the standards set down in the technical annexes of MARPOL.

Queensland's Coastal waters—

- Australia's sovereignty extends to a belt of sea around Australia described as the territorial sea. The present width of this belt is 12 nautical miles.
- Coastal waters under State jurisdiction include:
 - the territorial sea extending 3 nautical miles from a baseline following the low water mark along the greater part of the coastline;
 - the territorial sea along other sections of the coast where the baseline departs from the low water mark to enclose certain bays (eg Hervey Bay), or a fringe of islands along the coast (eg Whitsunday Islands) ; and
 - all other areas of sea to landward of the baseline to the extent

of the ebb and flow of the tide, including coastal rivers and streams.

The map attached illustrates waters defined as coastal waters, using the Hervey Bay region as an example.

The discharge of ballast water from ships is not dealt with in the Bill. While there is no ready solution presently available to control the introduction of exotic marine organisms into Australian waters, a national working group, chaired by the Australian Quarantine Inspection Service, is researching ways to destroy such organisms. The Queensland Government is represented on this working group. This initiative is in addition to a range of voluntary operational guidelines laid down for ships entering Australian waters in order to minimise the risk. The International Maritime Organisation has also commenced drafting a ballast water control Annex for MARPOL. This is not expected to be completed for a number of years.

Rationalisation of Transport Legislation

The Minister for Transport and Minister Assisting the Premier on Economic and Trade Development has initiated a process of completely revising transport-related legislation. Consequently, the State's transport functions are being integrated to approximately 20 Acts, in order to rationalise this legislation.

The key to this plan has been the establishment of peak legislation for the portfolio, namely the *Transport Planning and Coordination Act 1994* and the subsequent development of primary supporting legislation. The *Transport Operations (Marine Pollution) Bill 1994* is the fourth Bill in this series of supporting legislation.

Portfolio Strategic Planning

The *Transport Planning and Coordination Act 1994* incorporates, within its strategic framework, a legislative obligation to develop a Coordination Plan for the strategic management of transport operations across the State.

In the *Transport Operations (Marine Pollution) Bill 1994*, the Minister will be committed to developing marine pollution strategies, which will include goal statements and criteria for determining financial and management accountability in achieving marine pollution objectives.

Estimated Cost for Government Implementation

Most costs to Government in implementing the Bill will be administrative in nature, and the cost will not be significant. These administrative costs are able to be met within existing budget allocations.

The legislation will however, require a Government/industry/community education program to be put in place, to ensure a comprehensive level of awareness is established concerning the importance of responsible marine environmental management in the commercial shipping industry and the recreational boating arena.

No additional expenditure will be incurred as a result of this program.

Consultation

All relevant Commonwealth and State Government departments, industry and conservation groups and community organisations have been consulted prior to commencement and during drafting of the Bill.

As far as possible, various comments have been incorporated into the legislation. There are no unresolved issues of any substance.

NOTES ON PROVISIONS**Part 1—Preliminary**

Clause 1 sets out the short title of the Act—the *Transport Operations (Marine Pollution) Act 1994*.

Clause 2 provides that provisions of the Bill will commence on a day to be fixed by proclamation.

The exception to this is that the requirement for vessels to be fitted with a means of containing sewage on board will commence, for new ships, on 1 January 1998 and for existing ships, on 1 January 2000.

Clause 3 describes the Bill's overall purpose as protecting Queensland's marine and coastal environment by minimising deliberate and negligent

discharges of ship-sourced pollutants into coastal waters.

The Bill provides that, primarily, it is intended to accomplish this purpose by giving effect to relevant provisions of the International Convention for the Prevention of Pollution by Ships (MARPOL), a global convention which Australia has ratified.

The purpose is also to be accomplished through:

- enhancing, through a structured education process, industry and community awareness of the impacts of ship sourced pollutants on the Queensland's marine and coastal environment;
- making provision for the control of sewage discharge from ships;
- giving power of intervention to deal with serious maritime casualties;
- providing a legislative approach which is complementary to the Commonwealth and the other States; and
- the imposition of severe penalties for pollution offences.

This framework is consistent with the broad objectives of the *Transport Planning and Coordination Act 1994*.

Clause 4 provides for a dictionary of words and terms used in this Bill. The dictionary is located at the end of the Bill.

Clause 5 interprets key words and expressions used in the MARPOL Convention and in the Bill.

Clauses 6 and 7 define and explain the meaning of basic concepts fundamental to the operation of the Bill.

Clause 8 binds all persons to the Bill.

Clause 9 deems that a discharge into coastal waters includes a discharge occurring outside coastal waters, but entering coastal waters.

Part 2—Information about this Bill

Clause 10 contains historical information regarding the development of world wide concern about the threat to the marine environment from ship-sourced pollutants.

It also contains a summary outlining the global evolutionary process undertaken to produce international standards for ship design, construction and operation, to minimise this threat.

This process resulted in international acceptance of the MARPOL Convention, which was ratified by Australia in 1987.

The Bill gives effect to relevant parts of MARPOL in Queensland's coastal waters.

Clause 11 describes Queensland's jurisdiction in the territorial sea of Australia.

Australia's sovereignty extends to a belt of sea around Australia described as the territorial sea. The present width of this belt is 12 nautical miles.

Territorial seas under State jurisdiction include:

- the territorial sea extending 3 nautical miles from a baseline following the low water mark along the greater part of the coastline;
- the territorial sea along other sections of the coast where the baseline departs from the low water mark to enclose certain bays (eg Hervey Bay), or a fringe of islands along the coast (eg the Whitsunday Islands).

The meaning of coastal waters is described in the dictionary at the end of the Bill.

Clause 12 provides that the Bill applies to all ships in coastal waters.

Clause 13 provides that matters concerning ship construction, certification and survey are generally dealt with in regulations of the *Marine Safety Act 1994*.

Clause 14 describes how this Bill interacts with other environmental laws with regard to a discharge of pollutants into coastal waters. Fundamentally, the *Transport Operations (Marine Pollution) Bill 1994* regulates the control of specific ship sourced pollution within Queensland coastal waters, while the recently introduced *Environmental Protection Act 1994* deals with the discharge of pollutants from all sources into Queensland waters other than coastal waters and from sources on land into coastal waters.

Part 3—Marine Pollution Strategies

Clause 15 imposes a legislative obligation on the chief executive to periodically develop marine pollution strategies for approval by the Minister. These strategies are designed to give effect to the Transport Coordination Plan required to be developed under the *Transport Planning and Coordination Act 1994*.

In developing these strategies the chief executive must engage in an appropriate level of consultation.

The Minister may approve the strategies, or require the chief executive to amend or replace the strategies.

The Minister is required to table all marine pollution strategies in the Legislative Assembly within 5 sitting days after approval.

Clause 16 describes the minimum contents to be included in marine pollution strategies and agreement of arrangements concerning pollution prevention initiatives between State and local governments, other State governments and the Commonwealth government.

These strategies must also include criteria for determining priorities for initiatives and options for financing priorities.

Clause 17 requires the Minister to develop marine pollution prevention and response programs that must include policies, projects, financial provisions and performance targets. The development of such programs must be undertaken in consultation with appropriate government agencies, industry sectors and community interest groups.

This Clause also requires the chief executive to develop, for the Minister's approval, marine pollution prevention and response programs for one or more years.

These programs must include projects, policies, performance targets and financial provisions and may include proposals to spend funds on programs other than marine pollution, if such spending contributes to the minimisation of pollution. Such programs would embrace management of ships navigation through vessel traffic guidance systems, compulsory pilotage, pilotage training, and ship surveillance and position reporting schemes.

In developing these programs the chief executive must engage in appropriate industry and community consultation and make available copies of the programs as directed by the Minister.

Clause 18 provides that marine pollution prevention and response programs must be consistent with marine pollution strategies.

Clause 19 provides that the annual report of Queensland Transport include a report on the operation of marine pollution prevention and response programs each financial year.

Clause 20 provides that value for money must be ensured in providing resources arising from a marine pollution strategy to prevent marine pollution.

Clause 21 provides that marine pollution strategies are developed in a way that takes into account best practice and promotes safety of life and property and preservation of the marine environment.

Clause 22 requires that the Queensland Transport annual report must give a summary on the way in which effect has been given to the development of marine pollution strategies outlined in *Clause 21*.

Part 4—Prevention of Pollution by Oil

Clause 23 provides that the purpose of Part 4 is to give effect to relevant provisions of Annex I to MARPOL, (Regulations for the control of pollution by oil).

Clause 24 gives the meaning “discharge offence” and “oil” in relation to this Part.

Clause 25 provides that words and expressions used in Annex I to MARPOL apply to this Part.

Clause 26 is an offence provision prohibiting a discharge of oil from a ship into coastal waters. The owner and master each commit an offence.

Clause 27 provides an offence provision for the discharge of oil residues held in a ship being discharged into coastal waters.

Clause 28 outlines defences to a discharge of oil and mixtures containing oil. Defences apply:

- for the purpose of saving life or securing the safety of the ship or from unintentional damage, (provided reasonable precautions were taken to prevent or minimise discharge); and
- if a discharge is made to minimise pollution, or for training purposes, (with approval of an authorised officer).

If damage was caused through reckless action with knowledge that damage would probably result, the defence does not apply.

Clause 29 provides for a regulation to permit certain operational discharges, under stringent conditions.

Operational discharge of minimum quantities of oil used for propulsion machinery in all ships is permitted, provided that the content of the effluent, without dilution, does not exceed 15 parts per million and the ship has in operation an oil discharge and control system and oily water and oil filtering equipment.

In the case of oil carried as cargo in an oil tanker, which is limited to carrying out operational discharges at a distance of 50 nautical miles from the nearest land, no operational discharges are permitted in Queensland's coastal waters.¹

Clause 30 requires a ship to prepare and carry on board an oil pollution emergency plan, which includes a notification process and a mechanism for dealing with an emergency response to a pollution incident occurring on the ship.

Part 5—Prevention of Pollution by Noxious Liquid Substances in Bulk

Clause 31 provides that the purpose of Part 5 is to give effect to relevant provisions of Annex II to MARPOL, (Regulations for the control of pollution by noxious liquid substances carried in bulk).

¹Because the Great Barrier Reef World Heritage Area has been declared a "Particularly Sensitive Area" by the International Maritime Organisation, no operational discharges of any kind are permitted within reef waters. This also applies to Queensland's coastal waters which are part of the World Heritage Area.

Clause 32 provides that Part 5 applies to all ships carrying noxious liquid substances in bulk.

Clause 33 gives the meaning of “discharge offence”, “noxious liquid substances” and other key terms used in Part 5. A noxious liquid substance means any substance categorised as such in Annex II of the MARPOL Convention.

Clause 34 provides that words and expressions used in Annex II of MARPOL apply to this Part.

Clause 35 is an offence provision prohibiting a discharge of a noxious liquid substance into coastal waters. The owner and master each commit an offence.

Clause 36 which outlines defences to a discharge of a noxious liquid substance, is identical in intent to *Clause 28* (discharge of oil), except that an authorised officer cannot authorise the discharge of a noxious liquid substance for training purposes.

Clause 37 provides for a regulation to exempt certain discharges from the offence provision, (*Clause 35*).

Substances are categorised as:

- “A” (major hazard)—(*to human health or marine resources*);
- “B” (hazard);
- “C” (minor hazard);and
- “D” (recognisable hazard).

General conditions for discharge are:

- Category “A” no discharge of residue is permitted;
- Category “B” discharge allowed only if category “B” content is 1 to 1,000,000 parts or less;
- Category “C” discharge allowed only if category “C” content is 10 parts per 1,000,000 or less; and
- Category “D” discharge allowed if category “D” content does not exceed 1 part in 10 parts.

No discharge can be made unless a ship is at least 12 nautical miles from the nearest land and the water is at least 25 metres deep.

Clause 38 provides that certain oil-like noxious liquid substances of categories “C” and “D”, as listed by MARPOL, may be carried on an oil tanker and treated as oil for the purposes of the Bill.

Part 6—Prevention of Pollution by Packaged Harmful Substances

Clause 39 provides that the purpose of Part 6 is to give effect to the relevant provisions of Annex III to MARPOL, (Regulations from the Prevention of Pollution by Harmful Packaged Substances)

Packaged Harmful Substances are those substances identified as marine pollutants in the International Maritime Dangerous Goods Code, which are carried at sea in freight containers, road and rail vehicles and portable tanks.

Clause 40 defines “discharge offence” as an offence for this part.

Clause 41 provides that words and expressions used in Annex III to MARPOL apply to this Part.

Clause 42 is an offence provision prohibiting the jettisoning of a harmful substance carried as cargo, into coastal waters. The owner and master each commit an offence.

The term “jettisoning” includes a discharge because of leakage and a package (container), that is jettisoned and then leaks.

Clause 43 outlines defences to a prosecution under *Clause 42*.

Defences apply:

- when the jettisoning was carried out for the purpose of saving life or securing the safety of the ship;
- when jettisoning by washing a leaking substance overboard, after considering the physical, chemical and biological properties of the substance, is carried out in consideration that this action is the most appropriate manner of ensuring safety to the ship’s personnel and the integrity of the ship; and
- when, in an emergency situation, compliance with conditions outlined in the preceding paragraph would impair the safety of

persons on board the ship and the safety of the ship, the substance is washed overboard.

Clause 44 provides that a regulation may exempt certain discharges under *Clause 42*, only if it gives effect to an exemption permissible under Annex III to MARPOL.

Part 7—Prevention of Pollution by Sewage

Clause 45 defines key terms used in this Part. It should be noted that this Part does not give effect to sewage control regulations under Annex IV to the MARPOL Convention, as this Annex is not yet in force internationally. However, provisions governing ships to which the Annex will apply are used in relation to those ships categorised under the present draft regulations, that is ships of 200 tons gross and over.

The clause defines “new ship” and “existing ship”.

The Clause also defines the terms “high”, “moderate” and “low” areas of sensitivity and “large”, “medium” and “small” ships.

Clause 46 gives the meaning of “length overall” in relation to the measurement of a “medium” and “small” ship.

Clause 47 is an offence provision prohibiting the discharge of sewage into coastal waters from all ships into high and moderate zones of sensitivity and from large ships only into zones of low sensitivity.

This sensitivity zoning is intended to circumvent potential health problems and undesirable amenity impacts, in or adjacent to areas of urban habitation, such as canal estates and resorts, coastal embayments and river systems, which are used intensively for recreational boating and other aquatic activities.

Clause 48 provides a defence to a prosecution for sewage discharge, if the discharge was caused due to damage to the ship and that all reasonable precautions were taken before and after the damage happened to prevent or minimise discharge.

Clause 49 provides that a regulation may exempt certain sewage discharges from *Clause 47*. This will permit medium and small vessels to

discharge sewage in area of low sensitivity; these will be isolated areas away from human habitation and activity.

Clause 50 provides that new ships, other than small ships, must be fitted with a container or receptacle designed and constructed to receive waste from a toilet, and to retain that waste on board—a holding tank.

New ships will have until January 1998 to be fitted with holding tanks while existing ships will be required to retrofit holding tanks by the year 2000.

It is intended that a regulation prescribe conditions for certifying an existing ship is unsuitable for retrofitting a holding tank.

These conditions will be based on a formula to determine the cost effectiveness of retrofitting and the effect on ship stability.

Clause 51 provides that sewage provisions contained within the Bill do not limit another law imposing more stringent requirements concerning sewage discharge into coastal waters. For example it may be required that houseboats of less than 10 metres length will be required to be fitted with holding tanks in some intensively used areas of limited water exchange.

Part 8—Prevention of Pollution by Garbage

Clause 52 provides that the purpose of Part 8 is to give effect to the relevant provisions of Annex V to MARPOL (Regulations for the prevention of pollution by garbage).

Clause 53 defines “discharge offence” as an offence against *Clause 55* (discharge offence), and clarifies that plastics is included in the definition of garbage.

Clause 54 provides that words and expressions used in Annex V to MARPOL apply to Part 8.

Clause 55 is an offence provision for the disposal of garbage into coastal waters. The owner and master each commit an offence.

Clause 56 outlines defences to disposal of garbage.

Defences apply:

- for the purpose of saving life or securing the safety of the ship;
- if the disposal occurred due to damage to the ship or its equipment and all reasonable precautions were taken before and after the damage happened to prevent or minimise disposal; and
- if the disposal was the accidental loss at sea of a synthetic fishing net, or net material, provided all reasonable precautions were taken to prevent the loss.

Clause 57 provides that a regulation may exempt certain disposals from provisions of *Clause 55*, as allowed under Annex V to MARPOL.

It is intended that this be the release of small quantities of food wastes for the specific purpose of feeding fish in connection with fishing or tourist operations.

Part 9—Pollution relating to Transfer Operations

Clause 58 states that the purpose of this Part is to determine responsibility for transfer operations and matters related to transfer operations concerning pollutants.

Clause 59 outlines definitions used in Part 9. These relate to pollutants, transfer apparatus and a transfer operation.

Clause 60 provides that words and expressions that are used in this Part have the same meaning as they have in Annex I and Annex II to MARPOL.

Clause 61 is an offence provision making a discharge of oil or noxious liquid substances during a transfer operation between a ship and another ship or a place (on land), an offence. The ship's owner and master each commit an offence.

Clause 62 provide defences to a discharge offence in *Clause 61*.

It is a defence for the master or owner if a discharge occurs because of an error by an operator not acting under the master's direction (on another ship or at a place), or because of a fault in transfer apparatus not operated at the

Master's direction, provided the master took all reasonable precautions to minimise or prevent the discharge.

While the owner and master are both responsible for ships transfer apparatus belonging to the ship, or brought onto the ship and used in a transfer operation at the direction of the master, it is a defence if a discharge occurred and the master had taken all reasonable steps to ensure the apparatus was in good working order, prior to commencement of the transfer operation.

Other defences outlined in Part 4 (oil) and Part 5 (noxious liquid substances) are available under this Part.

Clause 63 prescribes restrictions on conducting transfer operations between sunset and sunrise.

Clause 64 provides that if a prescribed discharge occurs from 2 or more ships, or if it is impractical to identify a substance as being discharged from a particular ship, it is taken that the discharge has occurred from each of the ships.

This provision also applies to *Clauses 113, 114* (the lodgement of security following detention of a ship), *122* (the recovery of costs) and *127* (awards of compensation for discharges).

Clause 65 provides that the ship's owner and master, and the occupier of a place, to or from which a substance is being transferred, must keep records of a transfer operation in a manner prescribed by regulation.

Part 10—Reception Facilities

Clause 66 provides that the chief executive may direct ports, marine terminals, marinas, boat harbours or other establishments performing work on ships, to provide and maintain adequate facilities for the reception and disposal of oil, noxious liquid substances, sewage or garbage. Definitions of the terms "terminals" and "residues" are also included in this Clause.

The Clause provides for a continuing penalty for non compliance following a conviction for an offence.

Part 11—Reporting Requirements

Clause 67 outlines the criteria for reporting a discharge or probable discharge of oil, a noxious liquid substance or a packaged harmful substance.

All discharges or probable discharges of these substances, except those operational discharges permissible by regulation, are required to be reported to specific places which are identified in the regulation.

The Clause defines “reportable incident”.

The master and owner each commit an offence for non compliance.

Part 12—Investigation, Prevention and Minimisation, and Enforcement

Clause 68 summarises the functions of authorised officers in relation to investigating discharges, monitoring compliance with provisions of the Bill and responding to incidents of pollution.

Clause 69 provides that an authorised officer is subject to direction by the chief executive and where appropriate the chief executive of a port authority.

Clause 70 provides that an authorised officer has powers under this or another Act and that an authorised officer may exercise powers for the administration and enforcement of the Bill.

Clause 71 provides that the powers of an authorised officer may be limited by regulation or by the chief executive, or the chief executive of a port authority.

Clause 72 provides that chief executives may appoint officers of the public service, employees of a port authority and approved persons having necessary experience and expertise to be authorised officers, as prescribed by regulation .

Clause 73 provides that an authorised officer is appointed subject to conditions specified in the instrument of appointment.

Clause 74 provides that an authorised officer must be supplied with an identity card.

Clause 75 provides that an authorised officer must produce or display his or her identity card in relation to an exercise of power under the Bill.

Clause 76 provides that an authorised officer under the Bill is not civilly liable for an act or omission carried out without negligence. The clause provides that if this clause prevents a civil liability attaching to an authorised officer, the liability attaches to the State.

Clause 77 requires an authorised officer to gain the occupier's consent before entering premises (a place).

Unless entry is authorised by warrant, an authorised officer may only exercise general powers for places and ships if this consent is given.

An authorised officer may, without a warrant, enter a public place when it is open or may enter land around premises to ask the occupier for permission to enter.

Clause 78 provides for an authorised officer to apply to a Magistrate for a warrant to enter a place.

The Magistrate may issue the warrant if there are reasonable grounds for suspecting that evidence may be obtained concerning an offence against the Bill.

The warrant must specify the period for which the warrant is in effect and state that the authorised persons may, with reasonable help and force, enter the place and exercise powers under the Bill.

Clause 79 allows application and issue of a warrant for entry to a place by phone, fax, or radio, if there are urgent or special circumstances.

Clause 80 provides that an authorised officer, with reasonable help and force, may board a ship at any time of the day or night, if the officer suspects that the ship has been used in the commission of an offence, or that the ship, or something on the ship may provide evidence of an offence.

The authorised officer may signal the ship to stop, or not to move, unless the person in control of the ship believes that obeying the signal is dangerous.

Clause 81 outlines the general powers of an authorised officer for ships and places.

These include powers:

- to search, examine, test, measure, photograph and film;
- to take samples of a pollutant and copies of documents;
- to take persons and equipment onto the ship required to exercise a power;
- to authorise release of pollutants; and
- require the master of a ship to give reasonable help, to move the ship and to remain in control of the ship at a specified place.

An authorised officer must not enter any part of the ship used only as a living area.

Clause 82 provides an authorised officer power to seize evidence from places, if it is believed, on reasonable grounds, seizure is evidence of an offence, is necessary to prevent concealment or destruction, or necessary to prevent repeated offences. A warrant is required.

Clause 83 provides an authorised officer who boards a ship, powers corresponding to *Clause 82*, except that a warrant is not required.

Clause 84 provides that an authorised officer of the State may detain a ship if there are clear grounds for believing the ship is evidence of a discharge offence against the Bill.

The officer may act with reasonable and necessary help and force and may require the ship to move to a specified place, or may arrange to escort the ship to a place.

Clause 85 requires that, following detention of a ship, the authorised officer must give to the master, a notice stating that the ship is detained, including reasons why, and that the ship may be released on payment of security as outlined in *Clause 113*.

Clause 86 outlines the procedure an authorised officer must follow following the seizure of evidence.

The procedure includes the issue of a receipt for each thing seized and the return of a seized thing after 6 months, or following a prosecution or appeal.

Clause 87 provides a power for an authorised officer to require a person's name and address, if the person is committing an offence or finds the person in circumstances which lead the officer to suspect the

commission of an offence.

Clause 88 provides that authorised officers may require a person to give information if the officer suspects an offence has been committed, or if a person may be able to give information concerning the offence.

Clause 89 enables an authorised officer to compel the production of documents required to be kept under this Bill and the Commonwealth *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*, for inspection.

The officer may keep the document (for return as soon as practicable), or make copies of the document.

Clause 90 applies when an authorised officer seeks consent to enter a place.

The Clause provides that the officer must advise the occupier of the purpose of the entry and that things found may be seized as evidence.

If consent is given, the officer may ask the occupier to sign an acknowledgment of consent, which includes a statement that the officer may exercise his general powers as outlined in *Clause 81* of the Bill.

Clause 91 provides that if an acknowledgment under *Clause 90* is not produced in evidence, the court may presume no consent was given, unless the contrary is proved.

Clause 92 enables the State and a port authority (within its port limits), to direct and coordinate the response to a discharge or probable discharge of a pollutant.

Clause 93 provides that, while the State may consult with port authorities, local government or others in preparing a response to a discharge, the State has prime responsibility to direct and coordinate the response.

If, however, the discharge or likely discharge occurs within the limits of a port, the port authority must direct and coordinate the response unless the State assumes responsibility through the chief executive.

Clause 94 provides that the Minister may, through an emergency declaration, proclaim a local law that is inconsistent with a State or port authority response, or hinders a response, to be of no effect for a maximum period of 14 days.

The Minister may make such emergency declaration only if the Minister is satisfied that urgent action is needed to deal with the discharge and must repeal the declaration as soon as the emergency ceases to exist. The declaration must outline the nature of the emergency and must be published in the Gazette.

Clause 95 gives an authorised officer emergency powers.

If urgent action is necessary to protect the marine and coastal environment, the officer may take reasonable action to:

- remove, destroy, or disperse a pollutant;
- prevent a pollutant reaching a specified place;
- mitigate damage or injury caused by a pollutant; or
- require a person to assist with these actions.

In the case of a person obstructing the officer in carrying out these powers, a police officer may be requested to remove a person or thing or prevent further obstruction.

Clause 96 provides that an authorised officer may direct a release of a pollutant into coastal waters, if it is necessary because of an emergency which leaves no practical alternative to such a release.

A person directed to release a pollutant does not commit an offence in merely complying with the direction, but must take all reasonable precautions to prevent harm to the environment or damage to property.

Clause 97 defines terms used in the provisions relating to powers of intervention, including the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, and the definition of a “maritime casualty”.

Clause 98 provides the chief executive with specific powers of intervention, if, following a maritime casualty, there is grave and imminent danger to the Queensland coastline or to related interests, from a discharge or threatened discharge of a pollutant.

The chief executive may take measures considered necessary to prevent, minimise or eliminate the danger, including:

- to move the ship, remove the cargo, salvage the ship, take control of the ship or sink or destroy the ship.

The Minister's approval must be obtained prior to authorising any action to sink or destroy a ship.

Clause 99 provides that a direction or prohibition of an action outlined in *Clause 98* may be required to be carried out in accordance with the instructions of a specific person. In particular, the chief executive must not issue a direction to sink or destroy a ship without the written approval of the Minister.

Clause 100 outlines matters for the chief executive to undertake prior to exercising the powers of intervention in *Clause 98*.

The Clause compels the chief executive to ensure (except in an emergency):

- as far as possible, that human life is not threatened;
- Australia's obligations as a signatory to the International Convention Relating to Intervention on the High Seas are considered; and
- consultation takes place with both the Australian Maritime Safety Authority and the owner of the relevant ship.

Clause 101 provides a penalty for a person failing to help an authorised officer in an emergency, specifically:

- with a direction given by the officer under *Clause 95* (authorised officer's powers in an emergency); and
- for a person failing to give reasonable help to an officer exercising powers under *Clause 81* (authorised officers powers for ships and places).

Clause 102 provides a penalty for failing to help an authorised officer in cases other than an emergency, specifically:

- when an officer requires a person to give reasonable help in exercising general powers for ships and places, as outlined in *Clause 81*; and
- in cases when *Clause 101* (failure to help an authorised officer in an emergency), does not apply.

Clause 103 requires a person to comply with a direction given by an authorised officer.

The clause applies in relation to an authorised officers powers requiring a ship to be brought to a stated place to exercise general powers for ships and places, but does not apply to *section 101* (failure to help an authorised officer in an emergency).

Clause 104 requires a person to answer a question asked by an authorised officer, as provided in *Clause 88* (power to require information about a suspected offence) and when *Clause 101* (failure to help in an emergency), does not apply.

Clause 105 provides an offence for a person to knowingly give an authorised officer false, misleading or incomplete documents. The document may be given if the person declares that the document is false or incomplete.

Clause 106 provides an offence for a person to knowingly give an authorised officer false, misleading or incomplete information.

Clause 107 provides a penalty for obstruction, abuse or intimidation of an authorised officer, or a person who is authorised by an officer to take action in an emergency.

Clause 108 provides that a person must not impersonate an authorised officer.

Clause 109 requires an authorised officer to give written notice to a ship's master or owner of a place, of any damage caused in the exercise of any power under this Act.

Clause 110 provides that a person may claim compensation for loss incurred, because of the exercise of any power authorised under this Part (Investigation, Prevention and Minimisation, and Enforcement).

Compensation may be claimed from the State or a port authority in a court of competent jurisdiction, only if the court is satisfied it is just and reasonable to make the order in the circumstances.

Part 13—Security

Clause 111 outlines definitions used in this Part relating to security to be provided by a detained ship. It defines “discharge expenses” as reasonable

costs incurred in investigating, preventing, or minimising pollution and treating and rehabilitating plants, animals and the environment.

Clause 112 provides that this Part (Security) applies if an authorised officer has detained a ship under powers contained in *Clause 84* (power to detain ship).

Clause 113 provides that a detained ship must be released if security or guarantee is given.

The security must be sufficient to cover:

- expenses incurred by the State or a port authority as a result of a discharge of a substance;
- interest likely to accrue on such expenses until security is likely to be realised; and
- the penalty expected to be payable pending a successful prosecution.

Clause 114 outlines other ways a detained ship may be released. They include:

- if proceedings instituted against a ship are discontinued or concluded irrespective of an appeal pending and;
- proceedings are concluded and penalties paid and discharge expenses ordered to be paid.

Clause 115 provides that the State may recover discharge expenses by making a claim on security lodged by a ship. Expenses recovered on behalf of a port authority must be reimbursed to the port authority.

Clause 116 provides that a person affected by a decision on claims on security may appeal to a District Court or the Supreme Court.

Clause 117 provides that the procedure for an appeal concerning security is to be in accordance with the appropriate court's rules, or in accordance with the directions of a Judge. Costs of an appeal will be at the Courts discretion. A party to an appeal may present new evidence at the appeal hearing.

Part 14—Legal Proceedings

Clause 118 applies to legal proceedings under this Bill or another Act.

Unless proof is required, the appointment of the administering executive or an authorised officer must be presumed.

A signature of such officers, or a certificate signed by the Minister declaring a person to be the administering executive, is evidence of the signature or matters stated in the certificate.

The following matters are evidence included in a certificate:

- an appointment or approval;
- suspension or cancellation of approval;
- a direction or decision;
- a record or document (or extract or copy of);
- a stated period or a stated amount or costs;
- a stated order;
- a stated substance is a pollutant;
- instruments, equipment or installations used; and
- a signed analyst's report.

Clause 119 provides that an analyst's report may be produced by a defendant. The report may state that the sample was received and was analysed at a stated place and give the results of the analysis.

Clause 120 describes how, in a proceeding for an offence, it is relevant to prove a person's state of mind concerning a particular act or omission by a representative, within the scope of his or her actual or apparent authority.

In a proceeding for an offence, an act or omission is taken to be effected, unless the person proves that all reasonable steps were taken to prevent the act or omission.

Clause 121 provides that executive officers of a corporation must ensure that the corporation complies with the Bill.

If a corporation commits an offence, each executive officer of the corporation also commits an offence, insofar as not ensuring that the

corporation complied with the Act.

It is a defence for an executive officer if the officer took all reasonable steps to influence the corporation in complying with the Bill or was not in a position to influence the conduct of the corporation.

Clause 122 provides that the State or a port authority may recover the reasonable costs and expenses incurred as a result of a discharge of a substance into coastal waters.

If requested by a port authority, the State may recover a port authority's expenses, which must then be reimbursed to the port authority.

Clause 123 provides that an offence against the Bill for which the penalty is at least 850 penalty units, is an indictable offence. Offences drawing a lesser penalty are summary offences.

Clause 124 outlines proceedings for indictable offences.

A proceeding for an indictable offence may be taken by way of indictment or summary proceedings under the *Justices Act 1886*, at the election of the prosecution.

If a defendant asks that a prosecution be by way of an indictment, a Magistrate must not hear an indictable offence summarily.

The maximum penalty that may be imposed summarily for an indictable offence is limited to 1,000 penalty units.

Clause 125 provides limitations on which court may hear an indictable offence or the examination of witnesses in connection with such offences.

Clause 126 provides that a proceeding by way of summary proceeding must start within 2 years after the offence occurred, or within 2 years after the complainant becomes aware of the offence, but within 3 years of the occurrence of the offence.

Clause 127 applies to payment of compensation to the State or a port authority following prosecution on indictment for an offence.

If the court finds that the defendant has discharged a pollutant into coastal waters, the court may order the defendant to pay compensation for costs incurred to the State or a port authority and to take stated action to restore the marine and coastal environment, damaged as a result of a contravention of the Bill.

However, this Clause does not limit the court's powers under the

Penalties and Sentences Act 1992.

Clause 128 provides that a document may be served on a ship's master, or another person apparently in charge of the ship.

If the ship has no master or apparent master, the document may be served on the ship's owner or the owner's agent.

Part 15—Administration

Clause 129 provides that the Governor in Council may devolve to the Board of a port authority, the administration of the Bill within port limits.

Matters concerning prosecution of offences are not included in this devolution, as prosecution for offence provisions will, in all cases, be carried out by the State.

A port authority Board may make a resolution, consistent with the Bill, concerning fees payable to it for the devolved matter, or any matter necessary or convenient to carry out the devolved matter.

The State may undertake a matter that the port authority Board has failed to do as a devolved matter and recover reasonable costs incurred by the State.

Clause 130 provides that the chief executive may delegate the chief executive's powers to an authorised officer or an officer of the public service.

Clause 131 provides that a port authority Board may delegate its powers to the chief executive officer of a port authority.

The chief executive officer may subdelegate delegated powers of the Board and the chief executive officer to a port authority committee, an employee of a port authority and a board or committee consisting of employees of a port authority.

Clause 132 provides that the Minister may establish advisory committees he considers appropriate for the administration of the Bill. The Minister will decide the functions of such committees.

Part 16—Miscellaneous

Clause 133 empowers the Governor in Council to make regulations under the Bill.

It is intended that a head of power be established in the Bill to make regulations which include the following matters:

- giving further effect to provisions of the MARPOL Convention;
- procedure for mandatory reporting of discharges or probable discharges of substances prescribed in the Bill;
- conditions allowing certain operational discharges of substances from ships;
- measurement of a ship's tonnage;
- the keeping of oil pollution emergency plans for ships, ports, terminals, marinas and similar establishments;
- the standard of holding tanks;
- the standard of reception facilities;
- give effect to a treaty or convention about marine pollution;
- the keeping of records, including oil and noxious substances cargo books, outlining operations and occurrences concerning oil and noxious liquid substances, (including transfer operations);
- categorisation of liquid noxious substances and the washing and surveying of tanks which have held such a substance;
- proclamation of high, medium and low sensitivity zones for control of sewage discharge;
- exemptions for the fitting of sewage holding tanks on existing ships;
- the imposition of fees;
- procuring, analysing and ensuring the integrity and security of samples of substances;
- conditions of transport for packaged harmful substances;
- prescribing the cost of labour used in responding to a discharge of

a pollutant;

- giving effect to the power of intervention contained in the Bill;
- limitation of powers granted to an authorised officer;
- maximum penalty for contravention of an offence;
- powers of intervention;
- powers to detain ships;
- provision of reception facilities and;
- transfer operations.

Clause 134 exempts ships of the Australian Defence Force and foreign warships and other foreign ships used on government, non-commercial service only, from provisions of the Bill. This is an obligation under the MARPOL Convention.

Clause 135 requires the Minister to review the Bill every 10 years and report outcomes of the review in the Legislative Assembly.

Part 17—Repeals

Clause 136 The passage of this Bill will cause the repeal of the *Pollution of Waters by Oil Act 1973* and the *Pollution of Waters by Oil Amendment Act 1992*.

Dictionary contains the definition of terms used in this Bill.

