ATTACHMENT B

1981

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Protection of the Sea (Civil Liability) Bill 1981
Protection of the Sea (Powers of Intervention) Bill 1981
Protection of the Sea (Discharge of Oil from Ships) Bill 1981
Navigation (Protection of the Sea) Amendment Bill 1981
Protection of the Sea (Shipping Levy) Bill 1981
Protection of the Sea (Shipping Levy Collection) Bill 1981

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport the Hon. R.J. Hunt)

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Protection of the Sea (Civil Liability) Bill
The Protection of the Sea (Civil Liability) Bill will implement the provisions of the 1969 Civil Liability Convention and the 1976 Protocol. The Convention has been in force internationally since 1975. Australia signed the Convention in 1970 subject to ratification. The major maritime nations, other than the United States, are amongst the 40 parties to the Convention. The 1976 Protocol, which deals with technical matters for fixing liability limits, will come into force internationally on 8 April 1981. The object of the Convention is to ensure that adequate compensation is available where, as a result of the escape or discharge of oil from a ship carrying oil in bulk as cargo, pollution damage occurs on land or in the territorial sea, or expense is incurred in taking measures to prevent such damage. When the new legislation is enacted the way will open to Australia to become a party to the Convention and Protocol. A saving clause preserving State and Territory Legislation is included in the Bill.

Protection of the Sea (Powers of Intervention) Bill
The Protection of the Sea (Powers of Intervention) Bill will implement the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969, and the related Intervention Protocol 1973. This Bill will:

(i) clear the way for Australia to accept the Convention and Protocol;

(ii) enable Australia to implement the provisions of the Convention and Protocol. Although the Protocol is not yet in force internationally this Bill will implement, within the Australian jurisdiction, the provisions of the Protocol; and
(iii) reinforce Australia's traditional assertion that customary international law provides a nation with powers to protect its territory and coastal sea. Part VIIA of the Navigation Act 1912 has contained the provisions now included in this Bill since 1972. These provisions give the Minister, in actual or threatened incidents, powers of intervention that are broader than the provisions of the Convention or Protocol but that are in line with the customary international law principles mentioned above.

A saving clause preserving State and Territory legislation is included in the Bill.

Protection of the Sea (Discharge of Oil from Ships) Bill
The Protection of the Sea (Discharge of Oil from Ships) Bill will repeal and replace the Pollution of the Sea by Oil Act 1960. The Bill will also incorporate the 1971 amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954. These amendments cover two important aspects. The first gives improved protection for the Great Barrier Reef by prohibiting operational discharges of oil within or near the outer Reef by measuring nearest land from the outer edge of the Reef. The second aspect limits the sizes of tanks in tankers thereby restricting the outflow of oil that is likely to occur following a tanker disaster.

Navigation (Protection of the Sea) Amendment Bill
The Navigation (Protection of the Sea) Amendment Bill will repeal Part VIIA of the Navigation Act 1912 which contains provisions relating to civil liability and intervention in shipping casualties. The provisions of Part VIIA will now be given extended application by operation of the first and second Bills referred to above.
In addition this Bill will incorporate a new Division 12 relating to tankers in Part IV of the Navigation Act 1912. This amendment completes the implementation of the 1971 Tanker Amendments to the 1954 Convention for the Prevention of Pollution of the Sea by Oil. All aspects of certification relating to construction and safety of ships are incorporated in the Navigation Act, and accordingly the implementation provisions for this proposal are also included in the Navigation Act.

Protection of the Sea (Shipping Levy) Bill
Protection of the Sea (Shipping Levy Collection) Bill
The Protection of the Sea (Shipping Levy) and (Shipping Levy Collection) Bills are title amendments to the Pollution of the Sea by Oil (Shipping Levy) and (Shipping Levy Collection) Acts 1972 to reflect the unity of the Protection of the Sea legislation package.

The protection of the Sea (Shipping Levy) Bill will repeal and replace the Pollution of the Sea by Oil Act 1972 and introduce a new provision which will ensure that minimum levy collections are maintained at a level that makes the collection an economic proposition.

The Protection of the Sea (Shipping Levy Collection) Bill will repeal and replace the Pollution of the Sea by Oil (Shipping Levy Collection) Act 1972 and now incorporates a wider definition of "oil" which brings the new Bill into line with other measures in the legislation package.
PROTECTION OF THE SEA (CIVIL LIABILITY) BILL 1981

PART 1 - PRELIMINARY

CLAUSE 1

SHORT TITLE

This is the normal formal Clause providing for the citation of an Act.

CLAUSE 2

COMMENCEMENT

This Clause provides for the Act to come into operation on a date to be fixed by Proclamation.

CLAUSE 3

INTERPRETATION

This Clause contains definitions which are required for the purposes of the Bill. Terms defined are "applied provisions of the Convention", "Australia", "Civil Liability Convention", "country to which the Civil Liability Convention applies", "Protocol", and "the Convention". Of particular importance is the definition of "applied provisions of the Convention", because Clause 8 of the Act gives force of law to such provisions.

Sub-clause (2) provides that words used in Parts II or III have the same meaning as those words have in the Convention.

CLAUSE 4

ACT TO BIND CROWN

This Clause provides that the Act will bind the Crown in right of the Commonwealth, the States, the Northern Territory and Norfolk Island.
CLAUSE 5
OPERATION OF ACT

This Clause extends the Act to every external Territory of Australia as well as inside and outside of Australia.

CLAUSE 6
DECLARATION OF COUNTRIES TO WHICH CIVIL LIABILITY CONVENTION APPLIES

This Clause provides that countries which have accepted the Civil Liability Convention may be notified in the Gazette.

PART II - LIABILITY AND LIMITATION OF LIABILITY UNDER CONVENTION

CLAUSE 7
APPLICATION OF PART

Certain ships are exempted from the provisions of this Part. Exempt are trading ships on intra-State voyages and Australian fishing vessels on non-overseas voyages. These exemptions are called up from Clause 2 of the Navigation Act 1912.

Sub-clause (2) provides that the exemptions under Sub-clause (1) do not apply in cases where an exempt ship has joint and several liability for an incident with a non-exempt ship as provided in Article IV of the Convention.

Sub-clause (3) provides that the exemptions under Sub-clause (1) also apply to Convention provisions given the force of law and regulations under the Act.
CLAUSE 8
CERTAIN PROVISIONS OF CONVENTION TO HAVE THE FORCE
OF LAW

This Clause provides that certain parts of the Convention will have the force of law as part of the law of the Commonwealth. The specific provisions are Articles I to VI, paragraphs 1, 8 and 9 of Article VII, Article VIII, paragraphs 1 and 3 of Article IX and paragraph 1 of Article XI. This means that the Commonwealth accepts the Convention detail on liability limits and owners' compensation funds.

Because of the requirement to provide specific and detailed provisions in relation to certification, registration and enforcement of foreign judgements and the like, not all the Convention requirements have been given the force of law.

Sub-clause (2) requires the owner of an Australian ship to which the Convention applies to maintain insurance or other financial security in the terms of paragraph 1 of Article V of the Convention, that is at a rate of approximately $A142 per ton of the Ship's register tonnage up to a limit of approximately $A14.9 million. Figures are approximate due to fluctuating exchange rates.

CLAUSE 9
CLAIMS FOR COMPENSATION

This Clause gives the State/Territory Supreme Courts federal jurisdiction in the matter of compensation claims when the claims arise from incidents causing pollution damage in Australia or requiring preventive measures against such damage.

This Clause follows agreement between the Commonwealth and the States that State courts be given such jurisdiction.
CLAUSE 10
APPLICATIONS TO DETERMINE LIMIT OF LIABILITY

Sub-clause (1) allows ship owners or insurers to apply to have their liability limited or their claims determined by the State/Territory Supreme Court to which a compensation claim has been made, or to any State/Territory Supreme Court if an application for limitation of liability has not been lodged.

Sub-clause (2) allows a State/Territory Supreme Court to make orders on the distribution of a fund for paying claims, where that Court has determined that a person may limit his liability.

Sub-clause (3) gives State/Territory Supreme Courts federal jurisdiction to hear and determine proceedings under this Clause.

CLAUSE 11
TRANSFER OF PROCEEDINGS

Sub-clause (1) allows a State/Territory Supreme Court to transfer proceedings under the Convention to another Supreme Court on application or on its own motion.

Sub-clause (2) provides that when proceedings are transferred, the new Court having received filed documents and lodged monies and guarantees, will proceed as if all proceedings had been conducted in that Court.

CLAUSE 12
REGULATIONS GIVING EFFECT TO APPLIED PROVISIONS OF CONVENTION, ETC

Sub-clause (1) provides that regulations may prescribe matters involved in applied Convention provisions, and
specifically provide for money conversion, guarantees, right of
subrogation (substitution of one party for another as creditor)
and calculation of ship tonnage.

Sub-clause (2) provides that State or Territory Supreme
Court judges shall not be limited in the exercise of their powers
when ruling on matters not covered by Sub-clause (1).

PART III - INSURANCE CERTIFICATES RELATING TO
LIABILITY FOR POLLUTION DAMAGE

CLAUSE 13
INTERPRETATION

Sub-clause (1) defines "Government ships" in this Part
as ships owned by a country. The concept of Government ownership
here excludes ownership by statutory and corporate bodies on
behalf of a Government because "owner", in the 1969 Convention,
is defined to include a company registered as operating States'
ships.

Ships owned by the Commonwealth or the States or the
Northern Territory are covered in this Part.

Sub-clause 14(3) provides that insurance or financial
security contracts in this Part cover risk of liability for
pollution damage and preventive measures.

CLAUSE 14
APPLICATION

This Clause provides that Part III applies to ships
carrying more than 2,000 tons of oil in bulk as cargo, as
required by Article VII of the Convention.
The Clause also deems an unregistered ship to be registered in the country whose flag the ship is flying. This is based on the definition of "State of the ship's registry" in Article I of the Convention which links unregistered ships to the States whose flag they are flying. United Kingdom and New Zealand legislation has similar provisions.

Sub-clause (2) exempts Government ships on non-commercial service from the operation of Part III.

CLAUSE 15
INSURANCE CERTIFICATES TO BE CARRIED
ON CERTAIN SHIPS

This Clause requires the carrying of insurance certificates on board ships.

Sub-clause (1) makes an offence of ships not carrying the relevant insurance certificate when arriving at or leaving Australian ports and terminals, and Sub-clause (2) makes an offence of Australian-registered ships not carrying the relevant insurance certificate when arriving at or leaving foreign ports and terminals. Maximum penalties of $50,000 for individuals and $100,000 for corporations are prescribed. Sub-clause (3) requires that the insurance certificate be carried on the ship. The owner and master are both liable and penalties of $2,000 for an individual and $5,000 for a corporation are provided.

Sub-clause (4) empowers an officer defined in Sub-clause 15(8) to demand production of a certificate. Failure to produce the certificate can result in a $2,000 fine.

Detention of ships is permitted under Sub-clause (5). Detention ceases upon the appropriate certificate being obtained or produced.
Sub-clause (6) preserves the operation of State and Territory laws that make provisions concerning the issue of certificates to those ships defined by Sub-clause 7(4).

Sub-clause (7) lists the relevant insurance certificates for the various kinds of ship ownership. Certificates for Government-owned ships subject to Commonwealth jurisdiction will be issued under the provisions of Clause 18, and for non-Government-owned ships subject to Commonwealth jurisdiction, certificates will be issued under the provisions of Clause 16.

CLAUSE 16
ISSUE OF INSURANCE CERTIFICATES

This Clause authorises the Minister to issue insurance certificates to ships registered in Australia or a non-Convention country.

Applications may be made on the prescribed form by the owner, master or agent of the ship and be lodged with prescribed officers.

The form for the insurance certificate follows Article VII of the 1969 Convention, and contains details on the ship's owner and insurer. The form of the insurance certificate is contained in the Annex to Schedule 1 of the Bill, however the certificate is not limited to showing the details contained in that Annex (Sub-clause 16(4)).

Clause 16 also empowers the prescription of fees for the issue of certificates and requires that a copy of the certificate shall be forwarded to a prescribed person. This
provision is included so that copies of all certificates issued will be lodged with the proposed 'Register of Ships' under the Shipping Registration Bill 1981. All relevant documents relating to Australian ships will therefore be held at one location.

**CLAUSE 17**

**EXTENSION, CANCELLATION AND LAPSING OF INSURANCE CERTIFICATE**

The Minister may extend by up to one month the period a certificate is in force if he is satisfied that the insurance or financial security will remain in force for that period and that it covers the appropriate limit of liability. This provision is designed to cover the circumstance where a ship is at sea on the expiration of its certificate and, but for this provision, would breach Clause 15.

The Minister may cancel an issued insurance certificate if the insurance or financial security no longer covers the limits of liability under Article V of the Convention.

If an insurance certificate lapses with the ship's registration, the master must surrender the certificate to the prescribed officer.

**CLAUSE 18**

**GOVERNMENT SHIPS**

Sub-clause (1) provides that the Minister may issue certificates for Commonwealth and State owned ships if he is satisfied that liability for pollution damage up to the appropriate limits will be met by the appropriate Government.

With regard to Commonwealth ships, the Department of Finance has advised that the principle of self-insurance is applied in this case. It is also pointed out in passing that the Commonwealth owns no ship to which the Convention applies.
The jurisdiction of Australian courts on insurance claims extends under Sub-clause (4) to all Convention countries.

**CLAUSE 19**

**APPLICATIONS FOR REVIEW**

This Clause allows the Administrative Appeals Tribunal to receive applications for review of non-issue of a certificate under Clause 16, and certificate cancellation under Sub-clause 17(3).

**PART IV RECOVERY OF EXPENSES OF MINISTER UNDER PROTECTION OF THE SEA (POWERS OF INTERVENTION) ACT 1981**

This Part has been included in this Bill to bring together all the financial matters relating to oil pollution combat. It will facilitate the preparation of any future claim the Commonwealth might need to make in relation to a pollution incident involving the application of both the Protection of the Sea (Powers of Intervention) Act and the Protection of the Sea (Civil Liability) Act.

**CLAUSE 20**

**EXPENSES, ETC, INCURRED BY MINISTER DEBT DUE TO COMMONWEALTH**

Sub-clause (1) provides that expense or liability incurred under Clauses 8 to 10 of the Protection of the Sea (Powers of Intervention) Bill 1981 is a debt due to the Commonwealth. If expense or liability is incurred by a single ship, the owner is liable; if expense or liability is incurred by two or more ships, the ship owners are jointly and severally liable.
Sub-clause (2) exempts certain types of incidents from Sub-clause (1). These include incidents resulting from
- an act of war, hostilities, civil war, insurrection or natural phenomenon of an exceptional, inevitable and irresistible character
- intentional act or omission by a third party, and
- negligence or wrongful act of a government or other party.

Sub-clause (3) limits liability of ship owners for incidents not the fault of the owner. Liability cannot be more than the prescribed amount (approximately $A142) multiplied by the applicable tonnage factor up to a limit of approximately $A14.9 million.

Sub-clause (4) allows recovery of debt due to the Commonwealth through courts of competent jurisdiction.

Sub-clause (5) excludes the use of the Convention meaning of "pollution damage" in relation to this Clause so that the wider meaning of "damage" under Clause 10 of the Intervention Bill can be applied in relation to debts due to the Commonwealth.

Sub-clause (6) protects the operation of Part VIII of the Navigation Act 1912.

Sub-clause (7) defines "adjusted register tonnage", "incident", "owner", "third party" and "tonnage factor".

CLAUSE 21
EXPENSES, ETC, INCURRED BY MINISTER
CHARGE ON SHIP

This Clause provides for the amount of liability to the Commonwealth under Clauses 8 to 10 of the Protection of the Sea (Powers of Intervention) Act 1981 or under Clause 20, to be a charge on the ship(s) involved.
CLAUSE 22
DETENTION OF SHIPS

This Clause allows detention of a ship referred to in Clause 21. Detention may be effected by persons authorised in writing by the Minister, and continues until payment or security for payment of the amount to the Minister is provided to the satisfaction of the Minister.

Foreign ships may not be detained unless they are in Australian waters.

Penalties for going to sea without a release from detention include possible imprisonment of up to two years and/or a fine not exceeding $5,000 for the ship's master, or owner if not a corporate body. Sub-clause (3) also provides fines of up to $10,000 for corporations for the same offence.

Sub-clause (7) defines "Australian ship" and "foreign ship" for the purposes of the Clause.

PART V - MISCELLANEOUS
CLAUSE 23
PROSECUTION OF OFFENCES AGAINST SUB-SECTIONS 15(1) AND (2) AND 22(3)

This Clause provides for prosecutions against ships which are lacking insurance certificates or escaping detention.

Offences are indictable under Sub-section (1) and may be determined by a court of summary jurisdiction under Sub-section (2). Penalties under Sub-section (3) are up to $2,000 for individuals and up to $5,000 for corporate bodies.
CLAUSE 24
NO TIME LIMIT FOR PROSECUTION

This Clause allows a prosecution for an offence against the Act to be brought at any time.

This provision enables the Minister to proceed at any time against a ship owner etc who may not trade to Australia for some years after committing a breach of the proposed Act so as to take advantage of the Statute of Limitations. A precedent exists in Australian pollution legislation in Section 11 of the Pollution of the Sea by Oil Act 1960.

CLAUSE 25
ENFORCEMENT OF FOREIGN JUDGEMENTS

Article X of the Convention requires contracting Governments to provide that registration and enforcement of judgements made in overseas courts be undertaken.

This Clause provides that the Regulation will prescribe the matters necessary for giving effect to that requirement to the extent that the Constitution allows.

CLAUSE 26
DELEGATION

This Clause allows the Minister to delegate his powers under the Act. Powers delegated are to be in writing signed by the Minister and shall be deemed to have been exercised by him, though the Minister may still exercise such powers.

CLAUSE 27
REGULATIONS

This Clause provides for the making of regulations that cover matters required or permitted by the Act.
CLAUSE 1
SHORT TITLE

This is the normal formal clause providing for the citation of an Act.

CLAUSE 2
COMMENCEMENT

This Clause provides for the Act to come into operation on a date to be fixed by Proclamation.

CLAUSE 3
INTERPRETATION

This Clause contains definitions which are required for the purposes of the Bill.

Definitions in Sub-clause (1) of particular importance are those of "cargo", "direction under this Act", and "master".

"Cargo" includes ballast and ship's stores and fuel.

"Direction under this Act" means a direction under Sub-clause 8(2)(b), 9(2)(b) or 10(3)(b) or a further direction under Clause 15.

"Master", in relation to a ship, means the person having command or charge of the ship.

Sub-clause (2) states that it is the intention of the Parliament that provisions of the Act relating to the 1973 Protocol shall operate regardless of whether the Protocol is in force. This provision is inserted so that there is no doubt that the Minister can take appropriate action in cases of pollution or threatened pollution by Protocol substances (non-oil).
The Protocol will come into force internationally after 15 acceptances have been received. Nine countries have so far accepted the Protocol.

CLAUSE 4
ACT TO BIND CROWN

This Clause provides that the Act will bind the Crown in right of the Commonwealth, the States, the Northern Territory and Norfolk Island. Sub-clauses (2) and (3) ensure the Commonwealth or a State or Territory is not liable for prosecution, but the master of a ship owned by the Commonwealth or a State or Territory, is liable for prosecution for an offence.

CLAUSE 5
SAVING OF OTHER LAWS

This Clause provides that the Act will not derogate or take the place of other laws of the Commonwealth, any State or Territory. It will be read in addition to those laws. The 1976 Historic Shipwrecks Act will not affect this Act's operation. This Clause reflects the agreement on this matter between the Government and the States.

CLAUSE 6
OPERATION OF ACT

This Clause provides that the Act will operate within and outside Australia and will extend to all external Territories.

CLAUSE 7
DELEGATION

This Clause will empower the Minister to delegate his powers under the Act. Instruments of delegation are to be in writing signed by the Minister and will be deemed to be exercised by him, though the Minister may still exercise such powers.
CLAUSE 8
TAKING OF MEASURES UNDER CONVENTION TO PREVENT POLLUTION OF SEA BY OIL

Sub-clause (1) enables the Minister to take measures on the high seas against what he considers to be grave and imminent danger to the coastline or related interests of Australia from pollution or threat of pollution by oil.

Sub-clause (2) outlines the measures the Minister may take under Sub-clause (1). Action may be taken to move, salvage, sink, destroy, remove cargo from or take control of the ship or part of the ship. Directions may be issued to the ship's owner or master, or to any salvor in possession of the ship. Under previous legislation (based on some Convention provisions) only the owner was required to take action.

Sub-clause (3) excludes action against ships owned and operated by foreign States, such as warships, used only on government non-commercial service.

Sub-clause (4) provides that the Minister, in exercising his powers, shall follow Articles III and V of the Convention. This will ensure appropriate persons and bodies are notified and consulted with before any measures are implemented, and that the measures will be appropriate to the damage or potential damage.

Sub-clause (5) protects the rights and powers of the Commonwealth outside those in this Clause.

Sub-clause (6) provides that expressions used in this Clause have the same meaning as in the Convention.
CLAUSE 9
TAKING OF MEASURES IN ACCORDANCE WITH PROTOCOL TO PREVENT POLLUTION OF SEA BY SUBSTANCES OTHER THAN OIL

Sub-clause (1) enables the Minister to take measures on the high seas against what he considers to be grave and imminent danger to the coastline or related interests of Australia from actual or threatened pollution by substances other than oil.

Sub-clause (2) outlines the measures the Minister may take under Sub-clause (1). Action may be taken to move, salvage, sink, destroy, remove cargo from or take control of the ship or part of the ship. Directions may be issued to the ship's owner or master, or to any salvor in possession of the ship.

Sub-clause (3) excludes action against ships owned or operated by foreign States, such as warships, used only on government non-commercial service.

Sub-clause (4) provides that the Minister, in exercising his powers, shall follow Articles III and V of the Convention applying under Article II of the Protocol. If the Protocol has not come into force, then the Minister should follow those Articles of the Convention as they would apply under Article II of the Protocol if the Protocol had entered into force.

Sub-clause (5) protects the rights and powers of the Commonwealth outside those in this Clause.

Sub-clause (6) provides that expressions used in this Clause have the same meaning as in the Protocol, and in the provisions of the Convention referred to in Article II of the Protocol.
CLAUSE 10
TAKING OF MEASURES OTHERWISE THAN UNDER CONVENTION
OR PROTOCOL TO PREVENT POLLUTION OF SEA BY OIL OR
NOXIOUS SUBSTANCES

This Clause relies on customary international law to cover measures which are taken in cases outside those in the Convention or Protocol.

Sub-clauses (2), (3) and (4) provide that the measures taken should actually prevent or reduce the extent of actual or likely pollution, and damage to the sea, by oil or noxious substances. They should protect Australian territory and related Australian interests from actual or the likely pollution by oil or noxious substance.

Sub-clause (8) contains definitions relevant to the Clause. Important definitions include "noxious substance" and "related interests of Australia".

"Noxious substance" means a substance named in items 1 to 4 of the Protocol Annex, or declared a noxious substance by the regulations.

"Related interests of Australia" means those Australian interests directly affected or threatened by the actual or likely escape of oil or noxious substances. This includes maritime activities, tourist attractions and the health of Australian coastal populations.
CLAUSE 11
DIRECTIONS UNDER ACT MAY REQUIRE TAKING OF ACTION, ETC.

This Clause outlines the types of directions that may be issued. Directions may require or prohibit certain activities. This is designed to prevent unauthorised movement of the ship or movement of the cargo which may cause further pollution.

CLAUSE 12
ADDRESSING OF DIRECTIONS UNDER ACT, ETC.

This Clause allows directions to be addressed to ship owners, masters and salvors without specifying their names, so that the serving of the notice under which action is required to be taken is not delayed while the names of the position holders are ascertained.

This Clause and certain later Clauses are specifically drafted to ensure that action can be taken to effectively deal with an actual or threatened pollution incident without requiring time consuming register searches for names of owners etc. This is necessary because experience has shown that ownership of vessels can change during an incident.

CLAUSE 13
ISSUING OF MORE THAN ONE DIRECTION IN RELATION TO A SHIP

This Clause allows more than one direction to be issued under this Act in relation to a ship.
CLAUSE 14
DIRECTIONS UNDER ACT TO SHIP
WITH MORE THAN ONE OWNER, ETC.

This Clause provides that directions issued to one owner of a ship will serve as directions issued to all owners of the ship, in order to reduce time spent locating owners.

CLAUSE 15
REVOCATION AND VARIATIONS OF DIRECTIONS
UNDER ACT

This Clause allows the Minister to revoke a direction under this Act by a further direction.

CLAUSE 16
DIRECTIONS UNDER ACT
TO BE IN WRITING

This Clause is self-explanatory.

CLAUSE 17
SERVICE OF DIRECTIONS UNDER ACT

This Clause outlines how directions under the Bill are to be served.

In particular, Sub-clause (2) provides that directions may be personally served on the ship's owner(s), agent or master. If the owner or agent is a company, the director, secretary or any other officer of the company may be served.

Sub-clause (3) provides that directions served on one owner of a ship shall be deemed to have been served on all owners of the ship.
Sub-clauses (4) & (5) deal with service of notices salvor on the master or of a ship.

Sub-clause (6) provides that if directions cannot be personally served, it is sufficient if the directions are transmitted to the ship and someone on board acknowledges receipt of the transmission.

Sub-clause (7) allows persons authorised in writing by the Minister to board ships to personally serve directions.

CLAUSE 18
CHANGE IN OWNERSHIP OR MASTER OF SHIP

Where a ship's owner or master who has been served with a direction ceases to be the owner or master while the direction is in force, and fails to notify the new owner or master of the direction and fails to notify the Minister of his change of position, the former owner or master as the case may be is in breach of the Act and subject to a $2000 fine.

CLAUSE 19
CONTRAVENTION OF DIRECTION UNDER ACT, ETC

Sub-clause (1) provides penalties for persons contravening or not complying with directions under this Bill. The penalty is $20 000 for a person other than a corporate body and $50 000 for a corporate body.

Sub-clause (2) provides for summary proceedings in relation to a Sub-clause (1) offence.

Sub-clause (3) applies fines not exceeding $2000 for a person and $5000 for a corporate body to Sub-clause (2) proceedings.
Sub-clause (4) provides defences for the person charged. It is a defence to a prosecution for an offence against Sub-clause (1) if it is proved that the direction was contravened because of the need to save life at sea, or the direction was not possible or could not be complied with before the time specified.

Sub-clause (5) provides that if a direction is varied by another direction, then contravention under this Clause refers to the varied direction.

**CLAUSE 20**

**NO TIME LIMIT FOR PROSECUTION**

This Clause allows a prosecution for an offence against this Act to be brought at any time.

This provision enables the Minister to proceed at any time against a ship owner etc who may not trade to Australia for some years after committing a breach of the proposed Act so as to take advantage of the Statute of Limitations. A precedent exists in Australian pollution legislation in Section 11 of the Pollution of the Sea By Oil Act 1960.

**CLAUSE 21**

**EVIDENCE**

Sub-clause (1) exempts ships defined in Sub-clause 10(6) from prosecution under the Act. Exempt are trading ships on non-overseas and non-interstate voyages, Australian fishing vessels on non-overseas voyages, and pleasure craft.

Sub-clause (2) provides that unless the contrary is proved, a person or body corporate served with a direction is deemed to be an agent of a ship if that person or body corporate had acted as the ship's agent at any time before the direction was served.
CLAUSE 22
TRANSITIONAL PROVISION

This Clause provides that notices under Sub-section 329E(1) of the Navigation Act 1912 served before the commencement of this Act shall be deemed to be directions under paragraph 10(3)(b) on the commencement of this Act. This is on condition that no oil escapes before this Act comes into force.

CLAUSE 23
REGULATIONS

This Clause provides for regulations to be made that are required or permitted by this Act. Regulations may exempt prescribed ships from provisions of this Act, and allow the Minister to make orders on matters involving "noxious substances".

CLAUSE 24
ORDERS

This Clause provides for orders to be made in pursuance of the regulations. Expressions used in orders mean the same as in the Act. Orders shall not be deemed to be statutory rules, and shall not be used so to exceed the power conferred by the Act. The Act prevails if there is an inconsistency between an order and the Act or regulations.

It is intended that the order making power will be used to enable the Minister to act quickly in circumstances where pollution damage is threatened by the escape or threatened escape of a noxious substance that is not included in the Annex to the Protocol. It is expected that the Inter-Governmental Maritime Consultative Organisation will add new substances to the list in the Annex to the Protocol as the effects of those substances become known. It is those substances that are envisaged as being covered by this provision.
CLAUSE 1

SHORT TITLE

This is the usual formal Clause providing for the citation of an Act.

CLAUSE 2

COMMENCEMENT

This Clause provides for the Act to come into operation on a date to be fixed by proclamation.

CLAUSE 3

REPEAL

This Clause repeals those Acts which will be replaced by the new Act. The Acts repealed are:


CLAUSE 4

INTERPRETATION

The Clause contains definitions which are necessary for the interpretation of the Bill. Definitions in Sub-clause (1) of particular importance in implementing the provisions of the proposed Act are those of "Australian ship", "inspector", "master", "the Convention", "the 1971 (Great Barrier Reef) Amendments", "this Act" and "prescribed officer".
CLAUSE 5

ACT TO BIND CROWN

This Clause provides that the Act will bind the Crown in right of the Commonwealth, the States, the Northern Territory and Norfolk Island. Sub-clauses (2) and (3) ensure the Commonwealth or a State or Territory is not liable for prosecution, but the master of a ship owned by the Commonwealth or a State or Territory is liable for prosecution for an offence against the Act.

CLAUSE 6

SAVING OF OTHER LAWS

This Clause provides that the Act will not derogate or take the place of other laws of the Commonwealth or States or Territory. It is to be read in addition to those laws.

CLAUSE 7

OPERATION OF THE ACT

This Clause extends the application of the Act to every external Territory of Australia as well as inside and outside of Australia.

CLAUSE 8

DELEGATION

This Clause allows the Minister to delegate his powers under the Act. Instruments of delegation are to be in writing signed by the Minister and should be viewed as being exercised by him, though the Minister may still exercise such powers.

The construction of this Clause follows the traditional form.
CLAUSE 9

PROHIBITION OF THE DISCHARGE OF OIL OR OILY MIXTURES INTO SEA

This Clause prohibits and penalises discharges of oil or oily mixtures from Australian ships into the sea. A penalty not exceeding $50,000 is imposed on the Master and owner if the owner is not a corporate body or $100,000 if the owner is a corporate body, and $50,000 for the ship's master.

Sub-clause (2) exempts from penalty under this Act, discharges into the territorial sea of Australia, and sea on the landward side of that sea. This provision follows the principle that the States and the Northern Territory are responsible for these waters. Discharges made to save the ship or unavoidable after all reasonable precautions have been taken are also exempt.

Sub-clause (3) exempts certain types of discharges from penalty. Oil discharges from non-tanker ships or from machinery space bilges of tankers are exempt if the ship is en route at the time, the discharge rate does not exceed 60 litres per mile, and the discharge is as far from land as is practicable. The same conditions apply to discharges of oily mixtures. In addition the oil content is to be less than 100 parts in 1,000,000 parts of the mixture.

For tankers on a non-ballast voyage, exemption conditions for discharges of oil and oily mixtures are that the discharge is not from machinery space bilges, the ship is en route at the time, the discharge rate does not exceed 60 litres per mile, and the discharge is made more than 50 miles from the nearest land. For tankers on a ballast voyage, the conditions are the same, with the additional requirement that the total discharge on the voyage is to be less than one-fifteen thousandth of the total cargo capacity. Discharges of clean ballast from previously cleaned cargo tanks are also exempted from the provisions of Sub-clause (1).
Sub-clause (4) allows the prosecution of an offence under Sub-clause (1) to allege and prove a discharge at sea, and the defence to use Sub-clauses (2) and (3) to show the discharge is exempt. This Clause is constructed on these lines because of the difficulty of bringing an action concerning an incident that can occur on the high seas. In addition if the provision were not worded this way it would be incumbent on the prosecution to prove that the Convention conditions relating to discharges were not complied with in whole or in part. It should be stated that Section 6 of the Pollution of the Sea by Oil Act 1972 and new Section 269N in Section 52 of the Navigation Amendment Act No.98 of 1979 are precedents for this provision. The Crown would not institute proceedings if it were aware of the existence of 11(2) or 11(3) defences. Similarly, an owner or master would not permit proceedings to be instituted that would interfere with the earning power of his ship if he can produce such defences. It is therefore considered that this construction best ensures that only actions with a real chance of success are brought.

CLAUSE 10

PROTECTION OF THE GREAT BARRIER REEF

This clause provides that "the nearest land" in Sub-clause 9(3) will be measured from the outer edge of the Reef after the 1971 (Great Barrier Reef) Amendments come into force. This provision will protect the Reef from oil pollution damage by prohibiting discharges within 50 miles of it.
CLAUSE 11

DUTY TO REPORT DISCHARGE OF OIL OR OILY MIXTURES FROM AUSTRALIAN SHIPS

Sub-clause (1) provides a penalty of $5,000 if an Australian ship's master does not notify an officer, prescribed by the Regulations, of a discharge of oil or oily mixture from the ship into the sea. The purpose of this Clause is to ensure that the incident is reported so that combat measures can be planned and implemented.

Sub-clause (2) exempts the territorial sea of Australia, and the sea on the landward side of that sea, from the penalty in Sub-clause (1). These areas come within the jurisdiction of the States and the Northern Territory.

Sub-clause (3) provides a penalty of $5,000 if a ship's master makes a false or misleading statement in a notice or report to a prescribed officer acting on Sub-clause (1).

Sub-clause (4) provides that a notice or report given to a prescribed officer is not to be admitted in evidence in a prosecution under Sub-clause (1) without the charged persons' consent. This provision is included to ensure that a master is not inhibited from making a report of an incident of oil discharge through a fear that the report may be used in evidence against him.

CLAUSE 12

OIL RECORD BOOK

This Clause requires that every Australian ship shall carry an oil record book, and that each entry shall be in English and signed by the ship's master. If no oil record book is carried on board, the ship's owner and master are each liable to be fined up to $5,000 ($10,000 for a corporation). A penalty of $5,000 applies if a ship's master does not make appropriate entries for prescribed operations.
CLAUSE 13

FALSE ENTRIES IN OIL RECORD BOOK

This Clause provides a penalty of $10,000 if false and misleading statements are made in an oil record book of an Australian ship. A higher level of penalty is provided in this case because of the more serious nature of the crime. Such an offence would include the commission of fraud.

CLAUSE 14

OIL RECORD BOOK TO BE RETAINED

Sub-clause (1) provides for an oil record book to be retained on board Australian ships for twelve months after the date when the last entry was made. Sub-clause (2) provides that if the oil record book is not retained, the ship's owner and master are each liable to be fined up to $5,000 ($10,000 for a corporation).

Sub-clause (3) provides that the oil record book shall be retained a further twelve months to the period stipulated in Sub-clause (1) either in the ship or at the owner's registered office. Sub-clause (4) provides that an Australian ship's owner periodically inform a prescribed officer of his or his agent's residential and office addresses. Sub-clause (5) provides that when an Australian ship's owner or his agent does not have a residential and office address in Australia, lodging an oil record book with a prescribed officer will be sufficient to satisfy Sub-clause (3).

All of these matters are required by the OILPOL Convention or are necessary for the implementation of Convention requirements.
CLAUSE 15

POWERS OF INSPECTORS

Sub-clause (1) outlines what an inspector may do in ascertaining whether a ship complies with this Act, parts of the Convention that deal with foreign ships, or laws of other countries that give effect to the Convention and deal with foreign ships. An inspector may, inter alia, board a ship, test equipment, inspect parts of the ship, check the oil record book, examine substances on board, and require people to answer questions that relate to these matters.

Sub-clause (2) provides a penalty of $2,000 on a person for not complying with a requirement by an inspector under Sub-clause (1), or making false or misleading statements in answering questions as required under Sub-clause (1).

Sub-clause (3) provides that an inspector shall not detain or unnecessarily delay a ship from going to sea when using powers under Sub-clause (1).

These provisions are necessary to ensure that Convention obligations are carried out.

CLAUSE 16

PROSECUTION OF OFFENCES AGAINST ACT

Sub-clause (1) provides that an offence is generally indictable while Sub-clause (2) provides that a court of summary jurisdiction may determine the charges. The penalties are fines not exceeding $2,000 for persons who are not a corporate body, and $5,000 for a person being a corporate body. Offences under Sub-clause 15(2) and prescribed by the Regulations shall be dealt with summarily.
CLAUSE 17

NO TIME LIMIT FOR PROSECUTIONS

This Clause provides that prosecutions for offences against this Act may be brought at any time. This provision is necessary to overcome the possibility that owners or masters might await the statute of limitations period and then continue trading to Australia. The existing "Pollution of the Sea by Oil Act 1972" also includes a similar provision.

CLAUSE 18

EVIDENCE

This Clause provides for any record kept in pursuance of this Act, or a certified copy of an entry in that record, to be admitted as prima facie evidence. Documents purporting to be a record or certified copy will be taken as such unless the contrary is proved.

CLAUSE 19

EVIDENCE OF ANALYST

This Clause provides that certificates of analysts appointed by the Minister to examine substances shall be admissible as prima facie evidence. Documents purporting to be certificates shall be taken as such unless the contrary is proved. A certificate shall not be taken as evidence until the person charged is given a copy of the certificate and given notice that the certificate is to be used as evidence. The analyst may be cross-examined on matters in the certificate as witness for the prosecution.

Analysts may be asked to examine oil from the various parts of a ship and to compare it with oil recovered from the sea or shore for the purposes of determining the source of the oil.
CLAUSE 20

APPLICATION OF CERTAIN PROVISIONS TO FOREIGN SHIPS

This Clause will permit the regulation of oil record book requirements and prescribed operations to non-convention ships within the Australian jurisdiction. An exemption from the provision of such regulations is provided for ships which are in the jurisdiction for reasons of securing the safety of the ship or human life or for preventing damage to the ship or its cargo.

CLAUSE 21

REGULATIONS

This Clause provides for Regulations prescribing matters required or permitted by this Act. Regulations shall cover the fitting of ships to prevent oil escapes, the fixing of fees and penalties and exemptions from the operation of the provisions of the Act or Regulations. Regulations shall not be inconsistent with the Act, nor affect the powers of the States or the Northern Territory in relation to ships defined in Sub-clause 21(4).

Sub-clause (2) exempts certain ships from the Regulations. These are intra-State trading ships, Australian fishing vessels on non-overseas voyages, and pleasure craft.

CLAUSE 22

ORDERS

This Clause provides for Orders in pursuance of the Regulations. References in Orders apply as if they were references in Regulations, and references in Regulations apply as if they are references in the Act. Orders shall not be deemed to be statutory rules, and shall not be used so as to exceed the power conferred by the Act. The Act shall prevail if there is an inconsistency between an Order and the Act.
It is intended that the Orders will be used to notify such matters as the types of oily water separating and oil content monitoring equipment that is approved by the Intergovernmental Maritime Consultative Organisation and/or Australia for use in ships.
NAVIGATION (PROTECTION OF THE SEA)
AMENDMENT ACT 1981

CLAUSE 1
SHORT TITLE

This is the usual formal Clause providing for the
citation of an Act.

CLAUSE 2
COMMENCEMENT

This Clause provides for the Act to come into operation
in three parts. Clauses 1, 2 and 7 (machinery provisions) will
come into operation on the date when the Act receives Royal
Assent, Clauses 3, 4 and 5 (the substantive provisions of the
Bill) will come into operation on a date to be fixed by
Proclamation, and Clause 6 (repeal of Part VI1A) will come into
operation on the date when the Protection of the Sea (Powers of
Intervention) Act comes into operation.

CLAUSE 3
INTERPRETATION

This Clause adds to Section 187A of the Navigation Act
both a definition of the "Prevention of Pollution of the Sea by
Oil Convention" and states that the definitions of the 1954
Convention, the 1962 and 1969 Amendments, the 1971 (Great Barrier
Reef) Amendments and the 1971 (Tanker) Amendments have the same
receptive meanings as in the Protection of the Sea (Discharge
of Oil from Ships) Act 1981.

CLAUSE 4
REGULATIONS GIVING EFFECT TO CONVENTIONS
- DISCRETION OF GOVERNOR-GENERAL AND
MINISTER

This Clause adds the "Prevention of Pollution of the
Sea by Oil Convention" definition to Sub-section 191A(1) of the
Navigation Act.
This Clause adds a new Division 12, entitled "Tankers", to Part IV of the Navigation Act 1912. The Clause will insert 13 new Sections into the Navigation Act.

It will be noted that reference to persons subject to penalty differ from such references in the other Bills in the Legislation Package. The terms "natural person" and "body corporate" are used here to preserve internal consistency within the Navigation Act 1912.

This Clause defines "Australian tanker", "tanker construction certificate", "tanker exemption certificate" and "the tanker Annex".

This Clause exempts trading ships on non-overseas and non-interstate voyages from the operation of Division 12.

Clause 267A provides for regulations giving effect to Article VI bis of the Pollution of the Sea by Oil Convention. This Article controls tanker construction by imposing construction and arrangement requirements on tank compartments to minimise the possible oil outflow should the tanker be involved in a pollution incident.
CLAUSE 267B
TANKER CONSTRUCTION CERTIFICATES

Clause 267B empowers the Minister to issue a tanker construction certificate if he is satisfied that the tanker has been built in accordance with Article VI bis of the Pollution of the Sea by Oil Convention.

CLAUSE 267C
TANKER EXEMPTION CERTIFICATES

Clause 267C empowers the Minister to issue a tanker exemption certificate to an Australian tanker if he is satisfied that the tanker is not required to be built in accordance with Article VI bis of the Pollution of the Sea by Oil Convention.

CLAUSE 267D
ALTERATION, ETC OF CONSTRUCTION OF TANKERS AND CANCELLATION OF CERTIFICATES

Clause 267D deals with alterations or damage to Australian tankers. A tanker's owner or master shall give notice of any alteration or damage to a prescribed person. The Minister may cancel a tanker construction (or exemption) certificate if the certificate was fraudulently obtained, issued on false information, if the tanker has been damaged or altered so that compliance with the tanker Annex is affected, or Clause 267E survey requirements have not been fulfilled. Penalties not exceeding $500 for a natural person and $1,000 for a body corporate are provided.
CLAUSE 267E
TANKERS TO BE SURVEYED PERIODICALLY

Clause 267E provides for a survey of a tanker at least once during the period in which a tanker construction certificate is in force. Penalties not exceeding $2,000 for a natural person and $5,000 for a body corporate are provided.

CLAUSE 267F
CANCELLATION OF CERTIFICATES IF SHIP CEASES TO BE A TANKER ETC

Clause 267F provides that a tanker construction (or exemption) certificate ceases when a tanker is no longer a tanker, registered in Australia, or ceases to have Australian nationality.

CLAUSE 267G
CERTIFICATES REQUIRED FOR AUSTRALIAN TANKERS

Clause 267G provides penalties for a tanker going to sea without a tanker construction (or exemption) certificate. Up to $10,000 and/or 4 years imprisonment is the penalty for the ship's master, and the owner if a natural person, and a maximum $40,000 fine is imposed if the owner is a body corporate.

CLAUSE 267H
CERTIFICATES TO BE CARRIED ON BOARD AUSTRALIAN TANKERS

Clause 267H provides that a tanker construction (or exemption) certificate while in force shall be carried on board a tanker (penalty $200).
CLAUSE 267J
PRODUCTION OF CERTIFICATES

Clause 267J provides for certificates being produced when a tanker applies for clearance to leave an Australian port. The ship’s master shall produce the tanker construction (or exemption) certificate to a Customs Officer on request. A Customs Officer may refuse to grant the clearance or detain the ship until the certificate is produced. (Penalty $200).

CLAUSE 267K
DIRECTIONS IN RELATION TO FOREIGN TANKERS

Clause 267K provides for the Minister to give directions to foreign tankers not constructed to requirements in the tanker Annex. Sub-clause (1) allows the Minister to direct in writing a foreign tanker’s master or owner that the tanker keep away from, or comply with specified requirements when approaching or using or leaving, Australian ports and off-shore terminals. This power is to be used only to protect the environment. Non-compliance with Sub-clause (1) is an offence, and the penalties are not to exceed $10,000 for the ship’s master, and the owner if a natural person, and $40,000 if the owner is a corporate body. The person charged has a defence if the non-compliance resulted from the need to save life at sea, or the direction is not possible of performance.

CLAUSE 267L
OFFENCES AGAINST SUB-SECTIONS 267G(1) AND 267K(4) TO BE INDICTABLE OFFENCES

Clause 267L makes offences under Sub-clauses 267G(1) (taking tanker to sea without the appropriate certificate) and 267K(4) (non-compliance with direction given to the master or owner of a foreign tanker) indictable offences.
At the time that this Bill comes into force, Section 394 of the Navigation Act 1912 will have been amended to provide that where offences are expressed to be indictable they may nevertheless be heard summarily upon agreement of all parties and that the respective penalties will thereupon not exceed $2,000 and $5,000.

**CLAUSE 6**

**REPEAL OF PART VIIA**

This clause repeals Part VIIA of the Navigation Act, though the provisions of that Part relating to oil escapes still apply if the escape occurred before the repeal becomes effective. This provision ensures that there is no hiatus in dealing with pollution incidents.

**CLAUSE 7**

**PROSECUTION OF OFFENCES**

Clause 7 inserts a reference to Sub-clauses 267G(1) and 267K(4) in Section 394 of the Navigation Act. Section 394 provides general rules in relation to the determination of offences.

This matter is also discussed in relation to Clause 267L above.

**CLAUSE 8**

**REGULATIONS**

This Clause adds Sub-section (5C) to Section 425 of the Navigation Act. This ensures that the Act or Regulations prevail if there is an inconsistency between an order and the Act or Regulations.
CLAUSE 1

SHORT TITLE

This Clause provides for the Act to be cited as the Protection of the Sea (Shipping Levy) Act 1981.

CLAUSE 2

COMMENCEMENT

This Clause makes provision for the Act to come into operation on a date to be fixed by Proclamation.

Sub-clause (2) is designed to simplify the calculation of levy charges following its initial introduction.

CLAUSE 3

REPEAL

This Clause repeals the present Act under which the levy is being administered. The Act being repealed is "The Pollution of the Sea by Oil (Shipping Levy) Act 1972".

CLAUSE 4

INCORPORATION OF COLLECTION ACT

Section 55 of the Constitution requires that laws imposing taxation shall deal only with the imposition of taxation, therefore other measures relating to the collection of levy must feature in a separate statute.
This Clause establishes the nexus between this Bill and the proposed Protection of the Sea (Shipping Levy Collection) Bill with which it must be associated in order to complete implementation of the levy.

**CLAUSE 5**

**IMPOSITION OF LEVY**

This Clause imposes a fundamental liability for levy on all ships to which the Bill applies which are carrying at least ten tonnes of oil in bulk on board and which are in Australian ports. Levy is imposed at quarterly intervals.

Ships with less than ten tonnes of oil on board are not considered to represent a pollution threat of sufficient significance as to warrant being subject to this Bill.

**CLAUSE 6**

**RATE OF LEVY**

The fund resulting from collection of the levy will continue to be used for maintaining the stockpile of materials and equipment and to cover all related maintenance and operational costs. The only cost factor that cannot be forecast with reasonable accuracy is the expenditure involved in combat operations which proves unrecoverable through insufficient evidence to obtain a conviction against the alleged polluter, or because of financial inability on the part of a polluter to acquit the liability. As experience proves necessary, the rate initially established may therefore be varied from time to time and this can be achieved far more readily by specifying the rate applicable at any time by Regulation up to the limit allowed by Clause 6.

When the current legislation was enacted in 1972 the levy was set at one cent per ton of the ship's tonnage and was subsequently reduced to 0.8 cents per ton.
CLAUSE 7

MINIMUM AMOUNT OF LEVY

This Clause provides that the amount of the minimum levy, payable under this Act, is the amount prescribed in the Regulations. The minimum levy, however, is not to exceed $25.

This provision has proven necessary because under the existing Pollution of the Sea by Oil (Shipping Levy) Regulation levies as small as $0.80 have been collected. It is clear that the administrative cost of collecting these levies is greater than the amount collected. On the other hand it is considered that the ships which pay these small levies pose a significant threat and under the "polluter pays" principle this provision will allow the setting of a minimum levy that is economic to collect.

CLAUSE 8

APPLICATION OF ACT

This Clause identifies the ships on which levy will be imposed.

The Clause applies the Act only to ships of over 100 tons or more. Smaller ships are regarded as being incapable, in general, of causing any major pollution incident and if the levy were applied to them the levy collected would be less than the cost of providing the administrative machinery required for its collection. Ships that are laid up are expressly included as their polluting potential remains if ten tons or more of oil in bulk are on board.
The categories of ships exempted in paragraphs (a) to (c) are military and Commonwealth, State or Territory owned ships for which exemption is customary due to their not being connected in any way with commercial activities. Except by special arrangement the stockpiled material and equipment maintained will not be used in combatting oil pollution caused by ships of the armed forces.

CLAUSE 9

REGULATIONS

This clause provides power to make Regulations as required to establish the rate of levy referred to in Clauses 6 and 7.
CLAUSE 1

SHORT TITLE

This Clause provides for the Act to be cited as the Protection of the Sea (Shipping Levy Collection) Act 1981.

CLAUSE 2

COMMENCEMENT

For practical purposes it is necessary for this Act to come into operation on the same day as the Protection of the Sea (Shipping Levy) Act 1981.

CLAUSE 3

REPEAL

This Clause repeals those Acts which will be replaced by this new Act. The Acts to be repealed are "The Pollution of the Sea by Oil (Shipping Levy Collection) Act 1972" and "The Pollution of the Sea by Oil (Shipping Levy Collection) Amendment Act 1979".

CLAUSE 4

INTERPRETATION

This Clause defines certain terms which appear in the two Bills concerned with this levy; terms which may otherwise not be clear in their meaning.
The term 'oil' is defined so as to include those oils regarded as constituting possible pollutants of the sea and the definition accords with that definition used in the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, Brussels 1969.

'Oil in Bulk'. The reason why the application of these Bills is restricted to ships carrying oil in bulk, as defined, is because oil in containers (drums, cans, etc.) is not considered to constitute a significant potential pollution hazard.

'Quarter' has been defined in the same manner as in the Lighthouses and Light Dues Regulations to simplify the physical collection of levy.

CLAUSE 5

EXEMPTION IN RESPECT OF SHIP IN AN AUSTRALIAN PORT
BY REASON OF AN EMERGENCY, ETC.

This Clause exempts from the operation of the Bill a ship which enters an Australian port in an emergency or for special reasons which, by their nature, do not justify the imposition of a levy.

CLAUSE 6

FOREIGN-GOING SHIPS - EXEMPT PERIODS

The purpose of this Clause is to ensure that, without interfering with the quarterly basis on which levy becomes due, a foreign-going ship will not be required to make individual payments at more frequent intervals than three months.
This avoids a situation developing in which a foreign-going ship could first become liable for levy towards the end of one quarter and shortly thereafter become liable again at the commencement of the next quarter.

CLAUSE 7

TIME FOR PAYMENT OF LEVY

This Clause establishes the time when levy becomes payable in respect of a ship, namely at the end of the particular quarter. The quarter referred to is the same period as applies in relation to the Lighthouses and Light Dues Regulations so as to simplify the physical collection of levy.

CLAUSE 8

PAYMENTS ON ACCOUNT OF LEVY

This Clause provides for levy to be paid on account, the intention being to align the time of payments with those made on account of Light Dues, applied under the Lighthouses and Light Dues Regulations.

Sub-clause (1) applies to Australian trade ships for which levy becomes payable on account on the first day of each quarter.

Payment on account of levy on behalf of foreign-going ships which are liable for Light Dues is required by Sub-clause (2) to be made on the same day as payment of such Dues.

The remaining category of ships liable for levy is referred to in Sub-clause (3). These are foreign-going ships not liable for payment of Light Dues and, here, provision is made for a Collector to obtain payment on account of levy following notice being served on the master. This is designed to ensure that payment on account of levy for such ships is similarly timed to that for ships subject to Light Dues. The form of notice to be used will be prescribed by regulation.
Paragraph (a) of Sub-clause (4) deems that payment of levy due for a quarter has been made when payment on account has been effected, and paragraph (b) provides for repayment in circumstances where levy has not become applicable for a quarter for which payment on account has been made under the terms of the preceding Sub-clauses.

Finally, Sub-clause (5) provides that payment on account of levy shall not be payable when it is evident that the ship will not become subject to the levy during a quarter.

CLAUSE 9

PERSONS LIABLE TO PAY LEVY

As with the requirement in the Lighthouses Act 1911 for the payment of Light Dues, this Clause places the liability for payment on the owner and master of a ship.

CLAUSE 10

RECOVERY OF LEVY

The first Sub-clause of Clause 10 establishes that payment due for levy or on account of levy constitutes a debt due to the Commonwealth.

Sub-clause (2) creates a presumption of liability for levy unless the contrary is established. This liability is imposed, in the case of paragraph (a), because evidence of the quantity of oil on board at any time is only available in records held on board a ship. Such records are not standardised in form nor do they usually feature in a ship's official documents.
Similarly, by virtue of paragraph (b) the fact that a ship is in an Australian port under circumstances described in Clause 5 will not necessarily be known to persons other than the master or owner. Clear evidence would obviously be required in such cases should any dispute arise.

**CLAUSE 11**

**RECOVERY OF UNPAID LEVY BY DISTRESS**

The first four Sub-clauses of Clause 11 provide powers for enforcing payment of levy due, and compare with the powers provided to a Collector in respect of Light Dues under the Lighthouses Act.

Sub-clause (5) extends the enforcement measures provided in the earlier Sub-clauses to any levy payable on account.

**CLAUSE 12**

**DETENTION OF SHIP FOR UNPAID LEVY**

This Clause provides for the detention of a ship to ensure that action may be taken to recover levy payments due, while those responsible are still within Australian jurisdiction.

Sub-clause (2) provides the power to fine the master of a detained ship that goes to sea unlawfully, a sum not exceeding $500 on conviction.

Sub-clause (3) extends the enforcement measures provided in the first two Sub-clauses to any levy payable on account.
This Clause is the usual regulation making power and will give the Governor-General power to make such Regulations, not inconsistent with this Bill, as may prove necessary to give effect to the proposed Act.

The maximum amount prescribable under the Protection of the Sea (Shipping Levy) Bill is 4 cents per register ton of the ship. Accordingly, if the maximum levy is applied, a 5,000 ton ship would pay a quarterly levy of $200. Under the existing Pollution of the Sea by Oil (Shipping Levy) Regulations the levy is set at 0.8 cents per register ton.

It is therefore considered that a maximum fine of $200 for contravention of the Regulations is consistent with the level of payments expected under the legislation.