



New South Wales

Marine Pollution Amendment (Review) Bill 2020

Explanatory note

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

Overview of Bill

The objects of this Bill are to amend the *Marine Pollution Act 2012* (*the Act*) to—

- (a) address recommendations of the 2019 statutory review of the *Marine Pollution Act 2012*, and
- (b) ensure consistency between the Act, the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* of the Commonwealth and the *International Convention for the Prevention of Pollution from Ships* (MARPOL), and
- (c) provide for enforcement powers about the maintenance of sewage pollution prevention equipment, and
- (d) provide for preventative action against marine pollution in relation to abandoned, derelict or out-of-commission vessels, and
- (e) make other minor and consequential amendments.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Marine Pollution Act 2012 No 5

Schedule 1.1[1] inserts the object of the Act.

Schedule 1.1[2] omits definitions and inserts the definitions of *garbage discharge requirements placard*, *Port Authority of New South Wales*, *State waters* and *transfer operation*.

The definition of *garbage management plan* replaces the definition of *shipboard garbage management plan* and is consistent with Annex V of MARPOL.

The definition of *Australian fishing vessel* is amended as a consequence to the repeal of the *Navigation Act 1912* of the Commonwealth, replaced by the *Navigation Act 2012* of the Commonwealth.

The definition of *recreational vessel* is inserted and is similar to the term used in the *Marine Safety Act 1998* and the *Navigation Act 2012* of the Commonwealth.

Schedule 1.1[3] makes a minor editorial amendment.

Schedule 1.1[4] updates a reference as a consequence of the repeal of the *Navigation Act 1912* of the Commonwealth.

Schedule 1.1[5] removes a reference to a pleasure vessel to apply the Act to all vessels.

Schedule 1.1[6] omits the definition of *survey authority* and is a consequential amendment.

Schedule 1.1[7] clarifies the application of the definition of *uncategorised noxious liquid substance*.

Schedule 1.1[8] inserts a definition of *transfer operation* to clarify that a transfer operation does not include the transfer of oil cargo at sea between oil tankers with a gross tonnage of 150 or more, to which Chapter 8 of MARPOL Annex I applies. This amendment is to avoid potential inconsistency with MARPOL Annex I.

The amendment also provides for proposed section 5B, which clarifies that a reference to the term “certified to carry” includes certification by way of an Australian Builders Plate to determine the carrying capacity of particular ships that may be issued an Australian Builders Plate.

Schedule 1.1[9] makes amendments to provide for when a ship is taken to be proceeding on a voyage under the Act.

Schedule 1.1[10] makes a consequential amendment due to the change to the definition of Tonnage Measurement Convention made by Schedule 1.1[11].

Schedule 1.1[11] updates a definition to refer to the term used in the *Navigation Act 2012* of the Commonwealth to provide consistency with the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* of the Commonwealth.

Schedule 1.1[12] inserts a note to clarify the drafting practice of referring to provisions of MARPOL in editor’s notes in this Act.

Schedule 1.1[13] makes a consequential amendment to remove a reference to section 171, which is omitted by Schedule 1.1[69].

Schedule 1.1[14] amends section 12(2) to provide that if a discharge of a marine pollutant includes garbage, proposed section 66A of the Act should be applied.

Schedule 1.1[15] makes a consequential amendment to remove a reference to the discharge of garbage, due to the changes made by proposed section 66A of the Act.

Schedule 1.1[16] inserts a new subsection to provide that if a person is liable to prosecution for an offence under this Act because a discharge of a marine pollutant that occurs outside State waters and enters State waters is taken to be a discharge into State waters of the marine pollutant under section 13, the person is not liable to prosecution for an offence in particular circumstances. The circumstances that determine the person is not liable to prosecution are that a provision of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* of the Commonwealth, specified in the subsection, applies to the discharge.

Schedule 1.1[17] updates the references in relation to the meaning of dumping, to refer to the 1996 Protocol to the *International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972*. The note is also amended to update the definition as defined in the 1996 Protocol, as in force for Australia from time to time.

The amendment also inserts a definition for the section of **relevant harmful substances** to align with Article 2 of the *International Convention for the Prevention of Pollution from Ships 1973*.

Schedule 1.1[18] and [19] removes references to special areas as there are no special areas relevant to the application of the Act.

Schedule 1.1[20] removes a defence that applies to ships within special areas as there are no special areas relevant to the application of the Act.

Schedule 1.1[21] updates the offences regarding the carrying of uncategorised noxious liquid substances to cover the carrying of a mixture that contains an uncategorised noxious liquid substance.

Schedule 1.1[22] omits sections 35 to 39 of the Act, as the discharges apply to an area that is not State waters. The defence is made available by operation of proposed section 13(3).

Schedule 1.1[23] makes a consequential amendment because of the insertion of a regulation-making power into section 53.

Schedule 1.1[24] inserts a regulation-making power in relation to an offence for the discharge or deposit of untreated sewage into State waters from vessels, other than large ships.

Schedule 1.1[25] inserts proposed section 55A, a new offence for having a defective, altered or modified sewage system, or part of a sewage system, on a particular vessel, that enables the discharge of sewage. The proposed section provides a penalty for large ships, and a regulation-making power for the penalty for a ship that is prescribed by the regulations for the purposes of the section.

The provision also inserts proposed section 55B, which provides for a regulation to create an offence for the discharge of treated sewage in a zone, prescribed by the regulations to be a no discharge zone.

Schedule 1.1[26] omits section 58 of the Act to remove a defence that applies outside of 3 nautical miles from the nearest land, as waters beyond 3 nautical miles are outside of the State waters that the Act applies to.

Schedule 1.1[27] removes references to an inspector to instead rely on the definition of **certified** in section 3(1) of the Act. The amendment also omits a requirement for test results to be set out in a ship's certificate, to align with Annex IV of MARPOL.

Schedule 1.1[28] amends the operation of section 59(2) of the Act as a consequence of the proposed section 55B.

Schedule 1.1[29] and [30] insert notes to confirm that the definitions in section 4, and Annex V of MARPOL, apply to Part 7 of the Act and include a definition of **fishing gear**, as defined by Annex V of MARPOL.

Schedule 1.1[31] amends the section to align with Annex V of MARPOL.

Schedule 1.1[32] and [33] amend section 65 of the Act to incorporate amendments to Annex V of MARPOL in relation to fishing gear.

Schedule 1.1[34] omits the defence in relation to certain dunnage, lining or packing materials that will float, as a consequence of amendments to Annex V of MARPOL. A defence is also inserted for the discharge of fishing gear from a ship for the protection of the marine environment, or for the safety of that ship or the ship's crew. The new defence is a consequence of amendments to Annex V of MARPOL.

The amendment also includes defence for the discharge of garbage that is mixed with or contaminated by other substances, if the more stringent requirements for the other substance is followed. This is a consequence of amendment to Annex V of MARPOL.

Schedule 1.1[35] omits section 74 of the Act which required written permission to conduct a transfer operation at night.

Schedule 1.1[36] makes a consequential amendment due to the omission of sections by Schedule 1.1[22].

Schedule 1.1[37] amends the definition of reportable incident to align with Article II(1)(c) of Protocol I of MARPOL.

Schedule 1.1[38] amends section 105 of the Act to require a procedures and arrangements manual to be in the form set out in Appendix IV to Annex II of MARPOL.

Schedule 1.1[39] and [40] amend references in the Act to shipboard garbage management plans to refer to garbage management plans, to align with Annex V of MARPOL.

Schedule 1.1[41] and [42] amend section 107 of the Act to apply to prescribed ships, as defined by the section. This is a consequence of amendment to Annex V of MARPOL.

Schedule 1.1[43] amends section 108 of the Act to make provision for ship operators to practice minimising garbage on board. This is a consequence of amendments to Annex V of MARPOL.

Schedule 1.1[44], [47] and [48] update references to “disposal” to refer to “discharge” to align with MARPOL.

Schedule 1.1[45] and [46] amend section 110 to extend the requirement for placards relating to garbage discharge requirements on fixed or floating platforms. This is a consequence of amendments to Annex V of MARPOL.

Schedule 1.1[49] amends the definition of *prescribed ship* in relation to the carriage of an oil record book, to align the provision with Annex I of MARPOL.

Schedule 1.1[50], [51], [53], [54], [58] and [59] provide that an oil record book, a cargo record book or a garbage record book may be kept electronically if kept in the way approved by the maritime authority of the country whose flag the ship is entitled to fly, and the way a signature may be made on an electronic record book. This is a consequence of amendments to Annexes I, II and V of MARPOL.

Schedule 1.1[52], [55] and [60] amend the requirement to provide that an oil record book, a cargo record book and a garbage record book are to be retained for a period of 3 years, consistent with Annexes I, II and V of MARPOL.

Schedule 1.1[56] extends the circumstances that a master and owner of a ship do not commit the offence of failing to carry a garbage record book to also apply to a ship that is a recreational vessel with a gross tonnage of less than 400 that is not on an overseas voyage. This aligns with Annex IV of MARPOL.

Schedule 1.1[57] amends section 137 to clarify the classes of ship that may apply to the Minister to waive the requirement to carry a garbage record book. This is a consequence of amendments to Annex V of MARPOL.

Schedule 1.1[61] amends section 148 to remove references to regulations of Annex III of MARPOL.

Schedule 1.1[62] omits section 149 of the Act as a consequence of the amendments to remove Part 12, Divisions 3–8 of the Act, proposed by Schedule 1.1[69].

Schedule 1.1[63] makes consequential amendments to the definition of *prescribed ship*, following the removal of the requirement for NSW construction certificates, and to reflect the application of the requirement in Annex I of MARPOL. The definition *ship construction certificate* is also amended to reflect the replacement of the *Navigation Act 1912* of the

Commonwealth by the *Navigation Act 2012* of the Commonwealth, the commencement of the *Marine Safety (Domestic Commercial Vessels) National Law Act 2012* of the Commonwealth, and the removal of the requirement for a NSW construction certificate.

Schedule 1.1[64] amends the definition of *prescribed ship* to reflect Annex II of MARPOL. This is a consequence of the amendments to remove the requirement for a NSW chemical tanker construction certificate. The definition of *chemical tanker construction certificate* is also amended to reflect the replacement of the *Navigation Act 1912* of the Commonwealth by the *Navigation Act 2012* of the Commonwealth and the removal of the requirement for NSW construction certificates.

Schedule 1.1[65] and [66] make amendments to the offences of a ship beginning a voyage unless there is a sewage pollution prevention certificate in force in relation to the ship that complies with Annex IV of MARPOL or the conditions prescribed by the regulations.

Schedule 1.1[67] and [68] provide for the type of ships and classes of ships that the requirement for a sewage pollution prevention certificate applies to, including ships prescribed by the regulations for the purposes of the section. The definition of *sewage pollution prevention certificate* is amended as a consequence of the replacement of the *Navigation Act 1912* of the Commonwealth by the *Navigation Act 2012* of the Commonwealth.

Schedule 1.1[69] omits Part 12, Divisions 3–8, containing the requirement for NSW construction certificates and NSW chemical tanker construction certificates.

Schedule 1.1[70] updates a reference as a consequence of amendments to Annex V of MARPOL.

Schedule 1.1[71] provides that the Minister may provide, arrange the provision of, or direct the provision of reception facilities for exhaust gas cleaning residues from an exhaust gas cleaning system.

Schedule 1.1[72] provides that exhaust gas cleaning residues from an exhaust gas cleaning system are a *prescribed waste*, for the definition of *reception facility*.

Schedule 1.1[73] extends the circumstances that the Minister may take preventative or clean-up action, to include if the Minister is of the opinion that marine pollutants are, or have been carried, on a vessel that has been abandoned, is out-of-commission or derelict.

Schedule 1.1[74] provides that an inspector, officer, employee or agent of the Minister may do all things necessary for the purpose of causing a marine pollution removal notice to be complied with.

Schedule 1.1[75] extends the definition of *preventative or clean-up action* to include action to prevent, minimise, remove, disperse or destroy a marine pollutant or prevent, minimise or mitigate any pollution likely to occur from a vessel that has been abandoned, is out-of-commission or derelict.

Schedule 1.1[76] makes consequential amendments to add the definitions of *marine pollution prevention notice* and *marine pollution removal notice* to the section.

Schedule 1.1[77] provides that the Minister may recover all costs and expenses incurred by the Minister from the owner of the vessel, in relation to action taken under Part 15 in relation to a vessel that has been abandoned, is out-of-commission or derelict.

Schedule 1.1[78] replaces the requirement for the Minister to establish an Oiled Wildlife Care Network with a requirement for the Minister to have an Oiled Wildlife Care Network as the network is already established.

Schedule 1.1[79] and [80] amend the definition of *marine pollution incident* for Part 16 to apply the Part to responding to a pollution incident whether or not the vessel has a particular certificate or is of a particular size.

Schedule 1.1[81] and [82] make consequential amendments to the Division to make provision for Division 4A, inserted by Schedule 1.1[84], and inserts the definition of *public authority* for the Part.

Schedule 1.1[83] omits the definition of *public authority*, which is inserted into section 190 to apply for the Part.

Schedule 1.1[84] inserts proposed Division 4A, to provide for the Minister to take preventative action for an abandoned, derelict or out-of-commission vessel, if marine pollutants are, or have been, carried on the vessel. The proposed Division includes an offence for failing to comply with a marine pollution removal notice. The Division provides for when the marine pollution removal notice, or a variation of the notice, operates, and creates a fee to enable the Minister to recover the administrative costs of preparing and giving marine pollution removal notices. A person who does not pay the fee, within the time provided for, is guilty of an offence.

Schedule 1.1[85] provides that the Minister may require a person given a marine pollution removal notice to pay all or any reasonable costs and expenses incurred by the Minister, as set out in section 205.

Schedule 1.1[86] provides that section 216 applies to the discharge of a noxious liquid substance into State waters, regardless of whether the ship holds a chemical tanker construction certificate certifying the ship to carry noxious liquid substances in bulk.

Schedule 1.1[87] removes the requirement that section 216 applies to the discharge of sewage into State waters from a large ship only.

Schedule 1.1[88] and [89] remove the requirement that the Minister, for the purpose of detaining the ship, have reasonable cause to believe that the ship will depart from State waters before the completion of the Minister's investigation into the source of a discharge.

Schedule 1.1[90] provides that a master of a ship may be required to produce a record book required to be carried by the regulations or by the *Marine Safety Act 1998* or any other books, documents or records relating to the ship or its cargo, carried in the ship.

Schedule 1.1[91] clarifies the scope of the regulation-making power in relation to the discharge of sewage, waste management and directions that may be given in relation to waste.

Schedule 1.1[92] inserts a regulation-making power for the categories of vessels required to have sewage pollution prevention certificates to be prescribed by regulation and for the administration of the certificates.

Schedule 1.1[93] updates a reference in the definition of *approved person* to refer to the Port Authority of New South Wales instead of the Newcastle Port Corporation. This aligns with the references to that Corporation in the *Marine Safety Act 1998* and the *Ports and Maritime Administration Act 1995*.

Schedule 1.1[94] omits a savings and transitional provision as a consequence of the omission of section 74 by Schedule 1.1[35].

Schedule 1.1[95] omits a savings and transitional provision that provided for the continued operation of ship construction certificates and chemical tanker construction certificates, as a consequence of amendments to section 150 and 151 of the Act.

Schedule 1.2[1]–[228] remove references that were contained in brackets next to the section headings and transfers the references to editor's notes, consistent with updated drafting practices. The references in the editor's notes are also updated to ensure consistency with MARPOL.

Schedule 2 Amendment of other instruments

Schedules 2.1 and 2.2 make consequential amendments to the *Fire and Rescue NSW Act 1989* and the *Fire Brigades Regulation 2014* to update references from State waters to refer to prescribed waters. The amendments continue the existing operation of the law under the *Fire and Rescue NSW Act 1989*, instead of adopting the amended definition of State waters under the *Marine Pollution Act 2012*.

Schedule 2.3 makes consequential amendments to the *Marine Pollution Regulation 2014*, including updating the references in Schedules 6 and 7 of the Regulation to incorporate changes to Marine Orders adopted and modified under the Act.

Schedule 2.4 makes a consequential amendment to a note in the *Marine Safety Act 1998* that refers to State waters, and updates the definition to align with the definition in the *Marine Pollution Act 2012*, consequent on the amendments made to the Act by Schedule 1.1[2].

Schedule 2.5 amends the penalty notice offence schedule in the *Marine Safety Regulation 2016* to remove references to sections omitted and includes in the Schedule offences inserted by Schedule 1.1[25] and [84].