

FIRST PRINT

MARINE POLLUTION (AMENDMENT) BILL 1991

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to provide for the detention of ships believed to have polluted State waters and to permit security to be taken from the owners or masters of such ships to cover the estimated costs of cleaning up the pollution and any penalties that may be imposed.

The Marine Pollution Act 1987 empowers the Maritime Services Board of New South Wales (the "Board") to take action to prevent, minimise or remove any pollution damage caused by the discharge into State waters of oil or noxious liquid substances from ships. Where the Board has incurred costs and expenses in taking such action, the Board may detain the ship from which the discharge occurred until the amount incurred is paid or security for the payment of that amount is provided. To exercise this power to detain, the Board must be able to identify the ship responsible for the discharge and must already have incurred some expenses.

There may be circumstances where the Board reasonably believes that a ship has caused a discharge but the Board has not had time to gather conclusive evidence of fault or has not yet incurred costs in cleaning up or minimising the discharge. At present the Board cannot, in these circumstances, detain the ship for the purpose of taking security for the amount of costs and expenses that may be subsequently incurred by it.

This Bill amends the Act to enable the Board to detain a ship that the Board reasonably believes has caused pollution by discharging oil or noxious liquid substances into State waters. Under the proposed amendments the ship may be detained until satisfactory security is provided for the costs and expenses the Board estimates it will incur in taking action in relation to the discharge and for any penalties that may be imposed under the Act in relation to the discharge. The security to be provided must be in a form acceptable to the Board (for example, the Board may accept a bank guarantee or a letter of undertaking from a Protection and Indemnity Club which is a member of the International Group Agreement). If the ship in fact caused the discharge the Board may enforce the security taken to recover its costs and expenses and the amount of any penalties. If the ship is found not to have caused the discharge the security will not be enforced.

Marine Pollution (Amendment) 1991

The period for which a ship may be detained is not specifically limited by the proposed provisions. However, since most ocean-going ships are covered by protection and indemnity insurance, satisfactory security, in the form of a letter of undertaking, will generally be available to ensure the prompt release of detained ships.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on a day to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Marine Pollution Act 1987.

Schedule 1 makes the amendments described above.

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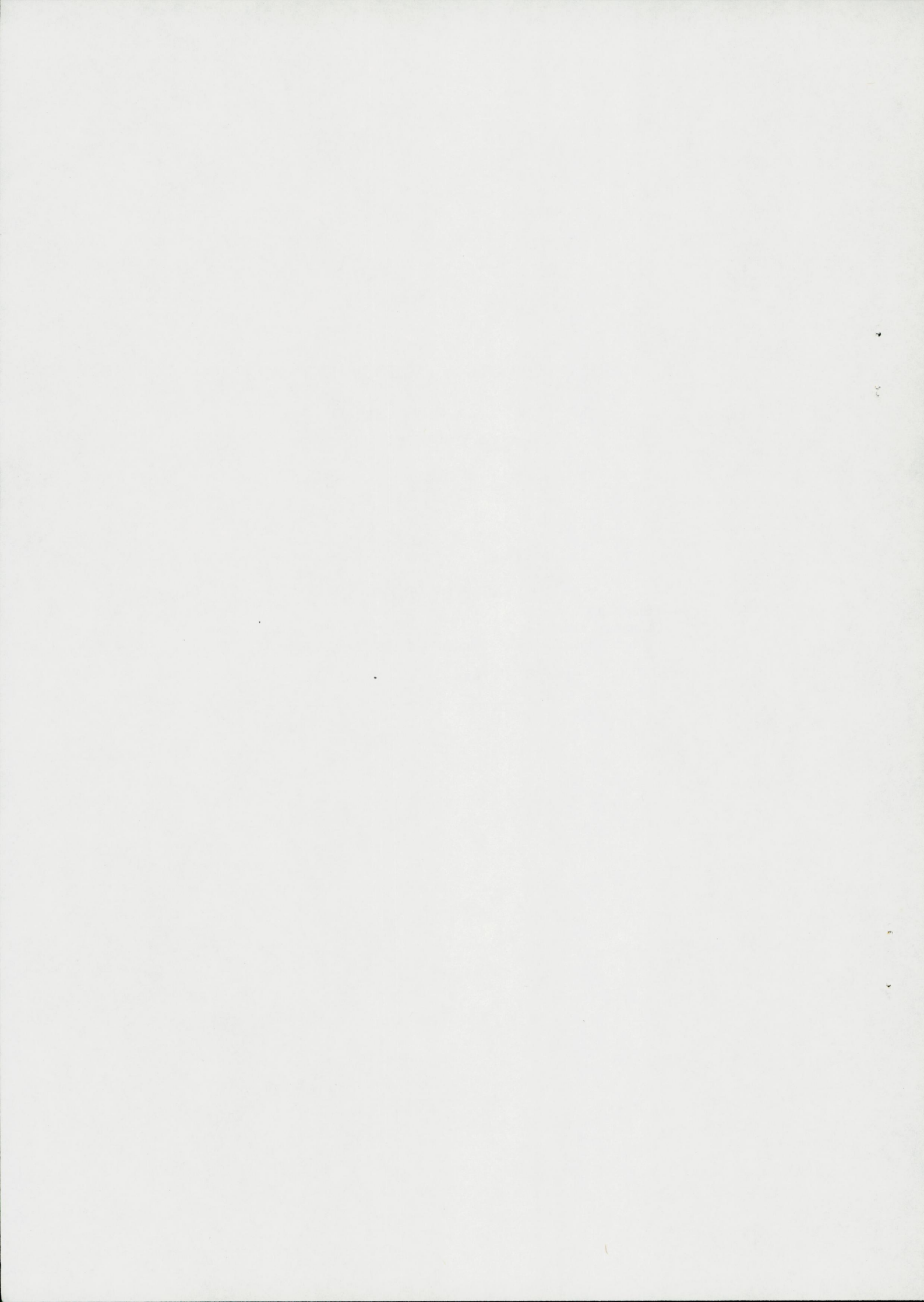
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Marine Pollution Act 1987 No. 299

SCHEDULE 1—AMENDMENTS



MARINE POLLUTION (AMENDMENT) BILL 1991

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to amend the Marine Pollution Act 1987 to provide for the detention of vessels believed to have caused pollution in State waters.

Marine Pollution (Amendment) 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Marine Pollution (Amendment) Act 1991.

Commencement

2. This Act commences on a day to be appointed by proclamation.

Amendment of Marine Pollution Act 1987 No. 299

3. The Marine Pollution Act 1987 is amended as set out in Schedule 1.
-

SCHEDULE 1—AMENDMENTS

(Sec. 3)

- (1) Sections 46 (**Recovery of costs and expenses with respect to pollution by oil**), 47 (**Recovery of costs and expenses with respect to pollution by noxious liquid substances**):

In sections 46 (4) and 47 (5), after "section 52", wherever occurring, insert "or section 52A".

- (2) Section 52 (**Additional provisions relating to recovery of costs and expenses**):

- (a) Section 52 (1):

Omit "is a charge", insert instead "and the amount of any penalty that can be imposed under this Act against the owner or master of the ship in relation to the discharge are charges".

- (b) Section 52 (2):

Omit "to the satisfaction of the Board", insert instead "in accordance with section 52B".

- (3) Sections 52A–52C:

After section 52, insert:

Detention of ships believed to have discharged oil or noxious substances

52A. (1) A ship in State waters may be detained by a person authorised by the Board if the Board has reasonable cause to believe:

Marine Pollution (Amendment) 1991

SCHEDULE 1—AMENDMENTS—*continued*

- (a) that a discharge to which this Act applies has occurred from the ship; and
 - (b) that, if the Board were to establish that the discharge had occurred from the ship, the Board could take proceedings to recover the costs and expenses incurred by it in taking action in relation to that discharge under section 46, 47 or 50; and
 - (c) that the ship will depart from State waters before the completion of the Board's investigation into the source of the discharge.
- (2) A ship that has been detained must be immediately released:
- (a) if security is provided in accordance with section 52B; or
 - (b) if proceedings are instituted in relation to the discharge and are discontinued; or
 - (c) if proceedings are instituted in relation to the discharge and are concluded, whether or not an appeal is pending, without any person being convicted or costs or expenses being awarded against any person; or
 - (d) if proceedings in relation to the discharge are concluded and all costs and expenses ordered to be paid and all penalties imposed have been paid; or
 - (e) if the Board has sought to recover costs and expenses incurred by it as a debt due and the amount has been paid; or
 - (f) if the Board forms the belief that the discharge did not occur from the ship; or
 - (g) if the Board determines for any other reason that the ship should be released.
- (3) Security may be required to be provided for the payment of:
- (a) any amount that might, in the opinion of the Board, be recoverable by the Board under section 46, 47 or 50 from the owner or master of the ship in relation to the discharge; and

Marine Pollution (Amendment) 1991

SCHEDULE 1—AMENDMENTS—*continued*

- (b) the maximum amount of penalties that can be imposed under this Act against the owner or master in relation to the discharge.

Security taken by the Board

52B. (1) This section applies where security is taken by the Board under section 52 or 52A.

- (2) The security must be in a form acceptable to the Board.
- (3) The amount available under the security must be applied only as follows:
- (a) in payment of any costs or expenses that have been ordered to be paid to the Board by the master or owner in the course of proceedings for an offence in respect of the discharge or that are recoverable under this Part against the master or owner as a debt due;
- (b) in payment of any penalty imposed by a court in the course of proceedings for an offence in respect of the discharge.

Departure of ships under detention

52C. (1) The master and the owner of a ship detained under this Part which departs State waters before it is released from detention are each guilty of an offence against this section.

Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in any other case).

(2) A person is not guilty of an offence under this section if the person can establish that he or she was not aware that the ship had been detained under this Part.

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EXPLANATORY NOTE

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The Marine Pollution Act 1987 empowers the Maritime Services Board of New South Wales (the "Board") to take action to prevent, minimise or remove any pollution damage caused by the discharge into State waters of oil or noxious liquid substances from ships. Where the Board has incurred costs and expenses in taking such action, the Board may detain the ship from which the discharge occurred until the amount incurred is paid or security for the payment of that amount is provided. To exercise this power to detain, the Board must be able to identify the ship responsible for the discharge and must already have incurred some expenses.

There may be circumstances where the Board reasonably believes that a ship has caused a discharge but the Board has not had time to gather conclusive evidence of fault or has not yet incurred costs in cleaning up or minimising the discharge. At present the Board cannot, in these circumstances, detain the ship for the purpose of taking security for the amount of costs and expenses that may be subsequently incurred by it.

This Bill amends the Act to enable the Board to detain a ship that the Board reasonably believes has caused pollution by discharging oil or noxious liquid substances into State waters. Under the proposed amendments the ship may be detained until satisfactory security is provided for the costs and expenses the Board estimates it will incur in taking action in relation to the discharge and for any penalties that may be imposed under the Act in relation to the discharge. The security to be provided must be in a form acceptable to the Board (for example, the Board may accept a bank guarantee or a letter of undertaking from a Protection and Indemnity Club which is a member of the International Group Agreement). If the ship in fact caused the discharge the Board may enforce the security taken to recover its costs and expenses and the amount of any penalties. If the ship is found not to have caused the discharge the security will not be enforced.

Marine Pollution (Amendment) 1991

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Clause 1 specifies the short title of the proposed Act.

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2. Commencement
3. Amendment of Marine Pollution Act 1987 No. 299

SCHEDULE 1—AMENDMENTS



MARINE POLLUTION (AMENDMENT) BILL 1991

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to amend the Marine Pollution Act 1987 to provide for the detention of vessels believed to have caused pollution in State waters.

Marine Pollution (Amendment) 1991

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Short title

1. This Act may be cited as the Marine Pollution (Amendment) Act 1991.

Commencement

2. This Act commences on a day to be appointed by proclamation.

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SCHEDULE 1—AMENDMENTS

(Sec. 3)

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- (b) Section 52 (2):

Omit “to the satisfaction of the Board”, insert instead “in accordance with section 52B”.

- (3) Sections 52A–52C:

After section 52, insert:

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52A. (1) A ship in State waters may be detained by a person authorised by the Board if the Board has reasonable cause to believe:

Marine Pollution (Amendment) 1991

SCHEDULE 1—AMENDMENTS—*continued*

- (a) that a discharge to which this Act applies has occurred from the ship; and
 - (b) that, if the Board were to establish that the discharge had occurred from the ship, the Board could take proceedings to recover the costs and expenses incurred by it in taking action in relation to that discharge under section 46, 47 or 50; and
 - (c) that the ship will depart from State waters before the completion of the Board's investigation into the source of the discharge.
- (2) A ship that has been detained must be immediately released:
- (a) if security is provided in accordance with section 52B; or
 - (b) if proceedings are instituted in relation to the discharge and are discontinued; or
 - (c) if proceedings are instituted in relation to the discharge and are concluded, whether or not an appeal is pending, without any person being convicted or costs or expenses being awarded against any person; or
 - (d) if proceedings in relation to the discharge are concluded and all costs and expenses ordered to be paid and all penalties imposed have been paid; or
 - (e) if the Board has sought to recover costs and expenses incurred by it as a debt due and the amount has been paid; or
 - (f) if the Board forms the belief that the discharge did not occur from the ship; or
 - (g) if the Board determines for any other reason that the ship should be released.
- (3) Security may be required to be provided for the payment of:
- (a) any amount that might, in the opinion of the Board, be recoverable by the Board under section 46, 47 or 50 from the owner or master of the ship in relation to the discharge; and

Marine Pollution (Amendment) 1991

SCHEDULE 1—AMENDMENTS—*continued*

- (b) the maximum amount of penalties that can be imposed under this Act against the owner or master in relation to the discharge.

Security taken by the Board

52B. (1) This section applies where security is taken by the Board under section 52 or 52A.

- (2) The security must be in a form acceptable to the Board.
- (3) The amount available under the security must be applied only as follows:
- (a) in payment of any costs or expenses that have been ordered to be paid to the Board by the master or owner in the course of proceedings for an offence in respect of the discharge or that are recoverable under this Part against the master or owner as a debt due;
- (b) in payment of any penalty imposed by a court in the course of proceedings for an offence in respect of the discharge.

Departure of ships under detention

52C. (1) The master and the owner of a ship detained under this Part which departs State waters before it is released from detention are each guilty of an offence against this section.

Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in any other case).

- (2) A person is not guilty of an offence under this section if the person can establish that he or she was not aware that the ship had been detained under this Part.
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MARINE POLLUTION (AMENDMENT) BILL 1991

MR SPEAKER:

I MOVE THAT THIS BILL BE NOW READ A SECOND TIME.

IT IS WITH GREAT PLEASURE THAT I INTRODUCE THIS LEGISLATION, WHICH IS THE RESULT OF DETAILED INVESTIGATIONS BY THE MARITIME SERVICES BOARD OF NEW SOUTH WALES AND THE DEPARTMENT OF TRANSPORT INTO COMPARABLE LEGISLATION OF LEADING MARITIME NATIONS.

THE OBJECT OF THE LEGISLATION BEFORE THE HOUSE IS TO PROVIDE FOR THE DETENTION OF A VESSEL WHEN THERE IS REASONABLE CAUSE TO BELIEVE THAT IT HAS CAUSED POLLUTION IN STATE WATERS UNTIL AN ACCEPTABLE FORM OF SECURITY TO COVER THE ESTIMATED CLEAN-UP COSTS, EXPENSES AND A PENALTY IS LODGED WITH THE MARITIME SERVICES BOARD.

THE MARINE POLLUTION ACT AUTHORISES THE MARITIME SERVICES BOARD TO TAKE NECESSARY ACTION TO PREVENT, MINIMISE OR CLEAN-UP ANY POLLUTION CAUSED BY THE DISCHARGE OF OIL OR NOXIOUS LIQUID SUBSTANCES FROM A VESSEL IN STATE WATERS. CLEAN-UP COSTS AND EXPENSES INCURRED IN TAKING SUCH ACTION ARE RECOVERABLE FROM THE OWNER OR MASTER OF SUCH VESSEL, AND THE VESSEL MAY BE DETAINED UNTIL THESE COSTS AND EXPENSES ARE PAID, OR SECURITY IN LIEU THEREOF IS PROVIDED TO THE SATISFACTION OF THE BOARD. HOWEVER, AT PRESENT, CLEAR EVIDENCE OF POLLUTION MUST BE AVAILABLE. IN OTHER WORKS, UNDER THE EXISTING LEGISLATION THE POLLUTING VESSEL MUST BE IDENTIFIED AND CLEAN-UP COSTS AND EXPENSES MUST HAVE ACTUALLY BEEN INCURRED BEFORE DETENTION FOR SECURITY CAN BE ENFORCED.



THERE ARE SOMETIMES CIRCUMSTANCES HOWEVER, WHERE THE BOARD HAS REASON TO BELIEVE THAT A VESSEL HAS CAUSED POLLUTION BUT, UNDER THE EXISTING LEGISLATION, CANNOT DETAIN THE VESSEL. FIRSTLY, IT MIGHT NOT HAVE POSITIVELY IDENTIFIED THE VESSEL BECAUSE CLEAR EVIDENCE OF ITS RESPONSIBILITY FOR THE POLLUTION IS NOT AVAILABLE, AND SECONDLY BECAUSE CLEAN-UP COSTS AND EXPENSES MAY NOT YET HAVE BEEN INCURRED.

CLEAR EVIDENCE OF A VESSEL HAVING POLLUTED TAKES A FEW DAYS TO ESTABLISH SINCE IT INVOLVES ANALYSING SAMPLES OF THE POLLUTANT AGAINST SAMPLES FROM THE SUSPECT VESSEL. BY THE TIME THE ANALYSIS IS COMPLETE, THE VESSEL WILL USUALLY HAVE SAILED FROM PORT. MORE IMPORTANTLY THE FACT REMAINS THAT, EVEN AFTER EVIDENCE OF POLLUTION BY A DEPARTED VESSEL IS FINALLY AVAILABLE, IT IS POSSIBLE THAT THIS VESSEL MAY NEVER RETURN TO NEW SOUTH WALES, THEREBY FRUSTRATING ALL HOPE OF RECOVERING THE CLEAN-UP COSTS AND PENALTY.

THE AIM OF THIS BILL IS TO AMEND THE EXISTING ACT AND SET ENABLING MECHANISM IN PLACE WHEREBY THE MARITIME SERVICES BOARD IS AUTHORISED TO DETAIN A VESSEL WHICH IT BELIEVES TO HAVE CAUSED POLLUTION, WITHOUT CLEAR EVIDENCE BEING AVAILABLE AT THE TIME WITHOUT NECESSARILY HAVING INCURRED ANY CLEAN-UP COSTS AND EXPENSES. SUCH VESSELS WILL BE RELEASED AFTER THE OWNER LODGES SECURITY IN A FORM ACCEPTABLE TO THE BOARD TO COVER THE ESTIMATED CLEAN-UP COSTS, EXPENSES AND THE MAXIMUM PENALTY RECOVERABLE UNDER THE ACT.

THE BILL WILL HAVE A TWO-FOLD EFFECT. FIRSTLY, IT WILL OVERCOME THE DEFICIENCY IN THE EXISTING LEGISLATION WHICH EFFECTIVELY PRECLUDES THE MARITIME SERVICES BOARD FROM DETAINING A SUSPECT VESSEL ONLY BECAUSE CLEAR EVIDENCE OF POLLUTION IS NOT AVAILABLE AT THE TIME. SECONDLY, IT WILL ACT AS A DETERRENT TO NEGLIGENT SHIPOWNERS WHO, UNTIL NOW, MAY HAVE TAKEN IT FOR GRANTED THAT THEIR VESSELS CAN POLLUTE STATE WATERS WITH A DEGREE OF IMPUNITY, ONLY BECAUSE THE LEGISLATION IS DEFICIENT IN THIS AREA.

HONOURABLE MEMBERS WILL BE AWARE OF THIS GOVERNMENT'S COMMITMENT TO THE PROTECTION AND PRESERVATION OF THE COASTLINE AND WATERWAYS OF NEW SOUTH WALES. HONOURABLE MEMBERS WILL ALSO RECALL THE INCIDENT INVOLVING THE "IRAN AFZAL" WHICH WAS SUSPECTED OF CAUSING OIL POLLUTION OFF BONDI BEACH IN MARCH LAST YEAR. FOLLOWING THAT INCIDENT, THE VESSEL WAS ABLE TO SAIL FROM PORT WITHOUT LODGING SECURITY FOR THE ESTIMATED CLEAN-UP COSTS AND PENALTY BECAUSE, AS I HAVE ALREADY STATED, THE EXISTING LEGISLATION REQUIRES CLEAR EVIDENCE OF POLLUTION BEFORE SECURITY CAN BE DEMANDED.

AT THIS TIME I WISH TO EMPHASISE THAT THE MARITIME SERVICES BOARD DID EVENTUALLY RECOVER CLEAN-UP COSTS, EXPENSES AND A PENALTY FROM THE FOREIGN OWNERS OF THE "IRAN AFZAL", AS THEY CHOSE TO RESPOND POSITIVELY WHEN CHARGED WITH THE POLLUTION OFFENCE. HOWEVER, A LESS RESPONSIBLE OWNER COULD HAVE DECIDED TO IGNORE IT.



APART FROM THE ABOVE INCIDENT THE PEOPLE OF NEW SOUTH WALES HAVE BEEN FORTUNATE INASMUCH AS THERE HAVE BEEN NO MAJOR MARINE SOURCED POLLUTION INCIDENTS IN RECENT TIMES. THIS IS LARGELY DUE TO COMBINED INITIATIVES BY THE STATE AND FEDERAL AUTHORITIES INVOLVING CONSTANT VIGILANCE OF MARITIME TRAFFIC ALONG OUR COASTLINE AND ENSURING, AS FAR AS POSSIBLE, THAT VESSELS VISITING OUR PORTS MAINTAIN HIGH STANDARDS OF OPERATION.

THE MARINE POLLUTION ACT PROVIDES FOR PENALTIES OF \$250,000 FOR A BODY CORPORATE AND \$50,000 FOR AN INDIVIDUAL PLUS UNLIMITED COSTS ASSOCIATED WITH CLEAN-UP OPERATIONS. WHILST THE PENALTIES IN THEMSELVES OUGHT TO ACT AS A DETERRENT AGAINST POLLUTION, THIS GOVERNMENT BELIEVES IT SHOULD SEND A CLEAR SIGNAL TO WOULD-BE POLLUTERS THAT IT IS ABSOLUTELY DETERMINED IN ITS COMMITMENT TO PROTECT THE COASTLINE AND WATERWAYS FROM UNSCRUPULOUS OR NEGLIGENT SHIPOWNERS. THE LEGISLATION BEFORE THE HOUSE REINFORCES THIS COMMITMENT.

THE PROPOSED LEGISLATION WILL INTRODUCE A MUCH MORE POSITIVE ELEMENT INTO THE EXISTING LEGISLATION, ENABLING AUTHORITIES TO RESPOND TO A POLLUTION INCIDENT INVOLVING A SUSPECT VESSEL, WITHOUT REQUIRING EVIDENCE OF POLLUTION. THE BILL STRENGTHENS THE EXISTING LEGISLATION AND IS INDICATIVE OF THIS GOVERNMENT'S RESOLVE IN ENSURING THAT ITS POLLUTION LEGISLATION IS ABLE TO REACT TO POLLUTION INCIDENTS IN A TIMELY MANNER.

THE BILL HAS BEEN CAREFULLY DRAFTED TO ENSURE THE SHIPOWNERS' RIGHTS ARE RECOGNISED AND PRESERVED AT ALL TIMES. TIS HAS BEEN ACHIEVED BY STIPULATING IN CLEAR AND CONCISE TERMS THE CONDITIONS UNDER WHICH A DETAINED VESSEL MUST BE RELEASED. ONE CONDITION IS WHEN ACCEPTABLE SECURITY IS LODGED WITH THE MARITIME SERVICES BOARD; ANOTHER IS WHEN REASONABLE CAUSE FOR SUSPICION CEASES TO EXIST. THE BILL ALSO ENSURE THAT THE SECURITY WILL ONLY BE APPLIED TOWARDS THE PURPOSE FOR WHICH IT WAS INTENDED. ON THE OTHER HAND, HOWEVER, THE BILL MAKES IT AN OFFENCE FOR A VESSEL TO LEAVE STATE WATERS WHILE UNDER DETENTION.

THE BILL DOES NOT IMPOSE ONEROUS FINANCIAL CONDITIONS: IT IS ENVISAGED THAT THE SECURITY WHICH WILL BE OFFERED BY A SHIPOWNER WILL TAKE THE FORM OF A LETTER OF UNDERTAKING ISSUED BY A PROTECTION AND INDEMNITY ASSOCIATION OF WHICH THE SHIPOWNER IS A MEMBER. THERE ARE ABOUT 16 SUCH ASSOCIATIONS OR CLUBS AS THEY ARE REFERRED TO IN SHIPPING PARLANCE, CONSTITUTING THE INTERNATIONAL GROUP AGREEMENT, WHICH OPERATE ON A MUTUAL INSURANCE BASIS. THEY OFFER THEIR SHIPOWNER MEMBERS UNLIMITED LIABILITY FOR VARIOUS RISKS ASSOCIATED WITH SHIPPING OPERATIONS, EXCEPT THAT A CLUB'S LIABILITY FOR AN OIL POLLUTION INCIDENT IS NORMALLY LIMITED TO ABOUT \$625 MILLION, EXTENDABLE TO ABOUT \$875 MILLION UPON PAYMENT OF AN ADDITIONAL PREMIUM BY THE SHIPOWNER. THE CLUB PROVIDES SECURITY AT NO ADDITIONAL COST TO THE SHIPOWNER, AND PAYMENT AGAINST THIS SECURITY IS MADE ONLY AFTER THE SHIPOWNER IS FOUND LIABLE AND THE AMOUNT OF CLEAN-UP COSTS, EXPENSES AND PENALTY HAS BEEN QUANTIFIED.

OVER NINETY PER CENT OF THE WORLD'S SHIPPING FLEET IS COVERED BY PROTECTION AND INDEMNITY CLUBS BELONGING TO THE INTERNATIONAL GROUP AGREEMENT. THESE CLUBS ARE HIGHLY REGARDED AS BONDSMEN OF TOTAL INTEGRITY. CONSEQUENTLY NO ADDITIONAL BURDEN, FINANCIAL OR OTHERWISE, WILL FALL ON THE SHIPOWNERS WHO ARE WELL ACCUSTOMED TO THE SYSTEM OF CLUB SECURITY IN THEIR NORMAL OPERATIONS. SHIPOWNERS WITHOUT MEMBERSHIP OF A CLUB BELONGING TO THE INTERNATIONAL GROUP AGREEMENT, WILL NEED TO PROVIDE ALTERNATE SECURITY ACCEPTABLE TO THE MARITIME SERVICES BOARD, SUCH AS A BANK GUARANTEE FROM A PRIME BANK IN AUSTRALIA.

THE LEGISLATION PROPOSED BY THIS BILL WILL BRING THE NEW SOUTH WALES LEGISLATION IN LINE WITH THAT ALREADY EXISTING IN OTHER LEADING MARITIME COUNTRIES INCLUDING THE UNITED KINGDOM, THE UNITED STATES OF AMERICA, CANADA AND THE NETHERLANDS.

THIS GOVERNMENT HAS ALWAYS ENDEAVOURED TO BE AT THE FOREFRONT IN MATTERS OF SIGNIFICANT REFORM IN ALL AREAS AFFECTING THE PUBLIC INTEREST AND IT GIVES ME GREAT PLEASURE TO ADVISE THE HONOURABLE MEMBERS OF THE HOUSE THAT NEW SOUTH WALES IS THE FIRST STATE TO INTRODUCE THIS LEGISLATION INTO AUSTRALIA. I AM SURE THIS LEGISLATION WILL BE WELCOMED BY THOSE WHO VALUE THE UNPOLLUTED BEAUTY OF THE BEACHES AND WATERWAYS OF NEW SOUTH WALES AND WILL BE RECOGNISED FOR WHAT IT IS - A REAFFIRMATION OF OUR COMMITMENT TO THE CONTINUED PROTECTION AND PRESERVATION OF OUR NATURAL HERITAGE.

I COMMEND THE BILL TO THE HOUSE.

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MARINE POLLUTION (AMENDMENT) ACT 1991 No. 81

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Marine Pollution Act 1987 No. 299

SCHEDULE 1—AMENDMENTS



MARINE POLLUTION (AMENDMENT) ACT 1991 No. 81

NEW SOUTH WALES



Act No. 81, 1991

An Act to amend the Marine Pollution Act 1987 to provide for the detention of vessels believed to have caused pollution in State waters.
[Assented to 17 December 1991]

Marine Pollution (Amendment) 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Marine Pollution (Amendment) Act 1991.

Commencement

2. This Act commences on a day to be appointed by proclamation.

Amendment of Marine Pollution Act 1987 No. 299

3. The Marine Pollution Act 1987 is amended as set out in Schedule 1.

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- (a) Section 52 (1):

Omit “is a charge”, insert instead “and the amount of any penalty that can be imposed under this Act against the owner or master of the ship in relation to the discharge are charges”.

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- (3) Sections 52A–52C:

After section 52, insert:

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52A. (1) A ship in State waters may be detained by a person authorised by the Board if the Board has reasonable cause to believe:

SCHEDULE 1—AMENDMENTS—*continued*

- (a) that a discharge to which this Act applies has occurred from the ship; and
 - (b) that, if the Board were to establish that the discharge had occurred from the ship, the Board could take proceedings to recover the costs and expenses incurred by it in taking action in relation to that discharge under section 46, 47 or 50; and
 - (c) that the ship will depart from State waters before the completion of the Board's investigation into the source of the discharge.
- (2) A ship that has been detained must be immediately released:
- (a) if security is provided in accordance with section 52B; or
 - (b) if proceedings are instituted in relation to the discharge and are discontinued; or
 - (c) if proceedings are instituted in relation to the discharge and are concluded, whether or not an appeal is pending, without any person being convicted or costs or expenses being awarded against any person; or
 - (d) if proceedings in relation to the discharge are concluded and all costs and expenses ordered to be paid and all penalties imposed have been paid; or
 - (e) if the Board has sought to recover costs and expenses incurred by it as a debt due and the amount has been paid; or
 - (f) if the Board forms the belief that the discharge did not occur from the ship; or
 - (g) if the Board determines for any other reason that the ship should be released.
- (3) Security may be required to be provided for the payment of:
- (a) any amount that might, in the opinion of the Board, be recoverable by the Board under section 46, 47 or 50 from the owner or master of the ship in relation to the discharge; and

Marine Pollution (Amendment) 1991

SCHEDULE 1—AMENDMENTS—*continued*

- (b) the maximum amount of penalties that can be imposed under this Act against the owner or master in relation to the discharge.

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52B. (1) This section applies where security is taken by the Board under section 52 or 52A.

(2) The security must be in a form acceptable to the Board.

(3) The amount available under the security must be applied only as follows:

- (a) in payment of any costs or expenses that have been ordered to be paid to the Board by the master or owner in the course of proceedings for an offence in respect of the discharge or that are recoverable under this Part against the master or owner as a debt due;
- (b) in payment of any penalty imposed by a court in the course of proceedings for an offence in respect of the discharge.

Departure of ships under detention

52C. (1) The master and the owner of a ship detained under this Part which departs State waters before it is released from detention are each guilty of an offence against this section.

Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in any other case).

(2) A person is not guilty of an offence under this section if the person can establish that he or she was not aware that the ship had been detained under this Part.

[*Minister's second reading speech made in—
Legislative Assembly on 13 November 1991
Legislative Council on 11 December 1991*]