

## 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*

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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.

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**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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