

1993

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PROTECTION OF THE SEA (OIL POLLUTION COMPENSATION FUND)
BILL 1993

PROTECTION OF THE SEA (IMPOSITION OF CONTRIBUTIONS TO OIL
POLLUTION COMPENSATION FUND - CUSTOMS) BILL 1993

PROTECTION OF THE SEA (IMPOSITION OF CONTRIBUTIONS TO OIL
POLLUTION COMPENSATION FUND - EXCISE) BILL 1993

PROTECTION OF THE SEA (IMPOSITION OF CONTRIBUTIONS TO OIL
POLLUTION COMPENSATION FUND - GENERAL) BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and
Communications, Senator the Hon. Bob Collins)



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Protection of the Sea (Oil Pollution Compensation Fund) Bill 1993

Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund - Customs) Bill 1993

Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund - Excise) Bill 1993

Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund - General) Bill 1993

GENERAL OUTLINE

The purpose of these four Bills is to give effect to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (the Fund Convention) and to Protocols of 1976 and 1992 amending the Fund Convention.

The Protection of the Sea (Oil Pollution Compensation Fund) Bill will require persons who receive in Australia or in a Territory of Australia by sea more than 150,000 tons of crude oil or fuel oil in a calendar year to contribute to the Fund established under the Fund Convention. The Bill distinguishes between two Funds - the 1971 Fund established by the Fund Convention as amended by the 1976 Protocol and the 1992 Fund established by the Fund Convention after it is further amended by the 1992 Protocol.

Both the 1971 Fund and the 1992 Fund will pay compensation for pollution damage caused by oil where the pollution resulted from an incident involving one or more ships. In addition, the 1971 Fund will indemnify shipowners for a part of their liability to pay compensation for oil pollution damage under the International Convention on Civil Liability for Oil Pollution Damage 1969 (the Civil Liability Convention) implemented in Australia by the *Protection of the Sea (Civil Liability) Act 1981*.

The Australian Maritime Safety Authority is required to provide information to the Director of the International Oil Pollution Compensation Fund (a UK-based organisation established to manage the compensation regime) about persons who receive crude oil or fuel oil in Australia by sea and the quantities received in order to determine the liability of those persons to make contributions to the Funds. Regulations may be made under the proposed Act to require persons who receive crude oil or fuel oil to provide

information and documentation to the Australian Maritime Safety Authority.

The other 3 Bills impose the contributions required to be made by the Protection of the Sea (Oil Pollution Compensation Fund) Bill

FINANCIAL IMPACT STATEMENT

The four Bills will have no effect on revenue of the Commonwealth and no significant effect on expenditure by the Commonwealth.

PROTECTION OF THE SEA (OIL POLLUTION COMPENSATION
FUND) BILL 1993

NOTES ON CLAUSES

CHAPTER 1 - PRELIMINARY

Clause 1 - Short title

This clause provides for the proposed Act to be cited as the *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993*.

Clause 2 - Commencement

Subclause 2(1) provides for the commencement of Chapter 1 (Preliminary), Chapter 2 (The 1971 Convention) and Chapter 4 (Regulations) on a date to be fixed by Proclamation. This must not be a day earlier than the day on which the 1971 Convention (that is, the original Convention including amendments to be made by the 1976 Protocol) enters into force.

Subclause 2(2) provides for the commencement of Part 3.1 on a date to be fixed by Proclamation. This must not be a day earlier than the day on which Australia's denunciation of the 1971 Convention takes effect. The effect of Part 3.1 is to repeal Chapter 2.

Subclause 3(3) provides for the commencement of Chapter 3 (The 1992 Convention), other than Part 3.1, on a date to be proclaimed. This must not be a date earlier than the day on which the 1992 Protocol enters into force.

The effect of the above commencement provisions is that Chapters 2 and 3 may operate concurrently for a period of time. This will allow the 1992 Convention to be phased in as provided for in Article 36 bis which is to be applied as part of the law of the Commonwealth by clause 31. Subclause 14(3) ensures that a person will not be required to make contributions for oil received under Chapter 2 if the person is required to make contributions under Chapter 3.

Clause 3 - Interpretation

This clause defines a number of terms for purposes of the proposed Act.

Clause 4 - Act to bind Crown

This clause provides that the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk

Island is to be bound by the proposed Act. The Crown is not liable to be prosecuted for an offence against, or arising out of, the proposed Act.

Claus 5 - Operation of Act

This clause provides that the proposed Act operates both within and outside Australia, and its operation extends to every external Territory of Australia.

CHAPTER 2 - THE 1971 CONVENTION

Chapter 2 applies to the 1971 Convention, that is, the original Convention as amended by the 1976 Protocol.

PART 2.1 - OUTLINE OF CHAPTER

Clause 6 - Simplified outline

This clause provides a simplified outline of Chapter 2 in the following terms:

the 1971 Fund (that is, the fund established by the 1971 Convention) is liable to pay compensation and indemnification for certain oil pollution damage;

certain persons who receive oil in Australian ports and terminals are liable to contribute to the 1971 Fund;

the Australian Maritime Safety Authority is empowered to collect information about contributors and give information to the 1971 Fund.

The clause also has a diagram showing the flow of money as provided for in Chapter 2.

PART 2.2 - INTERPRETATION

Clause 7 - Interpretation

This clause provides that, unless the contrary intention appears, terms used in both Chapter 2 and the 1971 Convention have the same meaning in Chapter 2 as they have in the 1971 Convention.

PART 2.3 - LEGAL RECOGNITION OF THE 1971 FUND

Clause 8 - 1971 Fund is a legal person

This clause provides that, for purposes of Chapter 2, the 1971 Fund has the same legal personality as a company incorporated under the Corporations Law. In particular, the 1971 Fund may sue and be sued.

Clause 9 - Director is the legal representative of the 1971 Fund

This clause provides that, for purposes of Chapter 2, the Director of the 1971 Fund is the legal representative of the 1971 Fund.

PART 2.4 - COMPENSATION AND INDEMNIFICATION

Clause 10 - Certain provisions of the 1971 Convention to have the force of law

Subclause 10(1) provides that the following Articles of the 1971 Convention have the force of law as part of the law of the Commonwealth:

Article 1: This Article defines a number of terms for purposes of the 1971 Convention;

Article 3: This Article provides that the 1971 Convention applies only to pollution damage in the territory of a party to the Convention (a Contracting State) and to preventive measures taken to prevent or minimise such damage. Indemnification of shipowners under the Convention shall apply only in respect of such damage and preventive measures.

Article 4: This Article provides that the 1971 Fund will pay compensation to any person suffering pollution damage if that person is unable to obtain full and adequate compensation under the Civil Liability Convention. Reasonable expenses incurred by a ship owner to prevent or minimise pollution damage shall be treated as pollution damage for purposes of compensating the owner. The 1971 Fund will incur no obligation if the pollution damage resulted from an act of war or the oil escaped from a warship or from a Government-owned ship engaged in non-commercial activities. In addition, the 1971 Fund will incur no obligation if the damage did not result from an incident involving one or more ships.

The 1971 Fund may be exonerated from its obligation to pay compensation if it proves the pollution damage occurred as a result of an intentional act or omission of the person who suffered the damage or as a result of the negligence of that person. The total amount payable by the 1971 Fund in respect of a single incident is limited so that amount and the amount payable under the Civil Liability Convention shall not exceed "30 million units of account or 450 million monetary units" (approximately 60 million Australian dollars). The Assembly of the 1971 Fund may change that amount to apply to future incidents but it may not be decreased below its original value. The amount was doubled by the Assembly in 1986.

The 1971 Fund shall, at the request of a Contracting State, use its good offices to assist the State in obtaining personnel, material and services necessary to enable the State to take measures to prevent or mitigate

pollution damage resulting from an incident in respect of which the 1971 Fund may be required to pay compensation.

Article 5: This Article sets out the extent of the liability of the 1971 Fund under the 1971 Convention to indemnify a ship owner and the owner's guarantor from their liability under the Civil Liability Convention. The 1971 Fund may be exonerated wholly or partly from payment to the ship's owner or the owner's guarantor if the ship did not comply with certain specified requirements and the incident or damage was caused wholly or partly by that non-compliance.

Article 6: This Article provides that rights to compensation or indemnification are extinguished unless action is taken within a specified time.

Paragraphs 1, 3, 5 and 6 of Article 7: These paragraphs deal with the jurisdiction of the courts in hearing an action against the 1971 Fund for compensation or indemnification.

Article 9: This Article provides that, where compensation is paid by the 1971 Fund in respect of pollution damage, the 1971 Fund will acquire the rights that the person so compensated may have against the ship owner or the owner's guarantor.

Subclause 10(2) provides that paragraph 7 of Article 4, which enables a Contracting State to request the 1971 Fund to use its good offices to secure personnel, services and materials to take measures to prevent or mitigate pollution damage, may be read as meaning a request by the Australian Maritime Safety Authority.

Clause 11: Claims for compensation or indemnification

Subclause 11(1) provides that the provisions of clause 11 apply to actions against the 1971 Fund for compensation or indemnification.

Subclause 11(2) provides that such an action may be brought in the Federal Court or in the Supreme Court of a State or Territory. By virtue of section 15C of the *Acts Interpretation Act 1901*, the Supreme Courts of the States are vested with federal jurisdiction and jurisdiction, to the extent the Constitution permits, is conferred on the Supreme Courts of the Territories, to hear and determine proceedings under clause 11.

Subclauses 11(3) to (6) make provision in relation to the transfer of proceedings under clause 11 from one Court to another.

Clause 12: 1971 Fund may intervene in proceedings under the *Protection of the Sea (Civil Liability) Act 1981*

This clause provides that the 1971 Fund may intervene in proceedings for compensation arising under Part II of the

Protection of the Sea (Civil Liability) Act 1981. That section provides for the hearing of claims for compensation under that Act. This provision is included in the Bill because the liability of the 1971 Fund generally arises in relation to compensation that cannot be recovered under the Civil Liability Convention which is implemented by that Act.

Clause 13: Regulations to give effect to Article 8 of the 1971 Convention

This clause provides that regulations may be made to give effect to Article 8 of the 1971 Convention. That Article provides that, where judgment is given against the 1971 Fund, that judgment shall be recognised in each Contracting State when the decision is no longer subject to ordinary forms of review, that is, all appeals against the decision have been exhausted or the time for commencing an appeal has expired.

PART 2.5 - CONTRIBUTIONS TO THE 1971 FUND

Division 1 - Liability to make contributions

Clause 14: Liability to contribute to the 1971 Fund

Subclause 14(1) provides that Article 10 (other than subparagraph 2(b)) has the force of law as part of the law of the Commonwealth. That Article provides that persons who have received by sea more than 150,000 tons of contributing oil in a calendar year in any particular Contracting State shall make contributions to the 1971 Fund. Where associated persons import in total more than 150,000 tons, each shall be required to contribute to the 1971 Fund in proportion to the amount of oil received.

Subclause 14(2) provides that a person is not required to contribute to the 1971 Fund unless the contributions are imposed by an Act other than this proposed Act. It is the purpose of the proposed *Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund - Customs) Act 1993*, the proposed *Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund - Excise) Act 1993* and the proposed *Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund - General) Act 1993* to impose such contributions.

Subclause 14(3) provides that a person is not liable to contribute to the 1971 Fund because of Part 2.5 if that person is required to contribute to the 1992 Fund because of Part 3.6.

Subclause 14(4) clarifies the meaning of the term "associated person" as used in Article 10 in its application as part of the law of the Commonwealth.

Subclause 14(5) provides that a contribution required to be paid because of Part 2.5 is payable to the 1971 Fund as agent of the Commonwealth.

Clause 15: Amount of contribution

This clause applies paragraphs 1 and 2 of Article 11 and paragraphs 2 and 3 of Article 12 of the 1971 Convention as part of the law of the Commonwealth. Article 11 sets out the way the initial contribution will be determined; Article 12 sets out how subsequent annual contributions will be determined.

Clause 16: When initial contributions are due and payable

This clause provides that initial contributions to the 1971 Fund will become due 3 months after the 1971 Convention enters into force for Australia.

Clause 17: When annual contributions are due and payable

This clause provides that annual contributions to the 1971 Fund become due and payable on a day specified in a notice from the Director of the 1971 Fund.

Division 2 - Recovery of contributions etc.

Clause 18: Late payment penalty

This clause provides for the payment of a late payment penalty at a rate determined by the Assembly of the 1971 Fund. A late payment penalty is payable to the 1971 Fund on behalf of the Commonwealth.

Clause 19. 1971 Fund to be paid amounts equal to amounts of contributions

This clause provides that amounts received, or purporting to be received, as contributions to the 1971 Fund or as late penalty payments must be paid into the Consolidated Revenue Fund. Where an amount is paid into the Consolidated Revenue Fund, an equivalent amount must be paid to the 1971 Fund. The Consolidated Revenue Fund is appropriated for the purpose of such payments.

Clause 19 also provides that, if the Commonwealth becomes liable to refund some money that has been paid to the 1971 Fund from the Consolidated Revenue Fund, the 1971 Fund must pay to the Commonwealth an amount equal to that amount.

Clause 20: Recovery of contributions and late payment penalty

Subclause 20(1) provides that the 1971 Fund may recover, on behalf of the Commonwealth as debts due to the Commonwealth, any amounts of unpaid contributions and any late penalty payments.

Subclause 20(2) provides that, for the purpose of an action to recover unpaid contributions or late payment penalties, liability to costs is to be determined as if the 1971 Fund and not the Commonwealth were a party to the action or proceedings.

Subclause 20(3) provides that the 1971 Fund is not liable to recover costs or other expenses from the Commonwealth incurred by the 1971 Fund in recovering contributions or late payment penalties.

Clause 21: Regulations relating to recovery of contributions etc.

Subclause 21(1) provides that regulations may be made relating to methods for the payment of contributions and late payment penalties to the 1971 Fund and in relation to the refund of contributions or overpayment of contributions. By virtue of section 37A of the Audit Act 1901, the Consolidated Revenue Fund is appropriated to the extent necessary to make any necessary refund of contributions or of overpayment of contributions.

Subclause 21(2) provides that the regulations may provide for the payment of contributions and late penalty payments by electronic funds transfer.

Division 3 - Record-keeping and returns etc.

Clause 22: Authority to inform 1971 Fund

This clause applies Article 15 of the 1971 Convention as part of the law of the Commonwealth. By virtue of that Article and of subclause 22(2), the Australian Maritime Safety Authority shall be required to maintain, and keep up to date, information about persons in Australia who receive contributing oil and the quantities received. The Authority will be required to provide that information to the Director of the 1971 Fund.

Subclause 22(3) provides that the Authority may provide such additional information to the 1971 Fund as it thinks appropriate.

Clause 23: Record-keeping and returns etc.

Subclause 23(1) provides that regulations may be made requiring a person:

- (a) to keep and maintain records that are relevant to ascertaining liability to make contributions to the 1971 Fund; and
- (b) to give information and returns to the Australian Maritime Safety Authority where the information and returns are relevant to ascertaining liability to make contributions to the 1971 Fund; and

(c) to produce documents to the Australian Maritime Safety Authority or to make and give copies of documents to the Authority where the documents are relevant to ascertaining liability to make contributions to the 1971 Fund.

Subclause 23(2) provides that the regulations may provide that information or returns given to the Australian Maritime Safety Authority must be verified by statutory declaration.

Subclause 23(3) provides that a person is required to be paid reasonable compensation for making copies of documents that are required by the regulations to be provided to the Australian Maritime Safety Authority. This is to comply with the requirements of paragraph 51(xxxi) of the Constitution which provides that the Parliament may make laws for the acquisition of property on just terms for any purpose in respect of which the Parliament has the power to make laws.

Subclause 23(4) relates to self-incrimination. The fact that the giving of information or a return or the producing of a document or copy of a document in accordance with the regulations might tend to incriminate a person or expose the person to a penalty does not excuse the person from the requirement to give the information or return or to produce the document or copy. However, any information so obtained is not admissible in evidence against the person in proceedings for the recovery of a late payment penalty or in criminal proceedings except proceedings relating to failure to give required information or returns or proceedings relating to false information or returns.

Clause 24: Failure to give information or returns

This clause provides that a person must not refuse or fail to give required information or returns to the Australian Maritime Safety Authority.

Clause 25: False information or returns

This clause provides that a person must not give to the Australian Maritime Safety Authority information or a return the person knows to be false or misleading in a material particular.

CHAPTER 3 - THE 1992 CONVENTION

PART 3.1 - REPEAL OF CHAPTER 2

Clause 26: Repeal of Chapter 2

This clause repeals Chapter 2 and provides for the making of transitional or savings provisions in regulations as are necessary or convenient as a result of that repeal.

PART 3.2 - OUTLINE OF CHAPTER

The following provisions of Chapter 3 apply to the 1992 Convention, that is, the original Convention as amended by the 1976 Protocol and by the 1992 Protocol.

Clause 27 - Simplified outline

This clause provides a simplified outline of Chapter 3 in the following terms:

- the 1992 Fund (that is, the Fund established by the 1992 Convention) is liable to pay compensation for certain oil pollution damage;
- certain persons who receive oil in Australian ports and terminals are liable to contribute to the 1992 Fund;
- the Australian Maritime Safety Authority is empowered to collect information about contributors and give the information to the 1992 Fund.

The clause also has a diagram showing the flow of money as provided for in Chapter 3.

PART 3.3 - INTERPRETATION

Clause 28 - Interpretation

This clause provides that, unless the contrary intention appears, terms used in both Chapter 3 and the 1992 Convention have the same meaning in Chapter 3 as they have in the 1992 Convention.

PART 3.4 - LEGAL RECOGNITION OF THE 1992 FUND

Clause 29 - 1992 Fund is a legal person

This clause provides that, for purposes of Chapter 3, the 1992 Fund has the same legal personality as a company incorporated under the Corporations Law. In particular, the 1992 Fund may sue and be sued.

Clause 30 - Director is the legal representative of the 1992 Fund

This clause provides that, for purposes of Chapter 3, the Director of the 1992 Fund is the legal representative of the 1992 Fund.

PART 3.5 - COMPENSATION

Clause 31 - Certain provisions of the 1992 Convention to have the force of law

Subclause 31(1) provides that the following Articles of the 1992 Convention have the force of law as part of the law of the Commonwealth:

Article 1: This Article defines a number of terms for purposes of the 1992 Convention;

Article 3: This Article provides that the 1992 Convention applies to pollution damage in the territory, including the territorial sea, of a Contracting State and to preventive measures taken to prevent or minimise such damage. The 1992 Convention also applies to pollution damage in the exclusive economic zone of a Contracting State or a similar area established by the State.

Article 4: This Article provides that the 1992 Fund will pay compensation to any person suffering pollution if that person is unable to obtain full and adequate compensation under the Civil Liability Convention. Reasonable expenses incurred by a ship owner to prevent or minimise pollution damage shall be treated as pollution damage for purposes of compensating the owner. The 1992 Fund will incur no obligation if the pollution damage resulted from an act of war or the oil escaped from a warship or from a Government-owned ship engaged in non-commercial activities. In addition, the 1992 Fund will incur no obligation if the damage did not result from an incident involving one or more ships.

The 1992 Fund may be exonerated from its obligation to pay compensation if it proves the pollution damage occurred as a result of an intentional act or omission of the person who suffered the damage or as a result of the negligence of that person. The total amount payable by the 1992 Fund in respect of a single incident is limited so that amount and the amount payable under the Civil Liability Convention shall not exceed "135 million units of account" (approximately 400 million Australian dollars). The Assembly of the Fund may change that amount to apply to future incidents but it may not be decreased below its original value.

The Fund shall, at the request of a Contracting State, use its good offices to assist the State in obtaining personnel, material and services necessary to enable the State to take measures to prevent or mitigate pollution damage resulting from an incident in respect of which the 1992 Fund may be required to pay compensation.

Article 6: This Article provides that rights to compensation are extinguished unless action is taken within a specified time.

Paragraphs 1, 3, 5 and 6 of Article 7: These paragraphs deal with the jurisdiction of the courts in hearing an action against the 1992 Fund for compensation.

Article 9: This Article provides that, where compensation is paid by the 1992 Fund in respect of pollution damage, the Fund will acquire the rights that the person so compensated may have against the ship owner or the owner's guarantor.

Article 35: This Article provides that claims for compensation arising from incidents occurring after the

1992 Protocol enters into force may not be brought against the 1992 Fund earlier than 120 days after that date. This does not preclude a claim being brought against the 1992 Fund in relation to such incidents; rather, it means that the claim may not be brought against the 1992 until a period of time has elapsed.

Article 36 bis: This Article sets out transitional provisions which are to have effect during the period during which both the 1971 Convention and the 1992 Convention are to apply.

Paragraph (e) of Article 36 quater: By virtue of this paragraph, the 1992 Fund will take on the rights, obligations and assets of the 1971 Fund, if so decided by the Assembly of the 1971 Fund.

Article 36 quinquies: This Article is an application provision to provide that references to Contracting States in Articles of the original Convention that have not been amended mean, for purposes of the 1992 Convention, Contracting States to the 1992 Protocol.

Subclause 31(2) provides that paragraph 7 of Article 4, which enables a Contracting State to request the 1992 Fund to use its good offices to secure personnel, services and materials to take measures to prevent or mitigate pollution damage, may be read as meaning a request by the Australian Maritime Safety Authority.

Clause 32: Claims for compensation

Subclause 32(1) provides that the provisions of clause 32 apply to actions against the 1992 Fund for compensation.

Subclause 32(2) provides that such an action may be brought in the Federal Court or in the Supreme Court of a State or Territory. By virtue of section 15C of the *Acts Interpretation Act 1901*, the Supreme Courts of the States are vested with federal jurisdiction and jurisdiction, to the extent the Constitution permits, is conferred on the Supreme Courts of the Territories, to hear and determine proceedings under clause 32.

Subclauses 32(3) to (6) make provision in relation to the transfer of proceedings under clause 32 from one Court to another.

Clause 33: 1992 Fund may intervene in proceedings under the *Protection of the Sea (Civil Liability) Act 1981*

This clause provides that the 1992 Fund may intervene in proceedings brought under section 9 of the *Protection of the Sea (Civil Liability) Act 1981*. That section provides for the hearing of claims for compensation under that Act. This provision is included because the liability of the Fund generally arises in relation to compensation that cannot be

recovered under the Civil Liability Convention which is implemented by that Act.

Clause 34: Regulations to give effect to Article 8 of the 1992 Convention

This clause provides that regulations may be made to give effect to Article 8 of the 1992 Convention. That Article provides that, where judgment is given against the 1992 Fund, that judgement shall be recognised in each Contracting State when the decision is no longer subject to ordinary forms of review, that is, all appeals against the decision have been exhausted or the time for commencing an appeal has expired.

PART 3.6 - CONTRIBUTIONS TO THE 1992 FUND

Division 1 - Liability to make contributions

Clause 35: Liability to contribute to the 1992 Fund

Subclause 35(1) provides that Article 10 (other than subparagraph 2(b)) has the force of law as part of the law of Australia. That Article provides that persons who have received by sea more than 150,000 tons of contributing oil in a calendar year in any particular Contracting State shall make contributions to the 1992 Fund. Where associated persons import in total more than 150,000 tons, each shall be required to contribute to the 1992 Fund in proportion to the amount of oil received.

Subclause 35(2) provides that a person is not required to contribute to the 1992 Fund unless the contributions are imposed by an Act other than this proposed Act. It is the purpose of the proposed *Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund - Customs) Act 1993*, the proposed *Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund - Excise) Act 1993* and the proposed *Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund - General) Act 1993* to impose such contributions.

Subclause 35(3) clarifies the meaning of the term "associated person" as used in Article 10 in its application as part of the law of the Commonwealth.

Subclause 35(4) provides that a contribution required to be paid because of Part 3.6 is payable to the 1992 Fund as agent of the Commonwealth.

Clause 36: Amount of contribution

This clause applies paragraphs 2 and 3 of Article 12 of the 1992 Convention as part of the law of the Commonwealth. Article 12 sets out how annual contributions will be determined.

Clause 37: When contributions are due and payable

This clause provides that contributions required to be paid to the 1992 Fund become due and payable on a day ascertained under paragraph 4 of Article 12 of the 1992 Convention. By virtue of that paragraph, the Assembly of the 1992 Fund determines the portion of annual contributions that are payable immediately; the remaining part of the contributions are payable upon notification by the Director of the 1992 Fund.

Clause 38: Transitional

This clause applies Article 36 ter as part of the law of the Commonwealth. That Article provides that the total contributions payable in respect of contributing oil received in a single Contracting State during a calendar year shall not exceed 27.5% of the total contributions to the 1992 Fund in that year. This provision will apply only until the total amount of contributing oil in a single year received in all Contracting States in a calendar year has reached 750 million tons or until a period of 5 years from the date of entry into force internationally of the 1992 Protocol has elapsed.

Division 2 - Recovery of contributions etc.

Clause 39: Late payment penalty

This clause provides for the payment of a late payment penalty to the 1992 Fund at a rate determined by the Assembly of the 1992 Fund. A late payment penalty is payable to the 1992 Fund on behalf of the Commonwealth.

Clause 40: 1992 Fund to be paid amounts equal to amounts of contributions

This clause provides that amounts received, or purporting to be received, as contributions to the 1992 Fund or as late penalty payments must be paid into the Consolidated Revenue Fund. Where an amount is paid into the Consolidated Revenue Fund, an equivalent amount must be paid to the 1992 Fund. The Consolidated Revenue Fund is appropriated for the purpose of such payments.

Clause 40 also provides that, if the Commonwealth becomes liable to refund some money that has been paid to the 1992 Fund from the Consolidated Revenue Fund, the 1992 Fund must pay to the Commonwealth an amount equal to that amount.

Clause 41: Recovery of contributions and late payment penalty

Subclause 41(1) provides that the 1992 Fund may recover, on behalf of the Commonwealth as debts due to the Commonwealth, any amounts of unpaid contributions and any late penalty payments.

Subclause 41(2) provides that for the purpose of an action to recover unpaid contributions or late payment penalties, liability to costs is to be determined as if the 1992 Fund, and not the Commonwealth, were a party to the action or proceedings.

Subclause 41(3) provides that the 1992 Fund is not liable to recover costs or other expenses from the Commonwealth incurred in recovering contributions or late payment penalties.

Clause 42: Regulations relating to recovery of contributions etc.

Subclause 42(1) provides that regulations may be made relating to methods for the payment of contributions and late payment penalties to the 1992 Fund and in relation to the refund of contributions or overpayment of contributions. By virtue of section 37A of the *Audit Act 1901*, the Consolidated Revenue Fund is appropriated to the extent necessary to make any necessary refund of contributions or of overpayment of contributions.

Subclause 42(2) provides that the regulations may provide for the payment of contributions and late penalty payments by electronic funds transfer.

Division 3 - Record-keeping and returns etc.

Clause 43: Authority to inform 1992 Fund

This clause applies Article 15 of the 1992 Convention as part of the law of the Commonwealth. By virtue of that Article and of subclause 43(2), the Australian Maritime Safety Authority shall be required to maintain, and keep up to date, information about persons in Australia who receive contributing oil and the quantities received. The Authority will be required to provide that information to the Director of the 1992 Fund.

Subclause 43(3) provides that the Authority may provide such additional information to the 1992 Fund as it thinks appropriate.

Clause 44: Record-keeping and returns etc.

Subclause 44(1) provides that regulations may be made requiring a person:

- (a) to keep and maintain records that are relevant to ascertaining liability to make contributions to the 1992 Fund; and
- (b) to give information and returns to the Australian Maritime Safety Authority where the information and returns are relevant to ascertaining liability to make contributions to the 1992 Fund; and

(c) to produce documents to the Australian Maritime Safety Authority or to make and give copies of documents to the Authority where the documents are relevant to ascertaining liability to make contributions to the 1992 Fund.

Subclause 44(2) provides that the regulations may provide that information or returns given to the Australian Maritime Safety Authority must be verified by statutory declaration.

Subclause 44(3) provides that a person is required to be paid reasonable compensation for making copies of documents that are required by the regulations to be provided to the Australian Maritime Safety Authority. This is to comply with the requirements of paragraph 51(xxxi) of the Constitution which provides that the Parliament may make laws for the acquisition of property on just terms for any purpose in respect of which the Parliament has the power to make laws.

Subclause 44(4) relates to self-incrimination. The fact that the giving of information or a return or the producing of a document or copy of a document in accordance with the regulations might tend to incriminate a person or expose the person to a penalty does not excuse the person from the requirement to give the information or return or to produce the document or copy. However, any information so obtained is not admissible in evidence against the person in proceedings for the recovery of a late payment penalty or in criminal proceedings except proceedings relating to failure to give required information or returns or proceedings relating to false information or returns.

Clause 45: Failure to give information or returns

This clause provides that a person must not refuse or fail to give required information or returns to the Australian Maritime Safety Authority.

Clause 46: False information or returns

This clause provides that a person must not give to the Australian Maritime Safety Authority information or a return the person knows to be false or misleading in a material particular.

CHAPTER 4 - REGULATIONS

Clause 47: Regulations

This clause provides that the Governor-General may make regulations under the proposed Act. The regulations may prescribe penalties not exceeding 10 penalty units for offences against the proposed Act.

SCHEDULE 1

Schedule 1 sets out the text of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971.

SCHEDULE 2

Schedule 2 sets out the text of the Protocol of 1976 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971.

SCHEDULE 3

Schedule 3 sets out the text of the Protocol of 1992 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971.

**PROTECTION OF THE SEA (IMPOSITION OF CONTRIBUTIONS
TO OIL POLLUTION COMPENSATION FUND - CUSTOMS) BILL
1993**

NOTES ON CLAUSES

Clause 1: Short title

This clause provides for the proposed Act to be cited as the *Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund - Customs) Act 1993*.

Clause 2 - Commencement

This clause provides for the commencement of the proposed Act on the commencement of Chapter 1 of the proposed *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993*.

**Clause 3: Application of Protection of the Sea (Oil
Pollution Compensation Fund) Act 1993**

This clause provides that sections 4 and 5 of the proposed *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993* apply to this proposed Act. The proposed section 4 provides that the proposed Act binds the Crown and the proposed section 5 provides that the proposed Act applies both within and outside Australia and extends to every external Territory.

Clause 4: Imposition of contributions

This clause imposes contributions payable under the proposed *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993* insofar as those contributions are duties of customs, that is, the contributions are imposed on crude oil or fuel oil imported into Australia or a Territory of Australia from outside Australia or a Territory of Australia.

Clause 5: Act does not impose tax on property of a State

Subclause 5(1) provides that the proposed Act does not apply to property of any kind belonging to a State.

Subclause 5(2) provides that the term "property of any kind belonging to a State" has the same meaning as in section 114 of the Constitution. Section 114 provides, in part, that the Commonwealth shall not impose any tax on property of any kind belonging to a State.

**PROTECTION OF THE SEA (IMPOSITION OF CONTRIBUTIONS
TO OIL POLLUTION COMPENSATION FUND - EXCISE) BILL
1993**

NOTES ON CLAUSES

Clause 1: Short title

This clause provides for the proposed Act to be cited as the *Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund - Excise) Act 1993*.

Clause 2 - Commencement

This clause provides for the commencement of the proposed Act on the commencement of Chapter 1 of the proposed *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993*.

**Clause 3: Application of Protection of the Sea (Oil
Pollution Compensation Fund) Act 1993**

This clause provides that sections 4 and 5 of the proposed *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993* apply to this proposed Act. The proposed section 4 provides that the proposed Act binds the Crown and the proposed section 5 provides that the proposed Act applies both within and outside Australia and extends to every external Territory.

Clause 4: Imposition of contributions

This clause imposes contributions payable under the proposed *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993* insofar as those contributions are duties of excise, that is, the contributions are imposed on crude oil or fuel oil carried from one part of Australia or a Territory of Australia to another part of Australia or a Territory of Australia.

Clause 5: Act does not impose tax on property of a State

Subclause 5(1) provides that the proposed Act does not apply to property of any kind belonging to a State.

Subclause 5(2) provides that the term "property of any kind belonging to a State" has the same meaning as in section 114 of the Constitution. Section 114 provides, in part, that the Commonwealth shall not impose any tax on property of any kind belonging to a State.

PROTECTION OF THE SEA (IMPOSITION OF CONTRIBUTIONS
TO OIL POLLUTION COMPENSATION FUND - GENERAL) BILL
1993

NOTES ON CLAUSES

Clause 1: Short title

This clause provides for the proposed Act to be cited as the *Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund - General) Act 1993*.

Clause 2 - Commencement

This clause provides for the commencement of the proposed Act on the commencement of Chapter 1 of the proposed *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993*.

Clause 3: Application of *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993*

This clause provides that sections 4 and 5 of the proposed *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993* apply to this proposed Act. The proposed section 4 provides that the proposed Act binds the Crown and the proposed section 5 provides that the proposed Act applies both within and outside Australia and extends to every external Territory.

Clause 4: Imposition of contributions

This clause imposes contributions payable under the proposed *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993* insofar as those contributions are neither duties of customs nor duties of excise. This is to cover the situation where a contribution appears to be a duty of customs or a duty of excise but a Court rules that it is neither.

Clause 5: Act does not impose tax on property of a State

Subclause 5(1) provides that the proposed Act does not apply to property of any kind belonging to a State.

Subclause 5(2) provides that the term "property of any kind belonging to a State" has the same meaning as in section 114 of the Constitution. Section 114 provides, in part, that the Commonwealth shall not impose any tax on property of any kind belonging to a State.

