

Explanatory Statement

MARINE POLLUTION LEGISLATION AMENDMENT BILL 2019

SERIAL NO. 109

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

MINISTER FOR ENVIRONMENT AND NATURAL RESOURCES

EXPLANATORY STATEMENT

GENERAL OUTLINE

The *Marine Pollution Legislation Amendment Bill 2019* (the Bill) amends the *Marine Pollution Act 1999* (the Act) and *Marine Pollution Regulations 2003* (the Regulations).

The purpose of this Bill is to improve the administrative operation of the legislation and opportunities to pursue offences against ships suspected of causing marine pollution in Territory coastal waters.

NOTES ON CLAUSES

Part 1. Preliminary matters

Clause 1. Short title

This is a formal clause which provides for the citation of the Act. When passed, the Act may be referred to as the *Marine Pollution Legislation Amendment Act 2019*.

Clause 2. Commencement

This clause provides for the commencement of the Bill. The Bill will commence after the day on which the Administrator gives assent to the Act.

Part 2. Amendment of Marine Pollution Act 1999

Clause 3. Act amended

This is a formal clause that identifies that the *Marine Pollution Act 1999* is amended by Part 2 of this Bill.

Clause 4. Section 6 amended (Interpretation)

This clause amends the definition of **owner**, *in relation to a ship* by removing the definition provided by the section and identifying that the reader should refer to section 8A, a new section inserted by clause 5 that provides a new *Meaning of owner*.

This clause introduces the new term **approved form** for the purposes of new section 98A that is inserted in clause 11. The term will now be used throughout the legislation as the Bill provides a new power for the Chief Executive Officer (CEO) to approve forms for the purposes of the Act.

This clause also inserts a standard Note at the end of the section that refers readers of the Act to the *Interpretation Act 1978* for additional definitions and meanings that may be relevant, and updates the an obsolete citation of the obsolete to Penalties Act 1999 with a reference to the current Penalty Units Act 2009.

Clause 5. Section 8 replaced

This clause replaces section 8 to provide a new **Meaning of agent**, and to insert new section 8A, **Meaning of owner**.

The meaning of **agent** in section 8 is amended to provide clarity and more realistic reflection of the types of activities a person is likely to perform as a ship owner's agent; remove any geographical limitations on a person's status as a ship owner's agent as a result of the location of the ship; and provides information requirements on the ship owner and a ship owner's agent in instances when they advise the CEO that a person, or the person, is no longer the ship owner's agent.

Subclause 1 steps out in more detail the types of activities a person can perform on behalf of the owner for the person to be classified as an agent.

Subclause 2 clarifies that a person who undertakes any of the activities in subclause 1 and therefore is an agent, undertakes those activities for a ship that is coming to into the Territory, in the Territory or leaving the Territory. This amendment clarifies the nexus between the operation of the law and the Territory.

Subclause 3 identifies that a ship owner, or the person who is the ship owner's agent, may provide written notice to the CEO that a person is no longer the ship's agent.

Subclause 4 requires that in instances when a ship owner gives notice to the CEO, the notice must be in the approved form, and specify the person who is now appointed as the ship owner's agent.

Subclause 5 requires that in instances when a person gives notice to the CEO, the notice must be in the approved form, provide evidence that includes an effective date that the person is not the agent, and if known to the person, identify the new ship owner's agent.

The amendments clarify the functions of an agent and remove the requirement for a ship to be in Territory coastal waters for a person to be classified as an owner's agent. The amendments make it clear that a ship's physical location does not matter to the performance of the activities or services of an agent – what matters is that the activities or services are performed for a ship that is, will be, or was, in Territory waters.

The amendments also allow for both the owner of the ship and the agent to advise the CEO that a person, or the person, is no longer the agent of the ship, provided specified information is provided in the approved form.

New section 8A Meaning of **owner** is inserted to support the removal of the definition of *owner, in relation to a ship* from section 6 *Interpretation* as provided in clause 4.

The meaning of *owner, in relation to a ship* amends the structure of the definition to remove ambiguity about a person's functions to clearly identify the circumstances when a person, acting in a specific capacity and exerting some level of power and control of the ship, will be considered an owner for the purpose of the Act. The amendments provide for the Act to account for complicated ownership and control structures that can exist for ships by reflecting the multiple types of functions a person may perform that will result in the person being in control, or be exerting a level of power over the ship, and should therefore be classed as an owner of the ship for the purposes of the Act.

Clause 6. Section 41 amended (Waste management plans, garbage record book, signage)

This clause amends subsection 41(1) to reflect the new power in the Act for the CEO to approve forms for the purposes of the Act. Subsection (1) refers to placards that are prescribed in the regulations. The clause removes reference to the prescribed placards while identifying that the placards should be in the approved form. This will allow the CEO to maintain the currency of the requirements for placards consistent with changes to the International Convention for the Prevention of Pollution from Ships (MARPOL).

Clause 7. Section 50 amended (Duty to report certain incidents)

This clause provides amendments to reflect more contemporary drafting practices and complement new section 98A by amending subsection (3) to reflect the new provision of approved forms.

Clause 8. Section 66 amended (Procedure after detention of ship)

This clause amends the section to reflect more contemporary drafting practices and complement new section 98A by reflecting the new provision of approved forms.

Clause 9. Section 92 replaced

This clause repeals and replaces the existing section 92 which identifies when a prosecution can be commenced under the Act.

The clause is providing powers to allow legal proceedings under the Act to commence at any point in time, regardless of how much time has passed since the alleged offence took place. This will facilitate prosecutions of marine pollution incidents in Territory coastal waters that require significant investigations and time to prepare legal proceedings given the complex nature of maritime law and the convoluted ownership structures common of foreign owned ships that move through multiple jurisdictions.

Clause 10. Section 97 amended (Service of documents)

This clause is providing improvements to the manner documents may be legally served for the purposes of the Act. The clause is designed to ensure that documents can be served on the ship owner either directly, or through the ship's master or ship owner's agent, even if the persons are previous owners or previous agents.

Subclause 1 omits and replaces subsection 97(2) to clarify that a document can be served on the ship's owner or owner's agent, past or present, not just because there is no master or apparently no master, but because the document cannot be served on the ship's master. This amendment is made to address instances when the ship, and therefore the ship's master, have left port and it is therefore not feasible to serve documents on the ship's

master. The subclause also complements the other amendments to the section by identifying that documents may be served on current and previous ship owners, or owner's agents.

Subclause 2 amends subsection 97(3)(a) to identify that documents can be served on the owner of the ship, including a previous owner of the ship. This amendment is designed to ensure that an alleged offender who is a previous owner of the ship, including a foreign owner, can still be served documents should the occasion arise when the foreign owner of the ship sells the ship before the documents can be served. This amendment is intended to allow the service of documents on a person who is the owner of the ship at the time of an alleged offence. It addresses circumstances where ships are sold or traded in order to avoid legal proceedings.

Subclause 3 amends subsection 97(3)(c) to identify that documents can be served on an owner's agent, including a previous agent of an owner of the ship. This amendment is also designed to ensure that a person who is an owner's agent at the time of an alleged offence can be served documents in order to accommodate circumstances where a current agent of the owner cannot be located, or there is no current agent. This may be because there has not been a need for the ship owner to appoint a new agent in the Territory as the ship has not been in a Territory port to require the functions of an owner's agent, or an owner may be trying to avoid service through their agent by failing to provide details of the person who is their current agent.

Subclause 4 is a new clause defining 'previous owner' and 'previous agent' to provide clarity regarding service on previous owners when the previous owners may have had some kind of responsibility at the time of an alleged offence. It supports subclause 2 and 3 by clarifying and strengthening the service provisions and who is considered a previous owner or previous owner's agent for the purposes of service.

Clause 11. Section 98A (inserted)

This clause inserts new section 98A **Approved forms**. The clause provides powers in the Act for the CEO to approve forms for the purposes of the Act. This clause is complemented by clause 4 that inserts an interpretation for the term *approved form*.

Part 3. Amendment of Marine Pollution Regulations 2003

Clause 12. Regulations amended

This is a formal clause that identifies that the Marine Pollution Regulations 2003 is amended by Part 3 of this Bill.

Clause 13. Regulation 28 amended (Ships to display placards)

This clause omits and replaces sub-regulation 28(2). The new sub-regulation (2) identifies that placards referred to sub-regulation 28(1) are to be in the approved form.

The clause complements clause 6 and clause 15 that identify that prescribed matters will now be in the approved forms and repeal the related schedules included in the Regulations respectively.

This will allow the CEO to maintain the currency of the requirements for placards consistent with changes to the International Convention for the Prevention of Pollution from Ships (MARPOL).

Clause 14. Regulation 37 amended (Notification of reportable incident)

This clause improves and clarifies reporting requirements for operators of ships.

Subclause 1 amends sub-regulation 37(3)(a) by omitting the Northern Territory Environment Protection Authority (NT EPA) and inserting the Chief Executive Officer. This amendment reflects that incidents that require reporting under the marine pollution legislation should be reported to the CEO of the department responsible for administering the marine pollution legislation. The CEO is the responsible officer under the Act, not the NT EPA.

Subclause 2 omits sub-regulations 37(3) (c), (d), and (e) to reduce the number of authority choices available to an operator to report reportable incidents to. A reduced number will assist in providing a streamlined reporting system, alleviate uncertainty about which authority should receive maritime incidents reports in the Territory, and assist in more accurate record keeping of incidents by the CEO.

Subclause 3 amends sub-regulation 37(4) to omit reference to Schedule 3 in the Regulations and note that the information provided in Schedule 3 will be in the approved form. This amendment further complements the provision included in new section 98A that allows the CEO to approve forms for the purposes of the Act, and will allow the CEO to maintain the currency of the reporting requirements.

Clause 15. Schedule 2 and 3 repealed

This clause repeals schedules 2 and 3 in the Regulations as these schedules will now be replaced by approved forms. The information provided in these schedules reflect MARPOL requirements that can frequently be subject to change. The clause complements new section 98A and amendments made in clauses 4, 6, 13 and 14.

This amendment complements processes for improved administrative efficiencies by allowing the CEO to more readily maintain information that reflect current MARPOL obligations in approved forms that can be updated in a more timely manner than legislative schedules allow.

Part 4. Act further amended

Clause 16. Act further amended.

This is a formal clause that identifies the Schedule to the Bill has effect. The Schedule provides typographical amendments to section headings 10, 48, 49 and 50 to remove the acronym CEO and replace with the full text Chief Executive Officer.

Part 5. Repeal of Act

Clause 17. Repeal of Act

This is a formal clause that identifies that this Act is repealed on the day after it commences. As this is an amending Act, there is no need to retain the Act on the statute book once all the amendments have commenced.

Schedule. *Marine Pollution Act 1999* further amended

This Schedule complements clause 16 and amends the headings of section 10, 48, 49 and 54 to omit the acronym CEO and insert the full text Chief Executive Officer.