# Legislative Assembly

## Marine Legislation Amendment (Marine Pollution) Bill Hansard Extract

28/06/2002

**Second Reading**

**Mr GAUDRY** (Newcastle—Parliamentary Secretary), on behalf of Mr Scully [10.20 a.m.]: I move:

That this bill be now read a second time.

Marine and estuarine water quality is regarded as one of the most serious issues in Australia's marine and coastal environments and water quality generally. Marine and estuarine waters support dynamic ecosystems, contain valuable natural resources, and have important environmental values. Major pollution incidents such as oil spills can cause ecological damage to these fragile environments, and can also adversely affect human health and recreational activities. Oil spills in particular can affect intertidal biota, fish and birds. Sources of potential oil spills can include collisions between ships within ports and harbours, vessel groundings, discharge of tank washings or bilge water from vessels and refuelling accidents.

The Marine Pollution Act is the main statute that governs pollution in marine and estuarine waters from shipping. It covers pollution by oil and other noxious substances and prohibits discharges from ships of these substances into State waters. The Act also sets out powers to inspect and detain ships believed to be responsible for such discharges. The Marine Legislation Amendment (Marine Pollution) Bill is the first major revision of this important piece of legislation since its inception in 1987. Honourable members will recall that the main aim of the Marine Pollution Act is to enact the International Convention for the Prevention of Pollution by Ships, commonly called the MARPOL Convention. The Act prohibits and makes it an offence to discharge oil, oily mixtures and noxious liquid substances from vessels and transfer operations and makes the owner and master of the vessel and any other person who caused the spill strictly liable for the offence.

The Marine Legislation Amendment (Marine Pollution) Bill 2002 will amend the Act in three major ways—it will substantially increase the penalties for some offences; it will amend the offences to overcome a significant loophole; and it will require all vessels entering State waters to have and show evidence of insurance in respect of oil pollution. The proposed increases in penalties are for offences of improper discharges, failure or delay in reporting incidents and failure to co-operate in the investigation process. The increase in penalties is from the current maximum of $1.1 million to $10 million for corporations and from $220,000 to $500,000 for individuals for discharges and from the current maximum of $275,000 to $2.75 million for corporations and $55,000 to $120,000 for individuals for the failure and delay in reporting an incident and failure to co-operate in an investigation. I should note that these increased penalties only apply to commercial vessels—pleasure craft are specifically excluded from the provisions of the amendments.

The increases are significant but so is the potential impact on the environment that the penalties are intended to address. Oil pollution incidents represent a serious threat to the quality of New South Wales waters. Honourable members need only recall the spill of 300,000 litres of oil from the *Laura D'Amato* into Sydney Harbour on 3 August 1999 to realise the damage that a large spill of oil can cause. The environmental, commercial and public use significance of Sydney Harbour and other New South Wales coastal estuaries along with coastline and coastal waters requires owners and masters of vessels using these waters to exercise extreme care in full knowledge that failure to do so could have severe consequences on their operations. The current levels of fines are insufficient to have a deterrent effect on oil polluters. It must be remembered that the penalties are maximum ones and the courts have discretion on the penalty actually imposed.

Only in the most serious of cases would the penalty approach the maximum amount. Even in the case of the *Laura D'Amato*, the penalties imposed were only 50 per cent of the maximum and yet were the highest ever fines imposed under the Act or any other legislation covering New South Wales waterways. Even if the courts impose the maximum fine for a corporation, that penalty is relatively small when compared to the average value of a commercial vessel visiting New South Wales waters. For example, the value of an average oil tanker visiting Sydney Harbour or Botany Bay is about $60 million. This does not include the value of its cargo, which would normally be between $25 million and $30 million. Increased maximum penalties for improper discharge for corporations that represent over 10 per cent of the value of the average oil tanker and its cargo would provide a more appropriate incentive for compliance with the Marine Pollution Act than the current penalty does. The proposed increases to penalties for improper discharges for individuals and offences in relation to the failure or delay in reporting incidents or failure to co-operate will also provide more appropriate incentives for compliance with the Marine Pollution Act by shipowners and their crews.

Sentencing guidelines recently recommended in England state that for environmental offences penalties should be set according to the means of those concerned. For large companies, fines should be substantial enough to have a real economic impact which, together with the negative publicity resulting from the prosecution, would

create sufficient pressure on the management and shareholders of those companies to tighten regulatory compliance. The increase in penalties now proposed endorses this view. The proposed increased maximum penalties are also consistent with those in a number of countries, particularly maximum penalties in the United States. An increase in penalties is also consistent with the doctrine of public trust, which is applied in the United States of America. This doctrine assists in the determination of appropriate methods to protect the natural environment. The doctrine advocates that public resources and property are held in trust for current and future generations and that it is appropriate to impose severe penalties on those who degrade the natural environment.

In light of the significant environmental, commercial and public amenity issues associated with Sydney Harbour and New South Wales coastal estuaries, coastline and coastal waters and the potential impact of a major oil or other chemical spill the United States doctrine is applicable in the context of the Marine Pollution Act. Accordingly, the penalties in the Marine Pollution Act should reflect the significance of the resource and potential scale of the problem. The second major part of the bill is to amend the defences available to those involved with improper discharges. One of the defences exonerates those who spill oil as a consequence of damage to the vessel or its equipment. The interpretation of this defence taken by those prosecuting under the Act is that the damage must be external to the ship such as by collision or grounding.

However, in a current prosecution under the Act both the Land and Environment Court and the New South Wales Court of Criminal Appeal interpreted that the defence also includes spills that occur through wear and tear. If this view is accepted it would be possible for owners who have failed to properly maintain their vessels to use this defence to defeat the objectives of the legislation and the MARPOL Convention which underpins it. This case is currently the subject of an appeal to the High Court. Regardless of the result of the High Court appeal, it is vital to close this loophole by specifically excluding wear and tear and to clearly indicate to shipowners that any vessel entering New South Wales waters is required to be properly maintained.

The third part of the bill is to require that vessels entering New South Wales waters have and are able to produce evidence of insurance to cover the consequences of oil spills. Recent amendments to Commonwealth legislation on this point do not cover all vessels using New South Wales waters. In particular vessels under 400 tonnes and vessels engaged solely on intrastate voyages are subject to New South Wales law and are not covered by the Commonwealth legislation. This amendment brings these vessels within the same regime as all other vessels entering New South Wales waters. A particular ship may be declared to be exempt from this requirement by order of the Minister and a class of ships may be exempted by the regulations.

Honourable members will note that the Act will no longer apply to recreational vessels. It has been past practice to prosecute oil spills from recreational vessels under the Protection of the Environment (Operations) Act and its predecessor the Clean Waters Act, where penalties for offences are smaller. Oil spills from recreational vessels are rare and when they do occur are likely to be relatively minor. Furthermore, recreational vessels are unlikely to be insured for such occurrences. It is appropriate therefore to recognise current practice and bring prosecutions for oil spills from recreational vessels only under the Protection of the Environment (Operations) Act. Finally, the bill makes some minor miscellaneous amendments designed to aid in the administrative efficiency of the Act.

The effect of the bill is to further protect New South Wales waters from the effects of oil pollution from vessels by providing stronger incentives for owners, masters and crew of vessels to comply with the Marine Pollution Act and to ensure that vessels and equipment are appropriately maintained to prevent discharges. Sydney Harbour is the cleanest it has been for a very long time, with more and more whales and dolphins returning to it every year. The proposed amendments to the Marine Pollution Act will help to ensure that the health of Sydney Harbour and our other waterways are preserved for future generations. I commend the bill to the House.