Marine Legislation Amendment (Marine Pollution) Bill

Second Reading

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Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.00 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

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 fines ever 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 purpose 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.

The Hon. JENNIFER GARDINER [3.00 p.m.]: This bill amends the Marine Pollution Act 1987 in a number of important respects. It amends the definition of "ship" to include any vessel of any type whatsoever, except for a pleasure vessel, capable of being used on or in water. It is very important to note that the bill does not apply to recreational boats, but it applies to platforms and floating docks. The bill increases the number of penalties under the Act, including the penalty for the discharge of oil, an oily mixture or a noxious substance. It provides separate offences whereby a person whose act causes a discharge from a ship of oil, an oily mixture or a noxious substance can be prosecuted in relation to the discharge.

The bill restricts the defence of the damage in relation to discharge of oil, an oily mixture or a noxious substance. It requires certain ships in State waters to be adequately insured against oil pollution, and to carry

evidence of that insurance on board. It permits an inspector to detain a ship if he or she has reasonable grounds to believe that the ship does not have adequate insurance or does not carry on board evidence of that insurance. The bill permits a summons against a crew member of a ship to be served on the agent of the ship, and it expands the definition of "appropriate person" with regard to pollution relating to transfer of operations.

The bill also makes a number of other amendments. It amends the Ports Corporatisation and Waterways Management Act 1995 so that all penalties covered under the marine legislation will be paid to a port corporation if a member of staff of the port corporation prosecuted the offence or issued the penalty notice, and they will be paid to the Waterways Fund in any other case. The most important provision of the bill is that it increases almost tenfold the penalties for some pollution offences, for example, improper discharges and failure or delay in reporting incidents in New South Wales waters. The maximum penalty for discharges increases from $1.1 million to $10 million for corporations, and from $220,000 to $500,000 for individuals. The fines for failing to report a spill or failing to co-operate with an investigation increase from $275,000 to $2.75 million for corporations, and from $55,000 to $120,000 for individuals.

A number of shipping representatives have expressed to the Opposition their concern about the rather dramatic leap in the maximum penalties provided for in the bill. It is posited that they are harsher than fines imposed anywhere else in the world. We would be concerned if there were any disincentive to businesses using New South Wales ports as a result of these increases in maximum penalties. I note that in the Commonwealth jurisdiction some of the penalties for marine pollution have been revised downwards. It is very important that we have consistency across the continent so that New South Wales ports are not disadvantaged.

Under the Protection of the Sea (Prevention of Pollution from Ships) Act 1983, the Commonwealth has widened the net in terms of potential offenders, but it has reduced the maximum penalties for some pollution offences. I note also that the Commonwealth Minister for Transport, the Hon. John Anderson, recently released the Commonwealth response to the review of ship safety and pollution prevention measures in the Great Barrier Reef, which is a joint Commonwealth and Queensland government officers' analysis of issues highlighted by the grounding of the *Bungi Teratai Satu* in November 2000.

Recommendation 412 of that extensive review stated that as part of the proposed shipping management plan for the Great Barrier Reef waters the main regulatory agencies should present co-ordinated proposals to improve the powers of intervention and the restitution and recovery of costs, offences and penalties. Although that recommendation applies to the Great Barrier Reef management plan, it is desirable that there be a consistent approach across Australian waters. The Opposition will carefully monitor the end result of such implementations. Amendments to the Marine Pollution Act require all ships entering New South Wales waters to hold insurance for oil pollution damage, to conform with the Commonwealth requirement to hold such insurance in relation to Commonwealth waters.

As a result of a fairly recent court case, the bill will prevent polluters using the wear-and-tear defence; it removes the loophole by which operators could use that defence to avoid prosecution for spilling oil and chemicals. The Opposition is pleased that the amendments make clear that recreational boats will be removed from the provisions of the bill. Pollution from such boats will be regulated under environmental legislation, particularly the Protection of the Environment (Operations) Bill. I note that the Minister for Transport, the Hon. Carl Scully, has been very slow to follow up in legislating-in line with a discussion paper that was released a long time ago-for recreational boating and the pollution they generate.

We are disappointed, as are many recreational boaters, that the Government's follow-up on that report is not clear. Although some parts of it have been followed up, there is a great gap in relation to recreational boating. The shipping fraternity is somewhat anxious about the wide discretion judges will have to impose the penalties to which I referred earlier. Theoretically, a judge could impose a $10 million maximum penalty for the spillage of a teaspoon of oil into New South Wales waters. Under the existing legislation a judge could impose a $55,000 penalty, or 5 per cent of the maximum, for the accidental spillage of a small amount of an innocuous substance, but under this new legislation a judge could impose a penalty of $500,000. That would be unreasonable and unjustified. It is important to again place on record that in his second reading speech in the Legislative Assembly, the Parliamentary Secretary, Mr Gaudry, who had carriage of this bill and spoke on behalf of the Minister For Transport, Mr Scully, said:

> Only in the most serious of cases would the penalty approach the maximum amount.

The Opposition trusts that the judiciary will reflect upon those words in the second reading speech when the legislation was introduced in the Legislative Assembly. Those comments are underscored by a letter from the Parliamentary Secretary Assisting the Minister for Transport dated 28 July, which stated:

> In any discussion about the size of penalties it should be noted that the prescribed amounts are expressed as a maximum and the actual penalty imposed for any offence is always at the discretion of the presiding judge. This penalty would normally vary according to the state of the vessel, the conduct of the crew, the level of cooperation and the environmental performance record of those found to be responsible for the spill. Only in the most serious cases would the court impose penalties approaching the maximum amount.

It is important that any judge considering the imposition of the maximum fine closely take into account those words, which were placed on the record on behalf of the Government and supported by the Opposition. In the *Laura D'Amato* case, which involved a significant oil spill in Sydney Harbour in 1999, the penalty imposed by the Land and Environment Court was $620,000, half the maximum, and the largest of its type. Honourable members will no doubt

recall that a number of inquiries and reviews have been held in the wake of the *Laura D'Amato* crisis, which in some ways have precipitated this review.

The Hon. Richard Jones: Including a general purpose standing committee inquiry.

The Hon. JENNIFER GARDINER: As the Hon. Richard Jones says, one review resulted in the General Purpose Standing Committee No. 5 "Report on Inquiry into Oil Spills in Sydney Harbour: Final Report No. 10", dated May 2001. That committee reviewed the outcomes of those inquiries and was generally satisfied with the response and follow-up to the crisis. As I said last week to a group of shipping companies, the industry can be generally pretty proud of its record because it is no mean feat to receive a tick of approval from a parliamentary committee chaired by none other than the Hon. Richard Jones that inquired into the responses and follow-up to the oil spillage. However, the committee made one simple request of the Government. Recommendation 9 states:

> That Sydney Ports Corporation/Waterways Authority in their 2000/2001 annual report to Parliament include a list of each of the recommendations made in the investigation report by 1) the State Marine Oil Response Committee; 2) the Inspector of Marine Accidents, Australian Transport Safety Bureau and 3) the Australian Maritime Safety Authority concerning the Laura D'Amato oil spill and details of the specific steps taken to implement these recommendations or detailed reasons for any decision not to implement any recommendation.

In keeping with the arrogance of this Labor Government it has failed to ensure that the Waterways Authority and the Sydney Ports Corporation have incorporated that report into their annual reports. The annual reports of both bodies made only a passing reference to the *Laura D'Amato* oil spill, despite its significance, and neither attempted to address recommendation No. 9. The lack of accountability of the Waterways Authority has emerged as a matter of great concern to waterways users in New South Wales. It demonstrates contempt for the Parliament because the recommendation required few resources to implement it. That is one reason why Mr Scully should be considered as only a temporary steward of the Waterways Authority.

The Opposition notes with satisfaction that the bill also amends the Ports Corporations and Waterways Management Act 1995 so that all penalties recovered for offences under marine legislation will be paid into the Waterways Fund, except those payable to a port corporation under proposed section 21A. So far, moneys derived by way of fines have gone into consolidated revenue. This was unintentional and the Treasurer has belatedly agreed that the ports corporations will receive penalties in the event of successful prosecutions. It would be interesting to know to what purpose the money has previously been put, but at least we have been assured that from now on it will be used to assist the ports corporations and the Waterways Fund to maintain clean waters in New South Wales. I conclude with the serious concern I have expressed about the dramatic hike in penalties and the plea that the judiciary be sensible and take into account the factors outlined in the second reading speech if it ever contemplates imposing maximum penalties for oil pollution.

The Hon. IAN COHEN [3.16 p.m.]: The Greens are pleased to support the Marine Legislation Amendment (Marine Pollution) Bill. It is important that there are significant penalties for polluting the marine environment, and the Greens hope that the size of the penalties will act as a deterrent to international shipping companies in particular, and encourage them to take greater caution when in Australian waters. The bill is consistent with the International Convention for the Prevention of Pollution from Ships, known as MARPOL. That convention was adopted on 2 November 1973 and covered pollution by oil, chemicals, harmful substances in packaged form, sewage and garbage.

The protocol of 1978 relating to the 1973 International Convention for the Prevention of Pollution from Ships-the 1978 MARPOL protocol-was adopted at a Conference on Tanker Safety and Pollution Prevention in February 1978 that was held in response to a spate of tanker accidents in 1976-77. The International Convention for the Prevention of Pollution by Ships was signed and is a good example of an international treaty. MARPOL came into force on 2 October 1983 and the original New South Wales legislation in 1987 was in response to it. Record-keeping on oil spills began in 1968. In 2000, 48,600 tonnes of oil was spilled, excluding war-related causes. This was the lowest quantity since 1968. By rough calculation, that is 48,600,000 litres, so the 300,000 litres from the *Laura D'Amato* in Sydney Harbour was only about 0.6 per cent of all oil spills around the world that year, and we know the serious threat it posed to the health of Sydney Harbour.

Oil tankers are a leading source of oil spills, although pipelines, production wells, storage facilities and refineries are also significant sources of spills. To quench the industrial world's thirst for fossil fuels, oil tankers transport some 107 million tonnes of oil each day. Unfortunately, many tankers are still single hulled-another good example of how the search for profit overrides the public interest, which would require double-hulled tankers as the norm. The Greens were pleased that the bill includes the doctrine of public trust. In the other place, Bryce Gaudry said:

> 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.

The doctrine of public trust comes to us from the Roman Emperor Justinian, who in 530 AD ordered that the laws of the Roman Empire be written down. Thus the Institutes of Justinian, the body of Roman civil law, were written. Tucked away in those numerous volumes covering every aspect of Roman life and commerce was the provision that:

> By the law of nature these things are common to all mankind: the air, running water, the sea, and consequently the shores of the sea.

Although Rome fell, much of Roman law was incorporated in English law, on which Australian law is based. The Greens think the doctrine of public trust applies to a great many more issues than marine pollution and we will regularly remind the Government of its advocacy of this doctrine. Similarly, the member for Kogarah, Miss Burton, when speaking about the *Laura D'Amato* spill, said:

> That spill, which had a damaging effect on the environment, incurred certain commercial costs and resulted in the depletion of marine life in Sydney Harbour. In determining appropriate penalties the issues to be addressed involve the intrinsic worth of clean marine environment. How much is too much when the lives of animals and the health of habitats are at stake?

She asked that rhetorical question of the House. The Greens would like to see the same logic applied terrestrially. On my reading, the bill refers also to pollution by ballast water that contains oily substances. However, the bill does not contain provisions regarding marine pollution from living organisms. It is well known that organisms introduced into the Australian marine environment from ballast water are now causing major problems, particularly in harbours and estuaries.

The marine environment of Botany Bay, for example, has been highly impacted by human activities, particularly shipping-related activities, since the early days of European settlement. This has resulted in considerable pollution in various forms that affects the marine biota of Botany Bay. Introduced marine organisms may also affect the habitat of, and compete with, the endemic marine fauna and flora of the bay. Toxic dinoflagellates-planktonic algae-such as the Alexandrium species may cause fish kills and also have a detrimental effect on aquaculture activities, including rendering shellfish such as oysters and mussels unsuitable for human consumption. Indeed, the consumption of shellfish thus affected can cause a fatal illness.

Interestingly, a significant source of pollution from marine organisms are the woodchip ships that ply their dirty trade between Japan and Newcastle and Twofold Bay. Tasmania-which has the disgraceful record of exporting more woodchip than anywhere else in Australia-has several new environmental pests that are believed to have entered its waters via woodchip ships. They include the shape-shifting microbe pfiesteria shumwayae, which has been devastating fish stocks in America, and the Northern Pacific sea star, asteria amurensis, which is a ravenous shellfish feeder that devours oysters, scallops, abalone, mussels and Japanese kelp-which is another weed.

The social and economic cost to our community from these organisms has not yet been determined. I think it is a great shame that governments of all political persuasions cannot consider the impact of industrial activity, such as the marine trade including woodchip ships, and the real cost to the environment, and subsequently the community, of industries that create financial advantages for a small section of the community but have a massive impact on the ecosystem and resources that should be available to us all.

The Greens would like to see legislation that not only deals with oil and chemical pollution in the marine environment but also addresses the pollution of our marine environment by introduced marine organisms. Similarly, this legislation does not deal with the pollution of the marine environment from antifouling paints. Antifouling paints are used to coat the bottoms of ships to prevent sea life such as algae and molluscs attaching to the hull, thereby slowing down the ship and increasing fuel consumption. In the early days of sailing ships, lime and later arsenic were used to coat ships' hulls. These days the modern chemicals industry has developed antifouling paints using metallic compounds. These compounds slowly leach into the sea water, killing barnacles and other marine life that have attached to the ship. However, studies have shown that these compounds persist in the water, killing sea life, harming the environment, and possibly entering the food chain.

One of the most effective antifouling paints, which was developed in the 1960s, contains organotin tributylin, which has been proven to cause deformation in oysters and sex changes in whelks-who knows what it might do to those who eat a substantial amount of affected oysters. The Greens call on the Government to continue to treat marine pollution seriously and to introduce legislation in line with the international convention on this matter in order to prevent the pollution of our marine environment from antifouling paint. Furthermore, we urge the New South Wales Government to lobby the Federal Government to ratify the proposed International Maritime Organisation convention on antifouling paints.

It was interesting to hear the Hon. Jennifer Gardiner say that this legislation has shifted the focus away from pollution by domestic boats and small recreational craft. I think that is a great shame. While major craft cause obvious pollution problems, pollution from small craft has a cumulative effect, which in many ways reflects the debate between commercial and amateur fishers. We often hear accusations-which may or may not be appropriate-about the impact of professional fishing on our marine environment. However, significant numbers of smaller recreational vessels can also have a major impact on our marine environment, particularly in the form of antifouling paints, sewage discharge and reckless behaviour by boat operators. This contributes to a build-up of marine pollution in offshore areas and in enclosed estuarine waters that cannot release pollutants. If we add this to urban run-off and the less than satisfactory methods of sewage treatment and disposal, we have a recipe for significant ongoing pollution that must be addressed by the Government and the community. With those comments, the Greens are pleased to support the Marine Legislation Amendment (Marine Pollution) Bill.

Reverend the Hon. FRED NILE [3.28 p.m.]: The Christian Democratic Party is pleased to support the Marine Legislation Amendment (Marine Pollution) Bill. This important bill will dramatically increase penalties under the Marine Pollution Act, including increasing the penalties for the discharge of oil, an oily mixture, or a noxious substance from a ship from $220,000 to $500,000 if the offender is an individual, and from $1.1 million to $10 million

if the offender is a body corporate. The bill will also require certain ships in State waters to be adequately insured against oil pollution and to carry evidence of that insurance on board. I seek the Government's guidance as to whether there will be any problems with ships securing that insurance, which this legislation will make compulsory. Has the Government inquired as to whether insurance companies have placed any restrictions on issuing such policies, as they seem to be eliminating from their coverage most of the areas they consider to be high risk?

The legislation will permit an inspector to detain a ship if he or she has reasonable grounds for believing that the ship does not have adequate insurance. That gets back to the point I was just making. The bill will also amend the Ports Corporatisation and Waterways Management Act 1995 to require all penalties recovered under the marine legislation to be either paid to a port corporation, if a member of staff of the Port Corporation prosecuted the offence or issued the penalty notice, or to the Waterways Fund in any other case. That is a good provision as any damage that has been caused by pollution obviously will have a long-term harmful effect on the harbour or coastline. It is only fitting, therefore, that either a port corporation or the Waterways Fund should receive the revenue from any penalties imposed and that it not go into consolidated revenue. If that revenue is given to those bodies, obviously the Government should not then deduct the amount of that revenue-in some cases it could be millions of dollars-from the budget allocations to those bodies, otherwise the effect of the amendments in this legislation will be lost.

The bill will increase fines relating to a failure to report a spill or a failure to co-operate with an investigation from $275,000 to $2.75 million for corporations and from $55,000 to $120, 000 for individuals. We have all seen evidence of the massive damage that can be done by pollution from ships, especially recently on the Barrier Reef. It seems that because nowadays ships are being mass produced for economic reasons they are more prone to damage from the effects of a violent storm or from hitting a reef or coastline. These ships, because of their size and length, split in the centre or at some part of the water line, and this means that pollution is immediate and dramatic. For those reasons this bill is very important. I hope-and not necessarily only from an insurance aspect-that shipbuilding methods will be further reviewed to ensure that ships that are required to carry large, heavy and dangerous cargoes such as oil or chemicals are safe. The Christian Democrats are pleased to support the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.32 p.m.]: The Democrats support the bill. The Marine Pollution Act 1987 is the main statute governing pollution from ships in marine and estuarine waters. It enacts the international convention for the prevention of pollution by ships which is referred to as the MARPOL Convention. The Act prohibits discharges of oil and other noxious substances into State waters. It 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 Act.

The bill will amend the Act in three major ways. It will substantially increase penalties for some offences; it will amend the offences to overcome a loophole; and it will require all vessels entering State waters to have, and to show evidence of, insurance for 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 increases apply only to commercial vessels. Pleasure craft are specifically excluded and addressed under the Protection of the Environment (Operations) Act. The increases are significant. For example, at present the maximum fine for corporations for discharges is $1.1 million. It will be increased to $10 million. Such penalties will be brought into line with those provided by other countries, and they will provide more appropriate incentives for compliance with the Marine Pollution Act.

The bill also amends the defences available to those involved with improper discharges. At present one such defence exonerates those who spill oil as a consequence of damage to their vessel or its equipment. The interpretation of this defence is that the damage must be external to the ship, such as through collision or grounding. Only damage arising in such circumstances where the master or owner has acted with intent to cause damage or has acted recklessly and with knowledge of the possible consequences has been excluded from this defence. The bill will exclude not only intentional or reckless acts but negligent ones as well.

In a current prosecution under the Act, however, 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. There is a concern that if this view is accepted, owners who have failed to maintain their vessels may use this defence to defeat the objectives of the legislation. Schedule 1 to the bill aims to close this loophole by specifically excluding wear and tear.

The third part of the bill addresses insurance to cover the consequences of spills. Vessels entering New South Wales waters will be required to have such insurance. Recent amendments to Commonwealth legislation do not cover all vessels using New South Wales waters. Vessels under 400 tonnes and those engaged solely on intrastate voyages are subject to New South Wales law and are not covered by the Commonwealth legislation. This amendment brings those vessels within the same regime as all other vessels in New South Wales waters. A particular ship may be declared exempt from this requirement by order of the Minister and a class of ships may be exempt by the regulations.

The Democrats support legislation that will bring penalties for these offences in New South Wales into line with similar penalties around the world. We support bringing vessels under 400 tonnes and those engaged solely on intrastate voyages under the same umbrella that covers other vessels entering New South Wales waters. Removing wear and tear as a defence for oil spills could be seen as superfluous if one considers the Port State control system and Article 94 of the United Nations Convention on the Law of the Sea.

Port State control requires the inspection of ships that enter the port of a State. Under international

maritime law entry into the ports of a foreign country subjects the ship, cargo and crew to the laws of that State and gives the Port State power to inspect the ship, and its cargo and crew. The inspection should ensure that the ship complies with international conventions and national laws. In Australia the primary responsibility for inspections lies with the Australian Maritime Safety Authority [AMSA]. Ships can be detained until proper requirements are met. Article 94 of the United Nations Convention on the Law of the Sea 1982 also stipulates that flag States have the sovereign responsibility of ensuring that their ships are operated and maintained in a manner that minimises risk to seafarers, the marine environment and cargo. Therefore, no ship in new South Wales waters should suffer from wear and tear significant enough to cause a spill. However, the convention acknowledges that unless some evidence arises from the physical examination, it will generally rely on the registration of the flag State. The convention states that it is also axiomatic that some flag States are better than others in their registration requirements and the port State has little control over such deficiencies, short of doing a full survey of all ships-and that is impractical, if not impossible. Therefore, by removing the defence of damage caused by wear and tear, New South Wales can, to some extent, encourage shipowners to properly maintain their ships.

The bill is important and should be supported. Following the *Laura D'Amato* spill there was quite a lot of pollution. The effect of the oil spill was made clear by many people in the northern suburbs of Sydney ringing up to complain of an appalling smell, which I could detect also at my house. At the investigative hearings conducted by General Purpose Standing Committee No. 5 on 22 February 2001 I asked about what levels of benzene were involved. Interestingly, the responses I received were almost comic in their inappropriateness. It seems that the benzene level was being measured in Rozelle, but because a southerly wind was blowing at the time I was happily assured that there was no change in the measurements. As there was a large amount of gas in the northern suburbs it seemed absurd that there would be no change in any reading involving benzene, which could well have been the result of spilled oil.

Rozelle monitoring station is, of course, south of the harbour and the spill occurred on the north side of the harbour. I was then assured that everything was fine because the level had been measured very thoroughly on the Thursday. Unfortunately, the spill was on a Sunday night. It bordered on the absurd for the claim to be made that the benzene level in the air was fine four days later! However, that did draw attention to the fact that in order to protect the environment additional pressure must be placed on ship owners to maintain their vessels and that those who do not should be punished. Similarly, more work is needed with regard to air monitoring. I commend those matters for consideration by the Government. They were discussed at the public hearing on 22 February 2001. The Australian Democrats support the bill.

The Hon. RICHARD JONES [3.40 p.m.]: I support the Marine Legislation Amendment (Marine Pollution) Bill. Like others who have spoken in this debate, I too am disappointed that the Government has not responded to the report on the inquiry into oil spills in Sydney Harbour that was produced by General Purpose Standing Committee No. 5 on 29 May 2001. This House has passed a motion asking the Minister to request the Government to respond to the report. I suggest that adoption of the recommendations of the report would not be onerous for the Government. The inquiry found that the oil spill did not have as much a negative impact as had been anticipated. Professor Underwood stated that this was because we did not use the same techniques to clean up the *Laura D'Amato* spill as were used for the *Exxon Valdez* spill. There were appalling repercussions following the *Exxon Valdez* spill, not just from the oil but from the attempts to clean up the oil. Dr Peter Scanes from the Environment Protection Authority [EPA], in agreeing with Professor Underwood-this appears on page 47 of the report-said:

> The *Exxon Valdez* example did not occur in this harbour because the methods of cleaning were far less severe and so the biological communities in those areas cleaned were virtually indistinguishable from areas which were not cleaned in our case so that the cleaning did not cause any environmental damage.

Dr Scanes had said:

> During the spill response, all efforts were made to keep people and machinery off habitats. Virtually all of the oil recovery was from water, the exception was the beach in Balls Head Bay. Shell primarily led that recovery. For that recovery, walkways were put in place and lots of precautions were taken so that over the areas where people moved there was very little possibility that oil was going to be trampled into the sediment.

A number of years of research were taken into account on the day of the spill. It ensured that we did not make the same mistakes as were made with the *Exxon Valdez*. In the end there was probably no loss or reduction of species in Sydney Harbour in the long term, although individual birds, animals and fish may have been killed. But, fortunately, the overall impact was far less than had been anticipated in the media. The committee heard evidence from Craig Bohm from the Marine and Coastal Community Network on the value of the harbour, particularly for divers. He stated in his evidence:

> The opportunity exists to extend the outer boundaries of the [North Harbour Aquatic] Reserve and increase the protection afforded by it to the level of a marine sanctuary. There is limited commercial and boat-based recreational fishing in the area of the Reserve, and with the exception of a few sacrificial land-based recreational fishing areas this fishing effort could be removed. There is also the potential for many... areas to be included into an expanded Sydney Harbour Marine Sanctuary.

I was very much hoping that my proposal that Sydney Harbour be declared a marine park would be accepted by the committee, but it was not. Such a declaration would only enhance the attractiveness of the harbour, and it is possible to declare a working harbour a marine park. Some members believed that the priorities of a working harbour and those for a marine park are not compatible, but that is not so. On our tour of the harbour Craig Bohm showed us

film taken by him while diving in the harbour. There is an extraordinary amount of biodiversity in the harbour just a metre or so below the surface, which I witnessed this morning while travelling on the JetCat. It is a very rich area. Dolphins and even whales are returning to the harbour now that it has been cleaned up.

Some years ago the Premier helped to launch a campaign to bring the dolphins back to the harbour. After 200 years of attack from pollution, overfishing and whaling the harbour is now becoming richer. We now realise what a valuable resource the harbour is. It is bringing more and more benefit to the people of Sydney with increased tourism. Evidence was given to the committee on the value of tourism and how much the harbour was worth. The oil spill may have deterred some people from visiting but we have no evidence of that. Tourism NSW claims that each visit lost costs something like $1,202-an enormous amount of money for each person who does not visit. So it is important for the harbour to be adequately protected from further oil spills such as the *Laura D'Amato* oil spill, which was the most significant spillage in the harbour for a long time. Between 250 and 300 tonnes of light crude oil went into the harbour between the hours of 18.26 and 18.50 on 3 August 1999.

I congratulate organisations such as the Sydney Ports Corporation and the EPA on reacting very efficiently indeed to this spillage. Probably the world's best practice was followed during the clean-up. They should be given credit for ensuring that the spill did not have the negative impact it might have had if the techniques used during the *Exxon Valdez* spill had been employed. Four of the eleven smaller spills in the harbour since 1995 have occurred during bunkering operations. Recommendation 8 of the committee's report was that the Sydney Ports Corporation give consideration to the deployment of booms during major bunkering operations on Sydney Harbour. I hope that recommendation will be adopted. The Government's response to the report should indicate whether all the recommendations have been adopted. All members on the committee agreed with the recommendations. I support the bill. It is time to make sure that those who despoil our harbour or other New South Wales waterways suffer the consequences and that there is adequate money to pay for any cleanup that is necessary.

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.47 p.m.], in reply: I thank honourable members for their contributions to the debate. The Government acknowledges the concerns raised by the Greens with regard to introduced marine pests. Whilst ballast water contaminants are of concern, the Government's advice is that, as there are further international treaties under development, the matter of penalties is, in the first instance, a Commonwealth responsibility. Furthermore, I am advised that the Commonwealth's amendments last year to the Quarantine Act provide interim protection until the international convention is in place.

In relation to the question of insurance raised by Reverend the Hon. Fred Nile, I am advised that as the vast majority-some 80 per cent-of shipping lines operate in North American waters, where penalties can be considerably higher, most ships already hold adequate insurance. I am advised further that the Waterways Authority has also made inquiries as to the availability of insurance and has been informed that appropriate policies are available for those ships not currently covered under international policies. I hope that satisfies Reverend the Hon. Fred Nile.

Motion agreed to.

Bill read a second time and passed through remaining stages.

Bill Name:	Marine Legislation Amendment (Marine Pollution) Bill
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Speakers:	Nile, Reverend The Hon Fred; Macdonald, The Hon Ian; Gardiner, The Hon Jennifer; Cohen, The Hon Ian; Chesterfield-Evans, The Hon Dr Arthur; Jones, The Hon Richard
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