PROOF

## Agreement in Principle

**Ms GLADYS BEREJIKLIAN** (Willoughby—Minister for Transport) [10.07 a.m.]: I move:
That this bill be now agreed to in principle.

I am pleased to speak on the Marine Pollution Bill 2011, which was introduced in the other place by the Minister for Roads and Ports. The key purpose of the Marine Pollution Bill 2011 is to implement in New South Wales the International Convention for the Prevention of Pollution from Ships, which is commonly referred to as the MARPOL convention. The bill will also introduce a number of miscellaneous amendments to improve the protection provided to New South Wales port and coastal waters from the harmful effects of pollution from ships. The MARPOL convention is the main international convention addressing marine pollution and is administered by the International Marine Organisation. The convention has more than 130 signatory countries worldwide, including Australia.

The convention covers six types of pollution from ships, including oil, noxious liquid substances, harmful substances in packaged form, sewage and garbage. Each type of pollution is referred to in a separate annex to the convention, with each annex being implemented on a progressive basis by signatories to the convention. The Marine Pollution Act 1987 already incorporates into New South Wales legislation annexes I and II, which deal with oil and noxious liquid substances respectively. Both annexes have been revised by the International Maritime Organisation a number of times since 1987, and therefore New South Wales legislation that refers to these annexes needs to be updated to account for these revisions. The Marine Pollution Bill will incorporate the revised annexes I and II and therefore ensure that New South Wales legislation is consistent with internationally agreed standards for the prevention of pollution from oil and noxious liquid substances.

Annexes III, IV and V deal with pollution from harmful substances carried in packaged form, sewage and garbage from ships respectively. While these annexes were incorporated into Commonwealth legislation between 1990 and 2004 under the Commonwealth Protection of the Sea (Prevention of Pollution from Ships) Act 1983, these annexes have not yet been incorporated into New South Wales legislation. In 1987 the Australian Transport Advisory Council agreed that Commonwealth legislation on each MARPOL annex would apply to State waters until a State introduced its own legislation for that annex. The purpose of this agreement was to ensure the timely implementation of the respective MARPOL annexes in all Australian waters. It was also agreed that Commonwealth legislation would be progressively rolled back once the States enacted legislation to give effect to the convention.

The Marine Pollution Bill will incorporate into New South Wales legislation MARPOL annexes III, IV and V and thereby enable this State to regulate and enforce those annexes in

its coastal and port waters. MARPOL annex III contains requirements for the prevention of pollution by harmful substances in packaged form such as freight containers, portable tanks or road and rail tank wagons. These harmful substances are defined in the International Maritime Dangerous Goods Code as items such as explosives, flammables, radioactive and corrosive substances. MARPOL annex IV deals with the prevention of pollution of the sea by sewage from ships. The annex applies to ships that are 400 gross tonnes and above or ships that are certified to carry more than 15 persons. Annex IV contains requirements regarding the discharge of sewage into the sea such as sewage treatment and discharge requirements, the provision of facilities at ports for the reception of sewage and requirements for survey and certification of ships.

The bill seeks to introduce two additional local requirements to minimise the impacts of sewage from ships in New South Wales port and coastal waters. First, the masters of large ships will be required to report to the Minister any incident whereby a sewage treatment system fails or malfunctions while in port. This is necessary to ensure that appropriate action can be taken to protect human health and the environment from the impacts of untreated or inadequately treated sewage. The bill will also limit the defence that currently exists in MARPOL annex IV that allows large ships to discharge treated sewage. This defence will not apply in zones, prescribed by the regulations, where it is determined that the discharge of treated sewage in such areas would present an unacceptable risk to human health and/or the environment. I understand the shipping industry has been consulted on both of these local additional requirements and that no major concerns have been raised.

MARPOL annex V contains requirements for the prevention of garbage pollution from ships such as plastics, food waste, and domestic and operational waste, excluding fresh fish, generated during the normal operation of the vessel. Annex V also provides details on how garbage should be disposed of aboard ships, including the distance from land that garbage may be disposed of. Importantly, annex V prohibits the disposal of any types of plastics anywhere into the sea. As a result of these various MARPOL provisions the bill will ensure that New South Wales legislation is consistent with internationally and nationally agreed best practice standards for managing various types of pollution from vessels. The bill shall place no significant additional requirements on the shipping industry. This is because Commonwealth legislation already applies in State waters if a State does not have complementary legislation for a specific annex of the convention.

In addition to incorporating the various MARPOL annexes into New South Wales legislation, the Marine Pollution Bill will also introduce a number of miscellaneous provisions to clarify the intent of the Act and further protect New South Wales coastal and port waters from the harmful effects of pollution from ships. For example, the bill clarifies that the New South Wales jurisdiction for marine pollution is limited to three nautical miles from the coast. This clarification is necessary due to the uncertainty that currently exists on whether the Act extends to three or twelve nautical miles from the coast. The intention of the 1987 Act was to provide jurisdiction to three nautical miles from the coast consistent with the territorial sea of Australia at the time. Since 1987, the limit of the territorial sea of Australia has been

extended to twelve nautical miles. In addition, the New South Wales Crimes at Sea Act 1998 extends New South Wales jurisdiction for criminal offences to twelve nautical miles from the coast, thereby raising a further uncertainty over the jurisdictional limit of the Marine Pollution Act. The Marine Pollution bill therefore seeks to restore the intent of the original legislation and confirm that New South Wales jurisdiction under the new Marine Pollution Act is limited to three nautical miles from the coast.

The bill also seeks to confirm the original intent of the Act with respect to pollution from vessels involved in transfer operations. Transfer operations include the transfer of oil from a ship to an onshore refinery or the transfer of oil between ships. The 1987 Act provides more limited defences for discharges involving transfer operations than for discharges directly from ships. The 1987 Act also has a limited definition of transfer operations and makes the relevant offences inappropriate if a discharge occurs directly from a ship, even if the ship is involved in a transfer operation. In 2003 the Land and Environment Court dismissed a prosecution arising from an oil spill that occurred during a transfer operation. As a result of this ruling, a broader range of defences were made available for oil spills arising from transfer operations than were intended under the Act. To address this matter the bill clarifies that discharges associated with transfer operations involving ships should be prosecuted under the part of the Act concerning transfer operations.

The bill will enable the Minister for Roads and Ports—the great Minister that he is—to issue verbal directions to prevent or minimise the discharge of pollution from vessels. Currently the Minister is required to give such directions in writing—a requirement that is cumbersome and inefficient for the purposes of taking prompt action to prevent pollution of the sea, especially during severe weather conditions. To ensure this direction-giving power can more effectively be carried out in the future this bill will allow the Minister to give such directions verbally, and that would then be followed up with a direction in writing within 72 hours. This is consistent with the approach taken to clean-up directions and notices issued under the Protection of the Environment Operations Act 1997.

The bill will also provide authority to the Minister to gain entry onto any premises to undertake preventative or clean-up action. This is necessary since combating oil pollution requires access to foreshores and on occasions this may require access through private property. This will be consistent with the Protection of the Environment Operations Act 1997, which includes similar power of entry provisions. The Marine Pollution Act already provides an offence for wilfully obstructing a person who is acting in compliance with a marine pollution prevention notice. The bill will introduce a similar offence for obstructing a person who is taking action on behalf of the Minister to prevent or clean up marine pollution. Existing New South Wales marine pollution response plans are tried and tested and the arrangements in place already encompass a coordinated approach involving a range of organisations and provide for the inclusion and management of volunteers. As a result of amendments moved in the other place, this Government has agreed to also include in this bill a provision for the establishment of a consultative committee, the Oiled Wildlife Care Network, to advise on marine pollution response preparedness.

The Local Court can impose a maximum penalty under the current Act of $11,000. I understand that oil spill offences are not being prosecuted in the Local Court because penalties for such offences are generally greater than $11,000. As a result, Marine Pollution Act offences are generally prosecuted in the Land and Environment Court at much greater cost to both the prosecution and the defence. The bill proposes to increase the jurisdictional limit of the Local Court to $55,000 for offences under the Marine Pollution Act and regulation. This will enable more offences to be prosecuted in the Local Court and reduce the cost of prosecuting and defending many offences under the Marine Pollution Act. Both the Chief Magistrate of the Local Court and the Chief Judge of the Land and Environment Court have been consulted on this proposal and have raised no concerns.

The bill also makes a number of minor administrative amendments such as the terminology associated with the service of summonses. The service of summonses is not relevant to prosecutions brought in the Local Court, therefore the bill refers to "court attendance notice or other process". This will ensure the Act uses the appropriate terminology with respect to all prosecutions under this Act. The bill will also ensure that ships detained under the Marine Pollution Act are not also subject to the exercise of a power of seizure under the Commonwealth Personal Property Securities Act 2009.

Currently MARPOL annexes I and II are incorporated in schedules of the Marine Pollution Act that comprise 212 pages. The bill will significantly streamline the legislation by calling up each MARPOL annex by referring to electronic copies on the Australian Maritime Safety Authority website instead of including them in full in the Act. By calling up each MARPOL annex by reference, this bill will also reduce the need to make additional amendment to the legislation in the future as MARPOL annexes are revised internationally. On such occasions when MARPOL annexes are revised internationally, the Australian Maritime Safety Authority consults with each jurisdiction and coordinates Australia's input on the proposed amendments to the International Maritime Organization. The new Act will be modernised, compared to the 1987 Act, by using a simplified structure and modern terminology.

The former New South Wales Maritime has consulted with key stakeholders on the bill. These stakeholders include the three New South Wales port corporations, various New South Wales government agencies, the Australian Maritime Safety Authority and various industry representatives. The Australian Government has also consulted with relevant stakeholders on the implementation of each MARPOL annex in Australia before incorporating the respective annexes into Commonwealth legislation.

In summary, the Marine Pollution bill will improve the protection provided to New South Wales coastal and port waters in a number of ways. Incorporating the revised annexes I and II and annexes III, IV and V into a new Marine Pollution Act will ensure New South Wales legislation is consistent with internationally and nationally agreed best practice standards for managing various types of pollution from vessels. It will provide New South Wales with the ability to enforce and prosecute the various types of pollution from harmful substances in

packaged form, sewage and garbage from ships. And it will incorporate a number of miscellaneous amendments to clarify the intent of the legislation and the level of protection provided from the harmful impacts of pollution on New South Wales port and coastal waters. I commend the bill to the House.

**Mr ROBERT FUROLO** (Lakemba) [10.19 a.m.]: I am pleased to lead for the Opposition on the Marine Pollution Bill 2011. I indicate at the outset that the Opposition will not oppose this bill. The stated aim of the Marine Pollution Bill is to protect the marine and coastal environment of our State from oil and other pollutants discharged from ships. The bill will repeal the Marine Pollution Act 1987 and will implement additional provisions of the International Convention for the Prevention of Pollution from Ships 1973, known as MARPOL.

Given that the current Act was introduced by a former Labor Government and that it is consistent with the Maritime Legislation Bill introduced by the Federal Labor Government, it should be clear that we have supported and always will support legislation that protects the quality of our precious waterways. The importance of our State's waterways to the people of New South Wales cannot be overestimated. It is where the vast majority of our population choose to live and is the source of recreation and employment, trade and cultural activities for so many people. Our marine environment is central to our way of life—it feeds us and sustains us and it is where we work and play. As I have outlined, it has been Labor governments that have had the insight and the foresight to provide legislative protection for our waters.

In 2002 the Labor Government made significant amendments to the 1987 Act in response to the discharge of crude oil by the *Laura D'Amato*, which occurred in Sydney Harbour in 1999. The changes made in 2002 significantly increased the penalties that were available at that time. The maximum penalty for corporations increased from $1.1 million to $10 million and the maximum penalty for individuals increased from $220,000 to $500,000. Other changes made in 2002 included a requirement for ships to be properly maintained and that vessels entering New South Wales must have evidence of insurance to cover the damage caused by oil spills. The *Laura D'Amato* spill in Sydney Harbour serves to remind us that oil spills and the damage they can cause are not just events that happen to someone else in other parts of the world.

The scale of the spill does not have to be in the order of the infamous *Exxon Valdez* spill in 1989 for the impact on the environment to be significant. In 2010-11 there were a number of minor shipping incidents in New South Wales waters, the most significant being a spill of about 12 tonnes of heavy fuel oil at the Kooragang Basin in the Port of Newcastle in August 2010. Some of the oil entered the Hunter River and a clean-up of mangrove and saltbush areas was required. The clean-up and response to the oil spill took four weeks to complete. This is why the Opposition supports this bill. We need to deter irresponsible and reckless behaviour that will damage our marine environment. We need strong penalties to send clear messages to operators that we expect the highest standard of protection for our waterways.

We share this common goal with the great shipping nations of the world.

The Marine Pollution Act is the main mechanism by which the International Convention for the Prevention of Pollution from Ships—MARPOL—is given effect in New South Wales waters. MARPOL is one of the most important international conventions. Its purpose is to minimise pollution of the seas. As at 2010, 150 countries were signatories to the convention, covering well over 90 per cent of the world's shipping by tonnage. Since MARPOL came into force and since the enactment of the Marine Pollution Act 1987, MARPOL has been significantly amended, and annexes to prevent pollution by harmful substances in packaged form and sewage and garbage have been added.

The bill before the House seeks to replace the Marine Pollution Act 1987 and gives effect to changes made to MARPOL since its enactment. The bill carries forward the provisions of the 1987 Act and incorporates amendments made to MARPOL in relation to oil and noxious liquid substances as well as incorporating annexes III, IV and V, relating to harmful substances in packaged form, sewage and garbage. The bill preserves important aspects of the 1987 Act, including provisions for the recovery of costs, expenses and damages. There are new provisions in relation to marine pollution clean-up notices, marine pollution prevention notices and marine pollution prohibition notices.

Unfortunately, there have been a few recent incidents that remind us of the need to be vigilant when it comes to the protection of our coastal waters. In 2009 the *Pacific Adventurer* lost 31 containers of ammonium nitrate while en route to Brisbane from Newcastle. In 2010 the *Shen Heng* ran aground in the region of the Great Barrier Reef, resulting in about four tonnes of fuel oil being spilt. As a consequence, the Commonwealth Government has implemented a number of measures to improve safe navigation, such as updating the penalty and offence provisions in Commonwealth legislation.

The bill seems to be generally in line with the Maritime Legislation Bill, which was passed by the Australian Parliament last year. Again, these important reforms to marine protection have been initiated by Labor governments. However, there are a number of discrepancies in the Maritime Pollution Bill, in which the penalties seem to be significantly less than those provided in the Commonwealth legislation. For example, the bill proposes a penalty of up to $10 million for the discharge of oil while the Commonwealth penalty is now $11 million. However, the greatest gap is in relation to the penalty for individuals. In the Commonwealth legislation, individuals face a penalty up to $2.2 million for the discharge of oil. The bill proposes a penalty of up to $500,000.

We are also concerned about how the provisions relating to penalties against crew members will be implemented. We put on record our concerns in this regard. There is no doubt that those responsible for the pollution of our waters should be penalised if they have conducted their activities without due care and responsibility. As an owner or operator of a ship, or as the master of a ship, they are clearly responsible for the operation of the ship. But an employee—a crew member—should not bear the burden of responsibility for the ship owner.

We do not want to see a situation whereby the master of the ship or the owner and operator of a ship evade their responsibility by shifting the blame to a crew member, someone who is only doing what he or she is are told and who does not have the means to mount a defence.

However, we have raised this matter with the Minister, and advice provided by him has indicated that the intention of these provisions is not to detract from the responsibility of the owner, the operator or the master of a ship. Instead, the ability to penalise crew members and individuals for pollution offences is to ensure all people responsible for a pollution occurrence, in addition to the owner, the operator and the master of the ship, are held to account. Members will be all too aware of the grounding of the *Rena* in October last year in the Bay of Plenty in New Zealand. Nearly four months on, the salvage and clean-up operation is continuing. With the reported cost of the *Rena* clean-up estimated to be about $130 million, which does not include the cost of the damage caused to the marine environment, there is no doubt we need to ensure we have the regulatory powers to deter and prosecute reckless behaviour by shipping companies. If the Marine Pollution Bill helps the owners, operators and masters of ships to be more diligent about their operations and helps to prevent such damage to our marine environment, then Labor will support the bill.

I also put on record my appreciation for the work of the Minister and his office in briefing the Opposition on the bill and for taking on board suggestions made in the other place by the Opposition and incorporating those suggestions in the form of amendments in the bill.