

Second Reading

The Hon. DUNCAN GAY (Minister for Roads and Ports) [6.21 p.m.]: I move:
That this bill be now read a second time.

The purpose of the Marine Pollution Bill 2011 is to replace the Marine Pollution Act 1987 and give effect to Australia's ratification of certain provisions of the International Convention for the Prevention of Pollution from Ships and, in turn, enhance the protection of the coastal and port waters of New South Wales. By way of background, the current Marine Pollution Act is the main statute in New South Wales governing pollution in coastal and port waters from shipping. The Act covers pollution from both operational and accidental causes and sets out powers to inspect and detain ships believed to be responsible for such discharges. The main aim of the Act is to implement the International Convention for the Prevention of Pollution from Ships, which is commonly referred to as the MARPOL Convention. This convention is administered, and modified from time to time, by the International Maritime Organization.

The MARPOL Convention has been signed by over 130 countries, including Australia. It represents an international commitment to protect the world's oceans from the various forms of pollution from ships including oil, chemicals, 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. All signatories to MARPOL are obliged to implement annexes I and II, which deal with oil and noxious liquid substances respectively. These annexes entered into force internationally in 1983 and 1987 respectively and were adopted in Australia in 1988 under the Commonwealth Protection of the Sea (Prevention of Pollution from Ships) Act 1983. Annexes III, IV and V deal with pollution by harmful substances carried in packaged form, sewage and garbage from ships respectively. These annexes were adopted internationally between 1988 and 2002 and were introduced in Australia between 1990 and 2004 under the Protection of the Sea (Prevention of Pollution from Ships) Act 1983.

In 1986 the then Australian Transport Advisory Council agreed that, to enable the timely implementation of MARPOL in Australia, Commonwealth legislation would initially apply to both Commonwealth and State waters where a State does not have complementary legislation for a specific annex of the convention. It was also agreed that the Commonwealth legislation would be progressively "rolled back" once the States enact legislation to give effect to the convention. The New South Wales Marine Pollution Act was enacted in 1987 and commenced in May 1990 to give effect to MARPOL in New South Wales legislation. This Act incorporated MARPOL annexes I and II and provides the State with direct responsibility for protecting New South Wales coastal and port waters from the harmful impacts of oil and noxious liquid substances.

The main purpose of the bill is to replace the current Marine Pollution Act to modernise the legislation and give effect to Australia's ratification of further amendments and provisions of MARPOL and, in turn, enhance the protection of the waterways of New South Wales. The bill will do this in three broad ways. First, it will adopt revisions to annexes I and II of MARPOL; secondly, it will adopt MARPOL annexes III, IV and V, which relate to marine pollution from harmful substances in packages form, sewage and garbage respectively; and, thirdly, it will include miscellaneous provisions to clarify the intent of the Act as well as to

improve the capacity of the New South Wales government and the three port corporations to protect our coastal and port waters.

The bill will also ensure that 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 in New South Wales coastal and port waters. Harmful substances may include explosives, flammables, radioactive material and corrosive substances.

The bill will modernise and improve the administrative efficiency of the legislation and therefore the level of protection provided from the harmful impacts of pollution in New South Wales waters. Importantly, the bill will 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. Therefore, the MARPOL Convention already applies to shipping in New South Wales waters as a result of the Australian Government having implemented MARPOL annexes III, IV and V in Commonwealth legislation. New South Wales will adopt annexes III, IV and V in this legislation.

Annexes I and II of the convention set out requirements to prevent and minimise ship-sourced pollution from oil and noxious liquid substances respectively. Since the Marine Pollution Act was introduced in 1987 MARPOL annexes I and II have been revised on several occasions. This includes substantial revisions in 2004 which entered into force internationally on 1 January 2007. The bill adopts these revisions to annexes I and II. The revised annex I incorporates, amongst other things, amendments relating to the phasing out of single hull requirements for oil tankers. The structure of the revised annex I has also been simplified. For example, it now clearly distinguishes between the requirements for new ships and those for existing ships. Annex II applies to all ships certified to carry noxious liquid substances in bulk such as fertilisers, vegetable oils, paints and chemicals. The revised annex II now includes a new simplified four-category classification system for noxious liquid substances. Annexes III, IV and V relate to ship-generated pollution in the form of harmful substances in packaged form such as sewage and garbage respectively.

These annexes were incorporated in Commonwealth legislation between 1990 and 2004 and therefore already apply to New South Wales waters. However, these annexes have not yet been incorporated into New South Wales legislation. This bill does that. In 2006 Australian Transport Council Ministers endorsed the previous Ministerial Council decision regarding uniform implementation of the MARPOL Convention in Australian waters. This bill will enable New South Wales to meet this commitment by incorporating annexes III, IV and V.

Incorporating those annexes by reference to New South Wales legislation will provide New South Wales with legislative responsibilities and powers to regulate and enforce requirements for the prevention of pollution covered by those annexes in New South Wales coastal and port waters over which New South Wales has responsibility.

Pursuant to sessional orders business interrupted to permit a motion to adjourn the House if desired.

The House continued to sit.

The Hon. DUNCAN GAY: MARPOL annex III contains requirements for the prevention of

pollution by harmful substances in packaged form or in freight containers, portable tanks or road and rail tank wagons. These harmful substances are those identified as marine pollutants in the International Maritime Dangerous Goods Code, such as explosives, flammables, radioactive and corrosive substances. MARPOL annex IV deals with the prevention of pollution of the sea by sewage from ships. This annex applies to ships that are 400 gross tonnage and above or to ships that are certified to carry more than 15 persons. Annex IV contains requirements regarding the discharge of sewage into the sea, ship equipment and systems for the control of sewage discharge, the provision of facilities at ports and terminals for the reception of sewage, and requirements for survey and certification of ships.

In addition to the sewage from ship provisions contained in annex IV, it is proposed to introduce two local requirements to minimise the impacts of sewage from ships in State waters. First, the New South Wales legislation will require the masters of large ships 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 also will 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 am advised that the shipping industry has been consulted on both of these local additional requirements and has not raised any major concerns.

Annex V of MARPOL contains requirements for the prevention of pollution by garbage from ships. Garbage includes plastics, all kinds of food, domestic and operational waste, excluding fresh fish, generated during the normal operation of the vessel. The annex sets out requirements for the responsible disposal of garbage from ships. It prescribes the distance from land and the manner in which garbage may be disposed of, and totally prohibits the disposal of plastics anywhere into the sea. The bill also contains miscellaneous provisions to clarify the intent of the Act, reduce red tape and improve the capacity of the New South Wales Government and the three ports corporations to protect our coastal and port waters. The bill clarifies that the New South Wales jurisdiction for marine pollution is limited to coastal waters which extend three nautical miles from the coast. By way of background, when the 1987 Act was enacted the coastal waters jurisdiction of New South Wales was the same as the territorial sea of Australia, which extended three nautical miles from the coast. The limit of the territorial sea of Australia has since been extended to 12 nautical miles, but New South Wales coastal waters remain limited to three nautical miles.

The introduction of the New South Wales Crimes at Sea Act 1998, which extends New South Wales jurisdiction for criminal offences to 12 nautical miles from the coast, raises a question as to the limit of the operation of the offence provisions of the Marine Pollution Act. To clarify New South Wales's jurisdiction for offences under the new Marine Pollution Act and to restore the intent of the original legislation, the bill explicitly provides that New South Wales's jurisdiction is limited to three nautical miles from the coast for the purpose of protecting the State's marine and coastal environment from pollution by oil and other marine pollutants that are discharged from ships. This is consistent with the Offshore Constitutional Settlement jurisdictional arrangements and the Inter-Governmental Agreement on the National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances.

Another provision in the bill relates to pollution arising 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 concerning an oil spill that occurred while a transfer operation involving a ship was taking place. The effect of this ruling was to provide more extensive defences for oil spills that resulted from transfer operations than were intended under the Act. The bill clarifies that discharges associated with transfer operations involving ships should be prosecuted under the part of the Act concerning transfer operations.

The 2007 grounding of the *Pasha Bulker* highlighted a limitation of the current Act relating to the provision of notices to require or prohibit certain actions to prevent or minimise pollution of State waters. Specifically, section 48 of the current Act enables the Minister for Roads and Ports to require—in writing—that certain actions be taken to prevent the discharge of pollutants. The need for such directions to be made in writing 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 includes provisions that will allow the Minister to give such directions verbally, which then would 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.

To further improve the capacity of the Minister to prevent or clean up marine pollution, the bill also will provide authority to the Minister or public authority, or their employees, agents or contractors, to gain entry onto any premises to undertake preventative or clean-up action. Combating oil pollution requires access to foreshores, and that may involve access through private property. The Marine Pollution Act currently does not provide the express power to enter premises for this purpose. The bill will provide authority to the Minister or public authority to gain entry onto any premises to undertake preventative or clean-up action. This will be consistent with the Protection of the Environment Operations Act 1997, which includes similar power of entry provisions. The bill also will introduce an offence for obstructing a person who is taking action on behalf of the Minister to prevent or clean up marine pollution. A similar offence already exists for wilfully obstructing a person who is acting in compliance with a marine pollution prevention notice.

The maximum penalty that the Local Court can impose for an offence under the current Act is \$11,000. Advice from the Sydney Ports Corporation and the former New South Wales Maritime indicates that prosecutions for the discharge of oil offences are not being brought in the Local Court because the penalty limit is lower than penalties that regularly would be applied for offences under the current Marine Pollution Act. As a result, offences under the current Act have been generally prosecuted in the Land and Environment Court but at a significantly higher cost to both the prosecution and the defence, which may be disproportionate to the penalty.

An increase in the Local Court jurisdictional limit to \$55,000 for offences under the new Marine Pollution Act and regulation would enable more offences to be prosecuted in the Local Court. This will 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.

Other minor provisions in the bill relate to section 57 of the 1987 Act, the service of summonses. The service of summonses is not relevant to prosecutions brought in the Local Court, hence 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 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. The bill also will significantly streamline the legislation by referring to electronic copies of MARPOL annexes on the Australian Maritime Safety Authority website rather than including the annexes as schedules in the Act. The schedules currently comprise 212 pages of the 1987 Act. By citing each MARPOL annex by reference, the bill will 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. Key stakeholders have been consulted on the new provisions. NSW Maritime consulted with the three New South Wales port corporations, various New South Wales government agencies and the Australian Maritime Safety Authority, which all supported the incorporation of up-to-date MARPOL provisions into New South Wales legislation. The former NSW Maritime also briefed various industry representatives, including Shipping Australia, on the proposed legislative amendments and advised other appropriate industry stakeholders in writing. Additionally, the Australian Government has previously consulted with relevant stakeholders on the implementation of each MARPOL annex in Australia before incorporating it into Commonwealth legislation.

The benefits of this bill are clear: Incorporating by reference revised annexes I and II and annexes III, IV and V into a new Marine Pollution Act 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. It will provide New South Wales with the ability to enforce and prosecute the various types of pollution caused by harmful substances in packaged form and sewage and garbage from ships. It will modernise and improve the administrative efficiency of the legislation and therefore increase the level of protection provided to deal with the harmful impacts of pollution on New South Wales waters. I commend the bill to the House.

Debate adjourned on motion by the Hon. Adam Searle and set down as an order of the day for a future day.