

## FACT SHEET

### *Marine-Related Incidents (MARPOL Implementation) Bill 2019*

This Bill will replace the outdated *Pollution of Waters by Oil and Noxious Substances Act 1987* (PWONSA), giving effect in State Waters to the MARPOL international convention on limiting pollution from ships (oil, chemicals, sewage, garbage and air pollutants).

Parts 2 to 6 of the Bill, and several other provisions, intentionally mimic the Commonwealth's *Pollution of the Sea (Prevention of Pollution from Ships) Act 1983*, which implements MARPOL at the Commonwealth level. Only those provisions of the Commonwealth Act that relate to State waters have been adopted in the Bill.

A notable exception to the general approach is that Part IIID of the Commonwealth Act, which implements Annex VI of MARPOL and deals with ships' fuel and atmospheric emissions, has not been included in the Bill. No other State has given effect to Annex VI in its MARPOL legislation. As such, Part IIID applies in State waters and the Commonwealth is responsible for its enforcement.

The main provisions of the Bill are given below.

#### *Part 1 – Preliminary*

- The Director of the EPA is now a “prescribed officer” for all purposes of the Bill. This is appropriate for operational purposes.
- Definitions of “damage” and “intentional damage” to a ship have been specified in sections 3(3) and (4) instead of in various places through the Bill, because of their importance and to reduce duplication.
- “Inspectors” are prescribed and appointed under the Bill, rather than “authorized officers” as under PWONSA. This is for consistency with the Commonwealth Act and to avoid confusion with authorized officers appointed under the *Environmental Management and Pollution Control Act 1994*, Tasmania's main pollution control Act.

#### *Part 2 – Prevention of Pollution by Oil*

Notable differences to the PWONSA oil pollution provisions are as follows. These mostly reflect changes to the Commonwealth Act as a consequence of MARPOL amendments.

- Section 14 provides a power to require the master of a ship to discharge oil or an oily mixture at a specified reception facility.
- Division 3 specifies provisions in relation to the transfer of oil cargo between oil tankers. The PWONSA provision on transfer of oil at night (section 15 of PWONSA) is now included in Part 7 of the Bill.

#### *Part 3 – Prevention of Pollution by Noxious Liquid Substances*

Noxious liquid substances are now classified as Category X, Y or Z rather than A, B or C.

Notable differences to the PWONSA noxious liquid substance provisions are as follows.

- A person may apply to the Director for approval to discharge a Category Z substance into State waters (section 21).
- There is a new offence of the carriage of substances that have not been categorised or provisionally assessed in accordance with MARPOL (section 22).
- PWONSA provisions enabling regulations to be made to deem a substance not listed under MARPOL to be a noxious liquid substance, or to deem a MARPOL listed substance not to be a noxious liquid substance, have been omitted. Section 24 provides a power to require the master of a ship to discharge a substance or mixture at a specified reception facility.

#### *Part 4 – Prevention of Pollution by Packaged Harmful Substances*

The provisions of Part 4 closely follow the equivalent provisions of the Commonwealth Act. The only notable difference to the equivalent PWONSA provisions is the omission of PWONSA provisions enabling regulations to be made to deem a substance not listed under MARPOL to be a packaged harmful substance, or to deem a MARPOL listed substance not to be a packaged harmful substance.

#### *Part 5 – Prevention of Pollution by Sewage*

The provisions of Part 3 closely follow the equivalent provisions of the Commonwealth Act, except that the provision for Sewage Management Directives has been carried over from PWONSA. The only notable difference to the PWONSA sewage pollutant provisions is the section 31 power to require the master of a ship to discharge sewage at a specified reception facility.

#### *Part 6 – Prevention of Pollution by Garbage*

The provisions of Part 6 closely follow the equivalent provisions of the Commonwealth Act. Notable differences to the PWONSA garbage pollution provisions are as follows:

- PWONSA provisions enabling regulations to be made to deem a substance not specified under MARPOL to be garbage, or to deem a MARPOL specified substance not to be garbage, have been omitted.
- Section 34 provides a power to require the master of a ship to discharge garbage at a specified reception facility.

#### *Part 7 – Prevention of Pollution from Transfer Operations*

- The Part 7 provisions regulate ship-to-shore and shore-to-ship transfer operations involving oil or noxious liquid substances. They also apply to ship-to-ship transfer operations not covered by Division 3 of Part 2. PWONSA currently has almost no provisions in relation to these matters, whereas other States have extensive provisions in their MARPOL legislation.
- Operations involving shore-to-ship transfer of ships' fuel have been a source of pollution in Tasmania in the past. The Part 7 provisions generally follow the provisions of Part 8 of the *NSW Marine Pollution Act 2012*, but with the following notable differences:

- Offence and penalty provisions have been drafted in a similar manner to those elsewhere in the Bill.
- Incident notification provisions have been included, similar to those in Parts 2-4 of the Bill.
- Record-keeping provisions have been omitted. The enforcement of such provisions would be resource intensive, and incidents involving ship-to-shore and shore-to-ship transfers are relatively easy to investigate without the benefit of records. The incident notification provisions will also assist in that regard.
- Provisions on discharge from an “apparatus” have been omitted – these appear to be anachronistic and unnecessary.

### *Part 8 – Miscellaneous*

The provisions of Part 8 are broadly similar to those in Division 3 of Part II of PWONSA, but with the following notable differences.

- Division 2 has provisions relating to waste reception facilities (a matter not dealt with in PWONSA). Such facilities are required at ports and other relevant places where ships may wish to, or be directed to, discharge substances to which the Bill applies. MARPOL requires signatory countries to provide adequate facilities, and the legislation of several other jurisdictions already includes reception facility provisions. Facilities may be either fixed plant or a standing arrangement for collection and removal of wastes direct from vessels (Tasmania already has the latter arrangement at its ports for several waste types).
- Section 50 provides inspectors with somewhat greater powers than those of authorized officers under PWONSA. The various powers apply to places on land and structures adjoining land, as well as on board vessels, to enable compliance investigations in relation to ship-to-shore and shore-to-ship transfer operations and other matters on land relevant to the Bill. Powers of entry have also been extended somewhat.
- Section 52 specifies the powers of the Director to prevent and clean up pollution, in relation to marine pollutant spills. Such powers are not prescribed in PWONSA, which is considered to be a significant deficiency that could impair cost recovery action in the event of response operations.
- The Section 53 provisions are similar to the ‘powers of intervention’ in section 26A of PWONSA, with two notable exceptions. In the Bill the powers will be vested in the Director rather than authorized officers – this is appropriate given the very serious nature of action that may be taken. Nonetheless the Director could delegate the powers to another officer or officers where appropriate. The Director will also have a new power to direct a ship’s master, charterer or owner, or a salvor, to take critical action where appropriate. It will often be more appropriate to issue such a direction rather than the Director taking such action.
- Section 54 prescribes an offence of making false or misleading statements.
- The provisions on cost recovery (section 55) have been specifically linked to marine pollutant spill response activities. It has been clarified that such costs may include costs for actions taken by all persons that may be involved in a response, including salaries, etc. paid to a person. Provision has also been included for the Director to recover costs by notice to a person and to apply interest to unpaid costs. This latter power is particularly

necessary to facilitate cost recovery in the case of vessels that do not come within the scope of MARPOL, and uninsured vessels.

- The immunity provisions (section 59) have been clarified and expanded to ensure that all persons engaged in a marine spill response are covered.
- Division 5 has provisions for the issuing of infringement notices (a matter not dealt with in PWONSA). The provisions are similar to those in other legislation. Specific infringement offences and penalties will be prescribed in the forthcoming Marine-Related Incidents (MARPOL Implementation) Regulations.