

## DRAFT SECOND READING SPEECH

HON PETER GUTWEIN MP

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

*\*check Hansard for delivery\**

Madam Speaker, I move that the Bill now be read a second time.

The purpose of the Bill is to protect the State's waters from pollution and give effect to the International Convention for the Prevention of Pollution from Ships, otherwise referred to as the MARPOL Convention. Australia is a signatory to the Convention and it is important that we play our part in maintaining a healthy marine environment.

The Bill protects waters up to 3 nautical miles from our coastline, whether a pollution event occurs within that distance, or the pollutant has originated from outside State waters. The main strength of the Bill is that it improves the Government's capacity to respond to and police any such event.

The Bill is also consistent with the equivalent legislation in other jurisdictions, and with the Commonwealth legislation that protects Australian waters.

Clean seas are important to Tasmania's economy, recreation and future prosperity. The Bill, if enacted, will play a fundamental and vital role in protecting Tasmania's environment and interests. It will also help us to meet our broader national and international commitments and obligations.

Madam Speaker, the Bill achieves its purpose of protecting our marine environment in five significant ways.

Firstly, it replaces the existing *Pollution of Waters by Oil and Noxious Substances Act 1987*, which is outdated and only gives partial effect to the MARPOL Convention.

Secondly, the Bill contains provisions to prohibit actions that could pollute our seawater with oil or oily mixtures, other noxious liquid substances, packaged harmful substances, sewage or garbage.

Thirdly, the Bill removes the possibility of a party to a pollution event evading the legal, financial and environmental consequences of their actions.

This can be a major problem for regulators due to the complex and often obscure relationships between ship owners, operators and charterers.

To deal with this issue, relevant offences under the Bill will now apply to each of the ship's master, charterer and owner.

Other responsible individuals are also captured by the Bill's provisions. People whose reckless or negligent conduct leads to the discharge of a pollutant will be guilty of an offence, as will those who knowingly cause a discharge.

Fourthly, the Bill provides the power for courts to impose significant penalties on individual and corporate polluters.

For example, for a very serious offence the court may impose a prison term of up to four years or an individual penalty of nearly \$1 million, and a maximum corporate penalty of nearly \$4 million.

These serious penalties emphasise the Government's resolve to protect State waters and will make it clear to any irresponsible ship owners and operators that our seas are not a dumping ground for their waste.

The penalties are also consistent with those applying in other States and at the Commonwealth level. Penalties for relatively minor offences are proposed to be dealt with in Regulations prepared under the provisions of the Bill.

Marine pollution events can be very costly to manage and clean up. Therefore, the fifth key element of the Bill is that it allows the State to recover these costs, instead of the community having to fit the Bill.

Madam Speaker, Parts 2 to 6 of the Bill provide the core provisions for preventing pollution from a wide range of liquid and other noxious substances. They also describe the main offences and related penalties.

For example, Part 2 deals with the discharge of oil or oily mixtures into State waters, and its provisions are similar to those used elsewhere in the Bill.

Oil-based pollutants are unfortunately one of the most common and also one of the most difficult problems to deal with in the marine environment.

Their discharge into the sea is therefore banned, unless required for ship safety or to save lives. Exclusions may apply, subject to strict conditions such as ship location, size and diluted oil concentration.

Importantly, the Bill establishes a duty to report actual or potential pollution incidents to a prescribed officer. Timely and truthful reporting from those involved is critical to the effective management of marine discharges, and it will be an offence not to do so.

Part 3 of the Bill covers an important aspect of marine pollution risk by prohibiting the carriage of unevaluated substances into State waters. If a potential pollutant is brought into our waters there needs to be a record of what it is so that an appropriate response can be formulated in the event of an emergency.

Marine pollution spills not only occur when a ship is travelling across the sea; they can also happen when materials are being transferred from a ship to the shore, or vice versa. The Part 7 provisions make it an offence to discharge pollutants into State waters during such transfers.

Madam Speaker, I am pleased to advise that the State Marine Pollution Committee will continue its important administrative and oversight role under the new Act. The Committee's job will be to coordinate and support a quick response to any actual or threatened marine pollution incident.

The Director EPA will continue to chair the Committee and report to the responsible Minister. Committee members will include representatives from all relevant Government agencies, the Local Government Association of Tasmania, the TasPorts Corporation, the Australian Marine Oil Spill Centre and the Australian Maritime Safety Authority (AMSA).

An Incident Controller will take immediate responsibility for the management of operations on behalf of the Committee. The Incident Controller will in turn mobilise trained and experienced staff from a range of agencies and other organisations to do whatever hands-on work is required.

Madam Speaker, in the unlikely but potentially catastrophic event of a marine spill, it may be necessary for the responsible Minister to declare an emergency so that the incident can be dealt with quickly and efficiently.

The Bill therefore allows the Minister to suspend any State law, or part of a law relating to the State's physical environment, for a period of up to two weeks.

The Minister must have reasonable and urgent grounds for doing so, including the requirement that the situation poses a grave and imminent threat to the State and its waters. An important safeguard is that the law to be suspended must be inconsistent with the urgent action, or would otherwise impede it.

During an emergency, it may also be necessary to provide a place where waste can be stored. The Director is therefore empowered to direct the owner or occupier of a port, terminal or ship repair facility to store waste arising from ship repairs, or to offload waste from a ship involved in an emergency.

This will strengthen existing administrative and practical arrangements for storing marine pollution waste at suitable locations around the State.

In addition, the Bill also establishes the very important role of an Inspector to undertake investigations, gather evidence and give appropriate directions to a ship's master or to any relevant land occupier. An Inspector may also take possession of relevant items or facilities if the situation demands it.

The Inspector may be a police officer, the Director, or a person appointed by the Director, the Australian Maritime Safety Authority or a harbour master.

Importantly, the Director may also detain an Australian or foreign ship in State waters if there are clear grounds for believing that the ship has been involved in a marine pollutant spill. The ship must be released if financial security has been provided or legal proceedings have been discontinued.

In addition, this Bill empowers the Director to take any practical preventative or clean-up action required to limit environmental damage during a critical event, or to safeguard human or animal life. This is just one aspect in which the Bill strengthens the role of the Director in responding to and managing marine pollution events.

This could involve the deployment of machinery or human resources. It may also mean restricting public access to affected areas so that the public is protected from any contamination and the response team can get on with their job.

Madam Speaker, I mentioned earlier that the Bill allows for recovery of any costs associated with a marine pollution event in State waters. These costs can be very large and it is entirely appropriate that they be passed back to those responsible for the pollution.

Therefore, it is vital that the Crown be able to recover any costs for preventing or cleaning up a spill. There may also be substantial legal costs if court action is required to deal with offenders, and these should also be recoverable.

I am pleased to advise the House that the Bill provides substantial powers to recover both types of cost. In addition, a Port Manager, Government Department or individual are not restricted by the Bill in claiming or recovering damages arising from a marine pollutant spill in State waters.

In terms of consultation, the Bill was released for a period of key stakeholder comment during June and July 2019, demonstrating this Government's commitment to listen to the views and concerns of industry and agencies involved in marine management.

Comments were received from the Australian Maritime Safety Authority (AMSA), Local Government Association of Tasmania (LGAT), TasPorts, Marine and Safety Tasmania (MAST), Huon Aquaculture, and the Department of Police, Fire and Emergency Management (DPFEM). Their valuable comments were largely positive, and helped to inform the finalisation of this Bill.

In conclusion, Madam Speaker, it is important that the shipping industry has certainty about their rights and requirements when operating in Tasmanian waters.

The legislative changes brought together in this Bill leave no doubt as to the environmental requirements expected by this Government and the community.

The Bill provides the legal foundation for a modern, pro-active approach to managing marine pollution, in line with our national legislation and international commitments.

It will enable the Government to deal quickly and effectively with any significant marine pollution event, to recover the costs incurred, and to make sure that offenders receive the appropriate penalties.

Madam Speaker, I commend the Bill to the House.