



PROTECTION OF THE SEA LEGISLATION AMENDMENT BILL 2008

Second Reading

[Mr. KELVIN THOMSON](#) (Wills) (8.24 p.m.)—The [Protection of the Sea Legislation Amendment Bill 2008](#) will increase the amount of compensation available to those who have established a claim for damages from approximately A\$350 million to about A\$1.3 billion. In the event of a major oil spill, this compensation can be used to fund the clean-up costs and help with the recovery of affected marine environments and coastal communities. In the event that an incident involving an oil tanker were to occur, the measures provided for in this bill will ensure that victims of oil pollution damage are able to obtain prompt, adequate and effective compensation.

Every year some 3½ thousand cargo vessels as well as more than 200 oil tankers and chemical carriers navigate through Australian waters, including near environmental icons such as Queensland's Great Barrier Reef and Western Australia's Ningaloo Reef. A significant oil spill would clearly be devastating to these fragile marine ecosystems. That is why the Labor government is acting swiftly and decisively to strengthen the legislative approach to protecting Australia's pristine marine environment from pollution.

This bill complements the [Protection of the Sea \(Civil Liability for Bunker Oil Pollution Damage\) Bill 2008](#), which passed the House of Representatives in May. These two pieces of legislation will together strengthen Australia's maritime environment protection framework and align it with international best practice. The [Protection of the Sea Legislation Amendment Bill 2008](#) will place into Australian law the protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, generally known as the supplementary fund protocol. The bill will implement that protocol of 2003 in schedule 1, it will introduce amendments to the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 with schedule 2, and it also includes amendments relating to shipping and marine navigation levies in schedule 3.

Australia is party to two conventions which establish the international liability and compensation regime for pollution damage resulting from spills of oil from an oil tanker: the International Convention on Civil Liability for Oil Pollution Damage 1992 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992. These conventions establish a two-tier scheme to provide compensation for loss or damage resulting from a spill of oil from an oil tanker. The burden of compensating victims for oil spills is shared in the first instance between shipowners and their insurers. If the moneys available are insufficient, the outstanding compensation is provided by

the International Oil Pollution Compensation Fund, which is financed by levies on cargo owners—that is to say, the oil-receiving entities.

Under the first tier, the tanker owner is strictly liable to pay compensation to a maximum amount, which is determined based on the size of the tanker. The second tier is provided by the International Oil Pollution Compensation Fund, which provides compensation for substantiated claims in excess of the shipowner's liability for the incident.

Under this two-tier scheme, the maximum amount of compensation available for a single incident involving spills of oil from an oil tanker is 203 million special drawing rights, and I understand that that is worth approximately A\$350 million. Following a number of high-profile, high-impact tanker incidents, the maximum compensation afforded by these two conventions has proven to be insufficient to provide full compensation for all claimants. In Australia, given our extensive coastline and our strong environmental perspective, the compensation available under these funds may not cover a major incident. As a result, the supplementary fund protocol was adopted back in 2003 by the International Maritime Organisation to create a further source of funds for compensation in the event of pollution damage caused by an oil spill from an oil tanker.

The supplementary fund will be financed through levies on public or private entities in receipt of more than 150,000 tonnes of contributing oil per year in contracting states. Levies for the supplementary fund will be collected after an oil spill occurred and after the first two tiers of compensation are exhausted. Australia's accession to the supplementary fund will ensure that compensation to Australian victims following an oil spill from an oil tanker incident is maximised and that adequate financial resources are provided for clean-up and restoration of Australia's marine environment.

Debate interrupted. (24th June 2008)

Debate resumed (25th June 2008)

[Mr KELVIN THOMSON](#) (Wills) (9.40 a.m.)—Last night I indicated to the House that significant oil spills overseas have demonstrated that the maximum amount of compensation afforded under the current protection of the sea legislation scheme is insufficient. For example, in the *Nakhodka* oil spill off the coast of Japan in 1997, the *Erika* spill off France in 1999 and the *Prestige* spill off Spain in 2002, the funds available under the existing scheme proved insufficient, with claimants unable to get the full amount of their approved compensation.

Australia has itself suffered a number of marine incidents involving oil tankers. The most notable incidents involved the *Princess Anne-Marie* off the Western Australian coast in July 1975, when approximately 15,000 tonnes of oil was spilt, and the *Kirki* off the Western Australian coast in July 1991, when approximately 18,000 tonnes of crude oil was released after the bow fell off the vessel. In the latter incident, serious pollution of the Western Australian coast was avoided due to the combination of severe weather conditions and the effects of the Leeuwin Current in dispersing the 7,900 tonnes of oil lost during the initial stages of the spill off Cervantes and Jurien Bay. While the clean-up costs in the above incidents fell within the limit provided for under the Civil Liability Convention and were consequently paid by the oil tankers' insurers, a large spill of heavy crude oil from an oil tanker in an environmentally sensitive area could necessitate extensive clean-up and restoration costs which might require drawing on the IOPC fund. This figure, of course, could increase substantially in areas involving, for example,

extensive commercial fishing or tourism interests, where potential claimants may seek to recover compensation for loss of income. Such a figure could exceed the IOPC fund limit. In order to tackle this problem, the Supplementary Fund Protocol creates a third tier of compensation for damage resulting from spills of oil from an oil tanker so that the maximum amount payable increases to 750 million special drawing rights, which is approximately A\$1.3 billion, per incident.

Let me now make some remarks about schedule 2 of the [Protection of the Sea Legislation Amendment Bill 2008](#). Australia is a party to the International Convention for the Prevention of Pollution from Ships 1973, which is known as MARPOL. It has implemented all six technical annexes to MARPOL. They deal respectively with prevention of pollution by the discharge of oil, noxious liquid substances in bulk, harmful package substances, sewage, garbage and air pollution from ships. The legislation giving effect to MARPOL in Australia is the Protection of the Sea (Prevention of Pollution from Ships) Act 1983. The amendments here make miscellaneous amendments to the requirements for maintenance of garbage record books.

In October 2006 the International Maritime Organisation adopted a revised annex III of MARPOL which was about prevention of pollution by harmful substances carried by sea in packaged form. The revised annex III will enter into force on 1 January 2010. The annex was revised to harmonise it with the criteria for defining marine pollutants which had been adopted by the United Nations transport of dangerous goods subcommittee, based on the United Nations' globally harmonised system of classification and labelling of chemicals. This bill makes the necessary amendments to implement this change as from 1 January 2010.

In July 2007 the International Maritime Organisation adopted an amendment to annex IV of MARPOL which extended an existing provision regarding the discharge of sewage to include sewage originating from spaces containing living animals and adopted a recommendation on standards for the rate of discharge of untreated sewage. This amendment will enter into force internationally on 1 December 2008. An amendment is necessary for Australia to continue to meet its international obligations.

The bill also substitutes a new definition of the term 'Australian port', to mean a place appointed, proclaimed or prescribed as a port under the Customs Act 1901 or under a law of a state or territory, in the Marine Navigation Levy Collection Act 1989, the Marine Navigation (Regulatory Functions) Levy Collection Act 1991 and the Protection of the Sea (Shipping Levy Collection) Act 1981. It is becoming more frequent for ships to load and unload offshore without entering a port. Ships calling at offshore installations and ships unloading cargo offshore gain the benefit of Australia's ship safety and environment protection services and the national aids to navigation network. However, as they do not call at Australian ports, they may seek to dispute their liability to pay the relevant levies for these services. This amendment will put beyond doubt that a place adjacent to an installation or indeed a place to which a ship comes for the purposes of unloading cargo, even if that place is not immediately adjacent to land, can be a port if it is so prescribed under the Customs Act 1901.

Australia is fortunate to have jurisdiction over 14 million square kilometres of marine area. This is almost twice the size of our continental land mass, so Australia's oceans are massive and important things indeed. They extend from Antarctica to near-equatorial waters, and we have one of the largest exclusive economic zones in the world. The states and territories have jurisdiction over

marine areas out to three nautical miles from the coastline, and the Commonwealth has jurisdiction beyond those waters to the 200-nautical-mile boundary of the exclusive economic zone. Our oceans are vitally important to us for recreation, for commercial and recreational fishing and for their multitude of plants, animals and fish, many of which are unique to Australian waters. Our oceans play a major role in our economic life as a base for shipping and transport and by supporting fisheries, aquaculture and tourism.

Our oceans are subject to a number of threats, not just those from oil tanker spills. The 2006 *State of the environment* report set out the continued degradation of marine habitats and our presently unsustainable fisheries management. There are a number of things that I believe need to be done to set our oceans on a path to sustainability. I believe we need a national oceans act that declares biodiversity protection, ecological sustainability and ecosystem based management as key objectives and works towards those objectives through enforceable regional marine plans. Progress has been too slow on regional marine plans and we should get on with the development of these plans. They should help achieve a national representative system of marine protected areas which ensure that no-take marine protected areas in which fishing is not permitted are established in each marine ecosystem.

No-take areas serve as a refuge where fish stocks can be built up, and they are an important safeguard against the chronic overfishing which is imperilling many of the world's fish species. Bureau of Rural Sciences fisheries status reports have painted a bleak picture, describing two-thirds of Australia's fisheries as either overfished or uncertain. We need a specific audit of the state of Australia's fisheries under the National Land and Water Resources Audit. We should ensure that Commonwealth and export trawl fisheries develop and implement turtle excluder devices and other bycatch reduction initiatives in longline fisheries. Longline fishing in areas and seasons that are of high risk to albatrosses and other seabirds should be limited to night setting.

Australia should develop regional partnerships to extend the present efforts to protect fisheries and marine life in Antarctic waters, including the pursuit and apprehension of illegal fishers in the Southern Ocean. We should pursue cooperatively with other nations the creation of marine protected areas in the Southern Ocean to protect the global marine heritage on Australia's doorstep. A comprehensive approach to marine protection includes safeguarding our oceans from pollution, from shipping and from land based activities. Water quality needs to be protected from impacts from nutrients, sedimentation, sewage and stormwater disposal and coastal shipping practices. We could have a marine pests initiative. Such an initiative would improve controls on ballast water discharges and build on existing activities by the Australian Quarantine and Inspection Service through the national system for the protection and management of marine pest incursions.

Then there is the impact on the sea of its interface with the land—the beaches and the shore. The Marine Coastal Community Network has done much to raise community awareness of these issues, and I notice that in its latest publication there is a report concerning the state of beaches and the impact of four-wheel drive vehicles on those beaches. This report indicates that beaches are not marine deserts, as is falsely assumed by the majority of beach users. They are highly dynamic ecosystems that host a great diversity of life, are a habitat for species not found elsewhere and provide irreplaceable ecosystem services—for example, water filtration, nutrient recycling and nursery habitat for fishes. They are not resilient to vehicles, which substantially modify the habitat of the

intertidal fauna, displacing large volumes of sand. As a result, if the invertebrates get crushed under tyres, beaches subjected to heavy vehicle traffic support significantly fewer species at much reduced densities. This has an impact on the ecosystem because those creatures recycle nutrients, break down organic matter such as stranded algae and seagrass and are food for birds and fishes. So, due to their role in transferring energy from plants up to fishes and birds, it means there is a reduction in the diversity of invertebrates which reverberates up the food chain. Fewer shorebirds and fewer fish may therefore be the consequence of driving cars on our beaches. Effective management of coastal ecosystems needs to include sandy beaches as living ecosystems and reduce the impacts from widespread human interference such as that involving four-wheel drive vehicles.

Then of course there is the impact of climate change on the oceans. Just in the past week there has been a report which has found:

Oceans have heated up much more rapidly in the past four decades than scientists had thought.

As reported in the *Age*:

An Australian and American research team found that between 1961 and 2003, the rate of warming of the upper ocean layers was about 50% higher than it was estimated in last year's report by the United Nations Intergovernmental Panel on Climate Change.

Scientist Catia Domingues, of the Centre for Australian Weather and Climate Research, said her team's finding helped solve a problem for climate researchers, who had not been able to fully explain why sea levels had risen so rapidly in this period.

They said, essentially, it was the result of 'expansion of the warming oceans'. The article continued:

The CSIRO team reviewed millions of measurements of ocean temperatures, taken from instruments probing the upper 700 metres of the ocean, to assess the contribution of the thermal expansion of the upper layers to overall sea-level rises.

Contributions from melting glaciers, melting ice sheets in Antarctica and Greenland, and thermal expansion of the deep ocean were also analysed.

It is also reported that they are now looking to work out whether the global sea rise is accelerating. Findings from ocean-mapping satellites suggest that between 1993 and 2003 sea levels rose by an average of 'slightly more than three millimetres a year' compared with the sea level rise of 1.8 millimetres a year during the previous part of the 20th century.

This suggests that our oceans may be very different in 50 years time. Ocean temperatures are warming. The pH—the acidity—is decreasing and sea levels are rising. The impact of climate change on Australian marine systems needs to be a concern for the general public, for scientists, for managers and policy makers. Clearly, there is a need for better research in this area, cross-disciplinary and cross-organisational research networks and integrated data archiving in order that we understand this phenomenon better. It is important that the parliament understand the impact of climate change on our oceans and on the Australian environment more broadly and that we take the measures that are needed to mitigate climate change, reduce our greenhouse gas emissions and also adapt to the inevitable impact on oceans, on beaches and on Australian life more broadly.

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