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SOCIAL POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

Marine Pollution Legislation Amendment Bill 2019

9.30 am, Wednesday 30 October 2019

Litchfield Room, Level 3, Parliament House, Darwin

Members: Ms Ngaree Ah Kit MLA, Chair, Member for Karama
Mr Gary Higgins MLA, Member for Daly
Mrs Kate Worden MLA, Member for Sanderson

Witnesses: *Department of Environment and Natural Resources*
Karen Avery: Executive Director, Environment Policy and Support
Kathleen Davis: Director, Environment Policy

MARINE POLLUTION LEGISLATION AMENDMENT BILL 2019

Department of Environment and Natural Resources

Madam CHAIR: Good morning, everyone, thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Social Policy Scrutiny Committee. On behalf of the committee, I welcome everyone to this public briefing on the Marine Pollution Legislation Amendment Bill 2019.

I acknowledge that this public briefing is being held on the land of the Larrakia people. I pay my respect to Larrakia elders past, present and emerging.

I also acknowledge my fellow committee members in attendance today via teleconference: the Member for Sanderson, Kate Worden; and the Member for Daly, Gary Higgins.

I welcome to the table to give evidence to the committee from the Department of Environment and Natural Resources Karen Avery, Executive Director, Environment Policy and Support, and Kathleen Davis, Director, Environment Policy. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public briefing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the briefing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

I will ask each witness to state their name for the record and the capacity in which they appear before inviting you to make a brief opening statement, and then proceeding to the committee's questions.

Could you each please state your name and the capacity in which you are appearing this morning?

Ms AVERY: Karen Avery, Executive Director, Environment Policy and Support, Department of Environment and Natural Resources.

Ms DAVIS: Kathleen Davis, Director, Environment Police, Department of Environment and Natural Resources.

Madam CHAIR: Thank you very much, ladies. Ms Avery, would you like to make an opening statement?

Ms AVERY: Madam Chair and members of the committee, thank you for inviting me to speak to you today on behalf of the Department of Environment and Natural Resources.

The Marine Pollution Legislation Amendment Bill 2019 introduces amendments to the *Marine Pollution Act 1999* and the *Marine Pollution Regulations 2003*. This Act and its supporting regulations form part of the Territory's system for environmental management, providing protection to the Territory's marine and coastal environments by minimising intentional and negligent discharges of ship-sourced pollutants.

Regulating marine pollution is recognised nationally and internationally as an important part of any environmental regulatory system. Ship-sourced pollutants can include oil, garbage, noxious substances and harmful chemicals. The risks these pose to marine environments and coastal communities has been on the international agenda for over half a century.

The International Convention for the Prevention of Pollution from Ships—an international agreement commonly referred to as MARPOL—is a testament to the importance placed globally on preventing and minimising pollution caused by ships. MARPOL aims to prevent accidental pollution and pollution from routine operation of ships. The convention originally came about in 1973 in response to concerns with the international community about maritime pollution resulting from a string of oil tanker disasters. Since its inception, MARPOL has continued to be updated with its regulations now applying international obligations on ships in relation to oil, noxious liquid substances in bulk, packaged harmful substances, sewage, garbage, and more recently, air pollution.

In conjunction with similar Acts passed by other Australian states and the Commonwealth, the Territory's *Marine Pollution Act* gives effect to relevant provisions of MARPOL and intends to provide a robust regulatory system for managing and protecting the Territory's marine and coastal environments.

Before I go on to address the amendments being part of the bill, I will give a short explanation about how the amendments have come about. The Territory recently experienced a marine pollution incident resulting from an oil spill in Darwin Harbour. This department's investigation of the incident identified that the oil spill was most likely caused by a visiting foreign-owned ship.

Legal proceedings for an offence under the *Marine Pollution Act* were commenced in the Darwin Local Court. This was the very first time legal proceedings under this Act have ever been commenced. The proceedings identified concerns with the Act that potentially inhibit the ability of the Territory to pursue justice for marine pollution caused by foreign-owned ships in Territory coastal waters. As those proceedings are ongoing, I will not go into detail.

However, this bill has been prepared to address the concerns and to facilitate any legal action that may be required as a result of pollution incidents in the future. I should be clear that this bill will not have any effect on the current proceedings.

There are two areas of concern that are being addressed by this bill. The first is the limitation on commencing proceedings. Regulating pollution by ships at sea is notoriously difficult, not only because of the vastness of the oceans and multiple jurisdictions that international shipping routes cross, but also because investigations can be challenging and incredibly complex. Often, ocean-going vessels are owned by multiple parties incorporated into shell companies and registered in multiple jurisdictions. This makes investigation and evidence gathering time consuming and it can be very difficult to identify who is legally responsible for the ship suspected of causing the pollution.

The Act currently requires legal proceedings to be commenced either within two years of the offence occurring or, if there is a delay in the offence being identified, within two years of the offence coming to the knowledge of the department, but in any event within three years of the offence occurring.

Although two years may seem like a long time, given the complexities involved in collecting evidence and identifying potential suspects and experience with the Act and environmental laws generally, two years does not allow sufficient time to properly complete investigations and prepare a legal case. This is particularly so if the pollution incident involves a foreign-owned ship.

To address this shortcoming, the bill removes any time limit for commencing proceedings for offences against the Act. This means legal proceedings for an offence under the Act can commence at any point in time after the offence happened. This amendment removes a major barrier to conducting investigations and successful legal prosecution under the Act.

The second area of concern addressed by the bill relates to the service of documents. The Act is intended to allow the service of documents on the ship owner or owners. If this cannot be done directly, then the service of documents occurs through the ship's master or the ship owner's agent. An agent for a ship is a person who makes arrangements for the berthing of the ship in the Territory or organises other activities that usually occur in port for the owner. Under the current provisions of the Act, an agent is no longer the agent when the ship is not in Territory coastal waters. The ship owner is also allowed to declare that a person is not their agent without having to identify a new agent. The effect of these provisions is that for foreign-owned vessels, once the vessel has left Territory waters, it is not possible to serve documents required for legal proceedings on the agent. This hinders the ability to serve documents where foreign-owned vessels are suspected of causing pollution in the Territory's marine environment.

The proposed amendments are intended to facilitate the service of documents by:

1. clarifying the definition of 'agent' by a clear understanding of who can be identified as an agent of the ship based on the functions they perform
2. removing any geographical restriction on the status of an agent—this means an agent will still be considered an agent for the purpose of the Act, even if the ship has left Territory waters
3. requiring the regulator to be informed if a person is no longer the agent for a particular vessel. Additionally, where the ship's owner is notifying the department of a change in agent details, the owner must give details of the new agent

4. clarifying the definition of 'owner' to provide a clearer understanding of when a person is considered to have sufficient responsibility for the actions of the ship to be considered an owner. This is necessary because of the complex company structures and contractual arrangements that generally exist in relation to large vessels
5. enabling documents to be served on an owner of a ship—including a previous owner of the ship—or an owner's agent, including a previous owner's agent.

These amendments will improve the ability for the Territory to serve documents on persons who were related to a ship at the time of an alleged offence. They address the circumstances of an owner selling a ship to avoid legal proceedings or avoiding being served documents by declaring a person is not their agent. The changes will facilitate the commencement of legal proceedings in the Territory courts for future alleged offences against the Act.

The amendment bill also includes some other amendments. A number of amendments intended to simplify and streamline the reporting requirements for operators of ships have been included. The bill reduces the number of authorities to which an operator of a ship is to report an incident. This reduces the uncertainty of where to report an incident and ensures that only the entities that have responsibility for responding to events receive the report.

As the department responsible for administering the Act, the bill identifies the CEO of the Department of Environment and Natural Resources as the responsible officer under the Act for receiving reports, not the NT EPA.

Other minor amendments contained in the bill are aimed at improving general administrative efficiencies, as well as updates to reflect contemporary drafting practices.

I will also comment quickly in relation to consultation. As I am sure the committee can see, this is a very technical bill that has been developed directly in response to identified shortcomings of the *Marine Pollution Act* which, if left as is, will inhibit the Territory's ability to take effective legal action in the event of ship-sourced pollution events in the future. As such, the department has not undertaken any public consultation on the amendments. However, the department has corresponded with each of the Territory's port operators that are affected by the changes and, in particular, the changes to reporting mechanisms contained in the regulations. None of the contacted port operators have raised any concerns with the proposed changes to date.

The department has also liaised with the Australian Maritime Safety Authority, AMSA, which has responsibility for promoting safety and protection of the marine environment in Australian waters, and is the primary body that receives reports of maritime incidents from ships.

The department also participates on national working groups that consider Australia's compliance with MARPOL and the management of marine incidents. These groups have been advised of the proposed reforms.

In conclusion, the Territory has seen an increase in shipping with the development of our ports and increasing industrial development. The amendments being introduced by this bill are aimed at strengthening the Territory's ability to respond to ship-sourced pollution incidents in our marine and coastal environments, allowing the Territory to be an effective regulator and protector of one of our greatest natural assets.

Thank you, Madam Chair. We are happy to receive questions from the committee.

Madam CHAIR: Thank you very much. Gary or Kate, do you have any questions for the department?

Mrs WORDEN: Yes. Thank you for that. They are all really good points. I am bit surprised we have not done this before. Besides the one ongoing case at the moment, have there been any other examples where experts have informed this, or are we just going with a normal national approach, or are there other experiences?

Ms AVERY: There may have been experience in other jurisdictions, but whilst generally in relation to these sorts of matters you get vaguely similar legislation across different jurisdictions, there are usually differences across them.

For us, as I said, the incident that occurred in the Territory not so long ago was the very first time the *Marine Pollution Act* was actually used to push forward with proceedings. It was through that exercise that we started to discover some issues and challenges with proceeding under the legislation as it currently stands.

Mrs WORDEN: Would it be right, Karen, to say that it gets minimal use?

Ms AVERY: That would be absolutely correct, Kate. It is used only when there is actually a marine pollution incident in Territory waters.

Mrs WORDEN: Have they used similar legislation interstate? Has it been useful, do you know, in other jurisdictions?

Ms DAVIS: Yes, there are similar Acts by all jurisdictions and there have certainly been marine pollution incidents. It is the same thing with other jurisdictions. They have also generally found when they have gone to use the legislation that there is something in it that has created some difficulty. Queensland is the one I am most aware of that has used its legislation.

Mrs WORDEN: Where was that?

Ms DAVIS: Queensland. They had a couple of significant issues with vessels being grounded and vessels losing cargo overboard a few years ago that resulted—a grounding in particular resulted in quite a bad marine oil event that they then had to use their legislation for.

I was not sure if this was where your original question was going, Mrs Worden, but when we did these amendments, we looked at other jurisdictions and how they had prepared their legislation. In particular, we looked at Victoria because it had very good definitions of ‘owner’, because they had learned through their experiences how to define an owner, in particular.

Mrs WORDEN: Yes. That is where I was going with it, because I guess if we have such rare experience, there is an awful lot more changes in that bill. But if we are being informed by other experiences, that is fine. Thank you.

Madam CHAIR: Are there other jurisdictions that also do not have a limit on when action can be brought against a party that has conducted marine pollution?

Ms DAVIS: Yes. Victoria is the one off the top of my head. It is about an even split, from memory, with jurisdictions which have a time limit and those that do not.

Madam CHAIR: I am hoping those jurisdictions that have a time limit were longer than the two to three years that we have in our current legislation?

Ms DAVIS: I cannot answer that off the top of my head, I am sorry.

Madam CHAIR: That is okay. I guess the other part that peaked my interest about this bill is that now we will not have a time limit going forward to hold people to account for their wrongdoing, the pressure it puts on the department—who does the investigations? How do you find out these shell corporations? It sounds quite extensive. I like the idea of not having a time frame to limit you to do that.

Ms AVERY: The investigations are conducted by the operations area of the Environment Division which is specialised and has investigators of pollution incidents. You are correct, Madam Chair, anything that involves complex shell structures and so forth is incredibly difficult to navigate—pardon the pun—in identifying who owners are and where responsibility lies. Hence, we have done quite a lot of work to take the lessons from other jurisdictions and try to incorporate, as much as we possibly can, a broad definition that captures people who have responsibility for a vessel at various times.

Madam CHAIR: Very good. My final comment or question relates to—I mentioned this before the public briefings started. I watched the documentary *Untrashing Djulpan* last week about a project from Sea Shepherd—a two-week project to help clean up a 14-kilometre stretch of pristine beach in Arnhem Land, and the extent and amount of trash that was on the beach. We have just passed laws that provide Aboriginal rangers the powers to be conservation officers.

My question is about the education of this bill. Now we have a lot of people out there who can and do help look after our marine life and keep an eye on this, how do we educate people to let them know that the bill has been strengthened now? We have one court case pending that will not be interrupted or impacted by this legislation change—but encourage people to not only keep an eye out and report it, because we can now go through those extra steps to hold people to account should they be doing the wrong thing in our waters.

Ms AVERY: Madam Chair, at this point, we have not identified specific educational elements to take out to the general public. Certainly the points you raise are very valid—ensuring that people feel comfortable reporting and knowing who to report incidents to so that we can get our investigators onto it as early as possible. Even though the amendment bill provides for no limitation on the time frame, obviously the earlier you can get onto an investigation and identify key aspects, the more likely you are able to be clear about the alleged offender and deal with that appropriately.

Primarily, the role of those rangers, for instance, would be about identifying where an incident has occurred and notifying of it, and providing witness statements or working with investigators to identify where the pollution may have come from. That would be the primary role.

Ms DAVIS: Madam Chair, to add to that, the department does some community outreach—I guess is the best way to put it—with ranger groups and other organisations, and even some public awareness about pollution response hotline, which is where we ask for those sorts of reports to come through from the public. The court case at the moment was, in fact, generated through a response to that—a call to that pollution hotline.

Madam CHAIR: Thank you very much. That concludes my questions. None from the committee? Thank you very much for appearing before us this morning.
