

Maritime Transport Amendment Bill

Government Bill

As reported from the Transport and Industrial Relations Committee

Commentary

Recommendation

The Transport and Industrial Relations Committee has examined the Maritime Transport Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The bill seeks to amend the Maritime Transport Act 1994 to improve the efficiency, effectiveness, and safety of the maritime transport system. The bill as introduced has three parts. These deal with amendments relating to drug and alcohol testing, oil pollution and limitation of liability, and miscellaneous amendments. The bill aims to:

- manage the risks associated with drug and alcohol use in the commercial maritime sector by requiring maritime operators to have drug and alcohol management plans (DAMPs)
- increase the amount of compensation available to meet the costs of a major spill from an oil tanker in New Zealand waters
- allow New Zealand to exercise its right, as a party to the Protocol of 1996 to amend the Convention on Limitation of Liability for Marine Claims (LLMC), to make reservations that exclude limitation of liability for claims relating to wreck removal, cargo removal, and damage caused by hazardous and noxious substances
- allow foreign-registered ships to carry freight to non-mainland ports, including the Chatham Islands
- add flexibility to the Minister of Transport's maritime rule-making powers

- make minor amendments to the Act in relation to local regulation of maritime activity and the availability of documents incorporated in maritime and marine protection rules
- clarify the Act's definitions and wording.

This commentary covers the main amendments that we recommend to the bill. It does not discuss minor, technical, or consequential amendments.

Amending maritime rules and maritime protection rules

Section 36 of the Maritime Transport Act enables the Minister of Transport to make maritime rules. Clause 5 of the bill as introduced would authorise rules to support the new DAMP scheme in new Part 4B of the Act.

We recommend amending clause 5 to amend new section 36(1)(ea)(ii) to (iv) by removing references to “prescribing” and “imposing”. This would align with the proposed amendments in clause 33 of the bill as introduced, which remove some of the more restrictive language in the Act and make the rule-making power more flexible.

We also recommend inserting new clause 36A (amending section 388) to make the rule-making powers for marine protection more flexible by deleting references to “specifying” and “prescribing”.

Amending definitions

We consider that the definition of “safety-sensitive activity” in clause 6 is too broad. We therefore recommend amending the definition to also include an activity specifically named under the maritime rules.

We recommend amending the definition of “testable drug” in clause 6 to clarify that a testable drug is specified in the DAMP as a drug for which testing must be carried out under the Act. The bill as introduced implies that a testable drug named in the DAMP is a drug that is to be tested for the purposes of the Act.

Competency to carry out random testing

Clause 6 of the bill as introduced would insert new Part 4B, including new section 40ZB(3) that would require random testing of safety-sensitive workers to be carried out by a person who is capable of carrying out the testing. We recommend amending this section to require that the tester must be competent to carry out the testing. This would ensure that the person doing the testing is appropriately skilled.

We also recommend amending clause 6, new section 40ZC(2)(d) (Director testing), for the same reason.

Reimbursement for a second Director test

Clause 6 of the bill as introduced would insert new section 40ZE to allow a worker who has undergone Director testing to ask the Director, immediately after the test, to carry out a second test for the same substance, using the same method. In the bill as

introduced, the worker would have to reimburse the Director for the direct costs incurred in carrying out the second test.

We recommend removing this reimbursement requirement. This is because it would require Maritime New Zealand to establish a payment process only for this purpose. This would be complex for a process that may only occur infrequently.

However, we also recommend amending clause 6, new section 40ZC(4)(g), to recognise that a charge could be imposed in the future.

When test results can be used in proceedings and prosecutions

Under new section 40ZF, to be inserted by clause 6 of the bill as introduced, random test results obtained by a DAMP operator would not be admissible in any proceedings except for prosecutions of offences under specified Acts. We recommend amending this provision to make it clear that random test results could be used in civil proceedings, and in criminal proceedings for the prosecution of an offence against the Maritime Transport Act, the Health and Safety at Work Act 2015, and the Hazardous Substances and New Organisms Act 1996.

We also recommend amending the title of this section to clarify that test results could be used in civil proceedings and certain criminal prosecutions.

Claims subject to the limitation of liability under the LLMC Convention

Clause 8 of the bill as introduced relates to claims that are subject to the limitation of liability under the LLMC Convention. Clause 8(2), which would replace section 86(4) of the Act, specifies the claims that are not affected by the LLMC Convention. These include claims relating to wreck removal, cargo removal, and damage as defined in the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, or any amendment or protocol to that convention.

We recommend deleting this section and retaining the existing section 86(4) of the Act, for the following reasons:

- New Zealand is not yet a party to the Harmful and Noxious Substances Convention, so referring to it could cause confusion.
- Expanding the circumstances in which limitation of liability would be excluded in relation to wreck and cargo claims would favour a private claimant for this type of loss over private claimants for other types of loss.

Transitional provisions

We recommend amending clause 28, new Schedule 1AA, to specify the commencement dates for the drug and alcohol testing amendments and the oil pollution compensation amendments. This is because the two provisions would now come into force on different dates because of the later transition period for the drug and alcohol testing.

Marine areas affected by space activities

We recommend inserting clause 30A to amend section 33M of the Act which allows regional councils to make navigation bylaws in their regions.

This amendment was prompted by a submission from Rocket Lab to the Foreign Affairs, Defence and Trade Select Committee on the Outer Space and High-altitude Activities Bill. We agree with Rocket Lab about the importance of protecting public safety to facilitate rocket launches. We therefore recommend that the bill provide for local authorities to create and enforce safety perimeters during rocket launches.

New clause 30A, amended section 33M, would allow a regional council to make navigation bylaws to control the use of ships in areas affected by space activities.

Pilotage

Section 60B(3) of the Act provides that a pilot is not liable for neglect or want of skill while on board a ship and acting as pilot. We recommend inserting new clause 33A, which would amend section 60B(3), to provide that the limitation of liability provisions would also apply when a pilot is acting remotely. This recognises that pilots may still be exercising their duties even while not on board the bridge of a vessel.

Transition period for drug and alcohol testing

Clause 2 of new Schedule 1AA proposes a transition period for drug and alcohol testing of 18 months after the commencement date. We recommend amending this clause to provide for a 2-year transition period. This would allow time for public consultation on the development of rules, and would allow operators more time to develop their DAMPs and renegotiate employment agreements.

New Zealand Labour Party and Green Party of Aotearoa minority view

The New Zealand Labour Party and Green Party support a safe, sustainable, effective, and efficient transport system.

We have serious reservations about key changes in this bill, most notably the new addition of mandatory random drug testing and the changes allowing foreign-registered ships to carry freight to the Chatham Islands.

These two aspects have been introduced without the support of the industries and populations they will affect.

Random drug testing

We heard from a significant number of submitters, including the Rail and Maritime Union, the Council of Trade Unions, the NZ Marine Transport Association, and several tourism operators, that the new requirement for random drug testing was not necessary or the best way to ensure safety and reduce the risk of impairment in the commercial maritime sector. The most striking information was the lack of any evidence of a systemic problem with drug and alcohol impairment in the maritime sector

in New Zealand. We heard that commercial operations are already implementing drug and alcohol safety plans and that a key shortcoming of random drug testing is that it does not test for impairment. Officials were unable to provide specific estimates of compliance costs—though several operators suggested it would be extremely costly and difficult for them to comply. The absence of clear evidence of a problem with drug and alcohol impairment or that random drug testing could even make a positive difference if there was one, leaves us unable to support these provisions.

Chatham Islands

We heard compelling evidence from Chatham Islands Shipping Ltd that there are insufficient freight volumes to the Chatham Islands to make more than one service economically viable. Opening up the possibility of foreign flagged vessels to run a service could undermine the financial viability of the current not-for-profit trust, and could eventually result in a private monopoly by a foreign registered vessel.

It could also undermine the provision of a reliable shipping service to the Chathams, threatening the livelihoods of the small, isolated population.

We heard from officials that the proposed law change was at the request of the Department of Conservation for its operations on other islands, but no submission was forthcoming from DOC for the committee to explore this.

This measure was opposed by all who submitted on this aspect of the bill.

Appendix

Committee process

The Maritime Transport Amendment Bill was referred to the committee on 16 November 2016. The closing date for submissions was 1 February 2017. We received and considered 25 submissions from interested groups and individuals. We heard oral evidence from 11 submitters.

We received advice from the Ministry of Transport, Maritime New Zealand, and the Civil Aviation Authority

Committee membership

Jonathan Young (Chairperson)

Hon David Bennett

Kris Faafoi (from 12 April 2017)

Peeni Henare (until 22 March 2017)

Raymond Huo (between 22 March and 12 April 2017)

Iain Lees-Galloway

Clayton Mitchell

Sue Moroney

Dr Parmjeet Parmar

Denise Roche

Alastair Scott

Hon Maurice Williamson

Dr Jian Yang

Julie Anne Genter replaced Denise Roche for this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

text inserted unanimously

~~text deleted by a majority~~

~~text deleted unanimously~~

Hon Simon Bridges

Maritime Transport Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Maritime Transport Amendment Act **2016**.
- 2 Commencement**
 - (1) **Part 2** comes into ~~operation~~force on the day that is 6 months after the ~~day~~date on which this Act receives the Royal assent. 5
 - (2) The rest of this Act comes into force on the day after the date on which this Act receives the Royal assent.
- 3 Principal Act**
This Act amends the Maritime Transport Act 1994 (the **principal Act**). 10

Part 1

Drug and alcohol testing amendments

4 New section 2A inserted (Transitional, savings, and related provisions)

After section 2, insert:

2A Transitional, savings, and related provisions

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The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

5 Section 36 amended (Maritime rules relating to other matters)

After section 36(1)(e), insert:

- (ea) any matter that is contemplated by or necessary for giving full effect to **Part 4B**, including, without limitation—
- (i) ~~the prescribing of~~ safety management systems for the purposes of that Part:
 - (ii) ~~prescribing~~ safety-sensitive activities:
 - (iii) ~~imposing~~ requirements that a DAMP must comply with:
 - (iv) ~~imposing~~ requirements for carrying out random DAMP testing:
 - (v) ~~the prescribing of~~ matters to be stated in a document under **section 40ZC(3)(a)(iii)**:
 - (vi) ~~requiring record keeping by~~ DAMP operators and the Director ~~to keep records~~ for the purposes of that Part:

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6 New Part 4B inserted

After Part 4A, insert:

Part 4B

Drug and alcohol management plans and testing

40X Health and Safety at Work Act 2015 not limited by this Part

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This Part does not limit the Health and Safety at Work Act 2015.

40Y Interpretation

In this Part, unless the context otherwise requires,—

bodily sample means any of the following:

- (a) biological fluid:
- (b) biological tissue (whether living or not):
- (c) breath

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DAMP means a drug and alcohol management plan developed under **section 40Z**

DAMP operator means a person—

- (a) who operates a ship other than a pleasure craft; and
- (b) who holds a maritime document for operating that ship; and
- (c) who has established a prescribed safety system; and
- (d) the operation of whose ship requires the carrying out of 1 or more safety-sensitive activities

Director testing means drug or alcohol testing carried out by the Director under **section 40ZC**

drug or alcohol test means—

- (a) a test of a person's bodily sample to determine the presence, but not the level, of alcohol or a testable drug (or both) in the sample; or
- (b) a test of a person's bodily sample to determine the presence and the level of alcohol or a testable drug (or both) in the sample

negative result, in relation to a drug or alcohol test, means that the test reveals—

- (a) that alcohol or a testable drug (or both) is not present in the bodily sample; or
- (b) if the DAMP specifies a level of alcohol or a testable drug in relation to a test, that alcohol or a testable drug (or both) is not present in the body at the specified level

prescribed safety system means a safety management system that is—

- (a) required by the maritime rules for the purposes of section 17(4)(a); and
- (b) prescribed by the maritime rules for the purposes of this Part

random testing means drug or alcohol testing of a safety-sensitive worker by a DAMP operator under **section 40ZB**, where the worker—

- (a) is selected for testing in a way that is non-discriminatory; and
- (b) is not given advance notification of the testing

response plan means that part of a DAMP that is concerned with actions taken by the DAMP operator in relation to a safety-sensitive worker who refuses to consent to a drug or alcohol test or whose test returns a result other than a negative result, and includes reasonable arrangements and processes developed by the DAMP operator for—

- (a) prohibiting the worker from performing a safety-sensitive activity; and
- (b) permitting the worker to resume performing safety-sensitive activities, if the worker can do so safely

safety-sensitive activity—

(a)	means an activity that could significantly affect the health or safety of any person on board a ship, including the person performing the activity; and	
(b)	includes an activity prescribed by <u>or under</u> the maritime rules	
	safety-sensitive worker—	5
(a)	means an individual who carries out work in any capacity for a DAMP operator in a role that involves the worker performing a safety-sensitive activity; and	
(b)	includes the DAMP operator, if the DAMP operator is an individual	
	testable drug , in relation to a DAMP developed by a DAMP operator, means a drug of any kind that—	10
(a)	could impair a safety-sensitive worker's performance of a safety-sensitive activity; and	
(b)	is specified in the DAMP as a drug that is to be tested for the purposes of <u>for which testing must be carried out under</u> this Part.	15
40Z	DAMP operator must develop a DAMP	
(1)	A DAMP operator must develop a DAMP for the purpose of managing risks to the health and safety of persons on board the operator's ship arising from drug or alcohol use by safety-sensitive workers of the DAMP operator.	
(2)	A DAMP operator must ensure that a DAMP—	20
(a)	is incorporated into the prescribed safety system established by the operator; and	
(b)	applies to all safety-sensitive activities; and	
(c)	provides for random testing of safety-sensitive workers, including by—	
(i)	specifying the testable drugs to be tested for under the DAMP; and	25
(ii)	setting out procedures and other matters (including any permissible levels of alcohol or a testable drug) in relation to the testing; and	
(d)	includes a response plan; and	30
(e)	complies with any further requirements in <u>or under</u> the maritime rules, including requirements for—	
(i)	the content of the DAMP; and	
(ii)	procedures for developing the DAMP; and	
(iii)	record-keeping.	35

40ZA Relationship between DAMP and DAMP operator's maritime document

- (1) It is a condition of the maritime document held by a DAMP operator for operating a ship that the DAMP operator must comply with all requirements under this Part in relation to that ship.
- (2) For the purpose of section 17(1), a DAMP prepared by a DAMP operator is a document that must be held in connection with the maritime document that is held by the DAMP operator for operating a ship.

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40ZB Random testing by DAMP operator

- (1) A DAMP operator must ensure that random testing of safety-sensitive workers is carried out.
- (2) Random testing may be carried out only if the worker consents to be tested.
- (3) The DAMP operator must ensure that a person who carries out random testing is ~~capable of carrying~~ competent to carry out the testing, including by having any necessary experience or qualifications.
- (4) The person who carries out the testing must—
 - (a) request the worker's consent before testing the worker; and
 - (b) explain to the worker the consequences of refusing consent; and
 - (c) carry out tests in accordance with the DAMP and any requirements in the maritime rules.

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40ZC Director testing

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- (1) The Director may carry out drug or alcohol testing of 1 or more safety-sensitive workers of a DAMP operator.
- (2) Director testing—
 - (a) must be carried out without giving advance notification to the DAMP operator or to the workers selected for testing; and
 - (b) may be carried out at any reasonable time and in any reasonable circumstances the Director considers appropriate; and
 - (c) may be carried out only if the worker consents to be tested; and
 - (d) must be carried out by a person who is ~~capable of carrying~~ competent to carry out the testing, including by having any necessary experience or qualifications.
- (3) When carrying out Director testing, the Director must—
 - (a) carry a document that states—
 - (i) the name and contact details of the person carrying out the test; and
 - (ii) an explanation of the statutory power to carry out the test; and
 - (iii) any other matter prescribed by the maritime rules; and

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- (b) show the document to the worker on first approaching the worker and at any later time on request; and
 - (c) ask for the worker's name; and
 - (d) ask for the worker's consent before testing the worker; and
 - (e) give the worker a written statement that contains the information and other matters set out in **subsection (4)**; and 5
 - (f) carry out a test or tests only in relation to—
 - (i) alcohol and the testable drugs specified in the DAMP; and
 - (ii) the permissible levels (if any) for alcohol or testable drugs specified in the DAMP. 10
 - (4) The statement required under **subsection (3)(e)** must contain the following:
 - (a) the matters set out in the document referred to in **subsection (3)(a)**:
 - (b) the purpose of the test:
 - (c) a general description of how the test will be carried out, including how the bodily sample will be taken and how it will be analysed: 15
 - (d) an explanation of the consequences of refusing to consent or of the worker's test returning a result other than a negative result:
 - (e) advice that the worker will be informed of the result of the test (and approximately when this will happen):
 - (f) advice about the worker's right to appeal under section 424 against the decision to test the worker: 20
 - (g) advice about the worker's right to request a second test under **section 40ZE** and ~~the cost to the worker of~~ any charge for carrying out a second test. 25
 - (5) As soon as practicable after the Director becomes aware of the result of a test, the Director must give the test result to the worker tested and the DAMP operator. 25
 - (6) A safety-sensitive worker who has been tested or selected for testing under this section may appeal against the decision to test that worker to ~~a~~ the District Court under section 424. 30
- 40ZD What happens if worker refuses consent or test result is not negative**
- (1) A safety-sensitive worker who has been selected for random testing or Director testing may refuse to consent to the testing.
 - (2) If a worker refuses to consent to random testing or is tested and returns a result other than a negative result, or if the Director notifies the DAMP operator under **subsection (3)**, the DAMP operator must— 35
 - (a) prohibit the worker from performing safety-sensitive activities until the worker is able to safely perform those activities; and

- (b) implement the response plan.
- (3) If a worker refuses to consent to Director testing or is tested and returns a result other than a negative result, the Director must notify the worker's DAMP operator of that fact as soon as practicable.

40ZE Worker may request second Director test

- (1) A worker who has undergone Director testing may, immediately after the test is carried out, ask the Director to carry out a second test for the same substance by the same method.

~~(2) If the worker requests a second test, —~~

~~(a) the Director must carry out a second test; and~~

~~(b) the worker must reimburse the Director for the direct costs incurred in carrying out the second test.~~

(2) The Director must carry out a second test requested under this section.

40ZF Test results ~~only~~ to be used in civil proceedings and certain prosecutions

Test results obtained by a DAMP operator from carrying out random testing are not admissible in any criminal proceedings other than the prosecution of an offence against any of the following:

(a) this Act:

(b) the Health and Safety at Work Act 2015:

~~(c) the Maritime Security Act 2004:~~

(d) the Hazardous Substances and New Organisms Act 1996.

7 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act.

Part 2

Oil pollution compensation and LLMC Convention amendments

Subpart 1—Amendments to Maritime Transport Act 1994

8 Section 86 amended (Claims subject to limitation of liability)

- (1) In section 86(3), replace “also” with “(as amended by the LLMC Protocol)”.
- (2) Replace section 86(4) with:
- (4) This Part and Articles 2, 3, and 9 of the LLMC Convention (as amended by the LLMC Protocol) do not limit or affect —

(a)	claims in respect of the raising, removal, destruction, or rendering harmless of a ship that is sunk, wrecked, stranded, or abandoned, including anything that is or has been on board the ship:	
(b)	claims in respect of the removal, destruction, or rendering harmless of the cargo of a ship:	5
(c)	claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 or of any amendment or protocol to that convention:	
(d)	anything in the Accident Compensation Act 2001, the Carriage of Goods Act 1979, or Parts 18 to 26A of this Act.	10
9	Section 87 amended (Calculation of limits of liability)	
	In section 87(5), replace “LLMC Convention” with “LLMC Convention (as amended by the LLMC Protocol)”.	
10	Section 88 amended (Units of account)	15
	In section 88(2), replace “LLMC Convention” with “LLMC Convention (as amended by the LLMC Protocol)” in each place.	
11	Section 342 amended (Interpretation)	
(1)	In section 342, replace the definition of CLC ship with:	
	CLC ship has the same meaning as ship has in the Civil Liability Convention	20
(2)	In section 342, insert as subsection (2):	
(2)	In the Civil Liability Convention, ship means any sea-going vessel and sea-borne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.	25
12	Heading to Part 26 amended	
	In the heading to Part 26, after “ International Oil Pollution Fund ”, insert “ and Supplementary Fund ”.	30
13	Section 370 amended (Interpretation)	
(1)	In section 370,—	
(a)	repeal the definition of Convention ship ; and	
(b)	the definition of International Oil Pollution Fund , delete “or the Fund ”.	35
(2)	In section 370, replace the 2 definitions of owner with:	

- owner**, in relation to a CLC ship, has the same meaning as CLC owner in section 342
- (3) In section 370, insert in their appropriate alphabetical order:
- fund** means the International Oil Pollution Fund or the Supplementary Fund (as the case may be) 5
- International Oil Pollution Supplementary Fund** or **Supplementary Fund** means the International Oil Pollution Compensation Supplementary Fund established under Article 2 of the Supplementary Fund Protocol
- Supplementary Fund Protocol** means the Protocol of 2003 to the Fund Convention and includes any subsequent protocol or amendment to, or revision of, that protocol accepted or ratified by New Zealand 10
- 14 Cross-heading above section 371 amended**
- In the cross-heading above section 371, after “*Fund*”, insert “*and Supplementary Fund*”.
- 15 Section 371 replaced (International Oil Pollution Fund to have legal personality)** 15
- Replace section 371 with:
- 371 International Oil Pollution Fund and Supplementary Fund declared to be legal entities**
- The International Oil Pollution Fund and the Supplementary Fund are legal entities and each fund has all the rights, powers, duties, and liabilities of a legal person. 20
- 16 Section 372 amended (Compensation from International Oil Pollution Fund for certain pollution damage)**
- (1) In the heading to section 372, after “**Fund**”, insert “**and Supplementary Fund**”. 25
- (2) In section 372,—
- (a) replace “shall pay” with “must pay”; and
- (b) replace “373” with “373(1)”; and
- (c) replace “convention ship” with “CLC ship”. 30
- (3) In section 372, insert as subsection (2):
- (2) Subject to the provisions of this Part, the Supplementary Fund must pay compensation, up to a maximum amount determined under **section 373(1A)**, for pollution damage if, and to the extent that, the maximum amount of compensation payable under **subsection (1)** is insufficient to compensate for the pollution damage. 35

17 Section 373 amended (Maximum amount of liability of International Oil Pollution Fund)

- (1) In the heading to section 373, after “**Fund**”, insert “**and Supplementary Fund**”.
- (2) In section 373(1), replace “The maximum amount for which the International Oil Pollution Fund shall be liable for pollution damage under section 372 shall be fixed from time to time, by Order in Council, and, until such time as the maximum amount is so fixed, shall be,—” with “The maximum amount for which the International Oil Pollution Fund is liable for pollution damage under **section 372(1)** must be fixed by Order in Council and, until that maximum amount is fixed, is,—”. 5 10
- (3) After section 373(1), insert:
 - (1A) The maximum amount for which the Supplementary Fund is liable for pollution damage under **section 372(2)** must be fixed by Order in Council and, until that maximum amount is fixed, is the amount of 750 million units of account less any amount paid by the International Oil Pollution Fund under **section 372(1)**. 15
- (4) In section 373(2),—
 - (a) replace “The maximum” with “A maximum”; and
 - (b) replace “shall apply” with “applies”; and 20
 - (c) replace “shall so apply” with “applies”.

18 Section 374 amended (International Oil Pollution Fund’s liability for compensation avoided or limited in certain cases)

- (1) In section 374(2), replace “shall not be liable under section 372” with “is not liable under **section 372(1)**”. 25
- (2) In section 374(3), replace “shall be reduced” with “is reduced”.
- (3) In section 374(4), replace “shall apply” with “applies”.

19 Section 375 amended (Several claims for compensation from International Oil Pollution Fund)

- (1) In section 375(1),— 30
 - (a) replace “section 372” with “**section 372(1)**”; and
 - (b) replace “shall determine” with “must determine”.
- (2) In section 375(2),—
 - (a) replace “section 372” with “**section 372(1)**”, in each place; and
 - (b) replace “section 373” with “section 373(1)”; and 35
 - (c) replace “shall order” with “must order”.

- 20 Cross-heading above section 378 amended**
In the cross-heading above section 378, after “*Fund*”, insert “*or Supplementary Fund*”.
- 21 Section 378 amended (Time for bringing proceedings against International Oil Pollution Fund)** 5
(1) In the heading to section 378, after “**Fund**”, insert “**or Supplementary Fund**”.
(2) In section 378(1),—
(a) after “against the International Oil Pollution Fund”, insert “or the Supplementary Fund”; and
(b) replace “shall be brought” with “may be brought”, in each place; and 10
(c) replace “served on the International Oil Pollution Fund” with “served on the fund”.
- 22 Section 379 amended (Jurisdiction of court in respect of claims against International Oil Pollution Fund)**
(1) In the heading to section 379, after “**Fund**”, insert “**or Supplementary Fund**”. 15
(2) In section 379(1), after “Fund”, insert “or the Supplementary Fund”.
(3) Replace section 379(2) with:
(2) If an action to enforce a claim for compensation for pollution damage under the Civil Liability Convention has been brought before a court in a State that is a party to that convention but is not a party to the Fund Convention or the Supplementary Fund Protocol, an action by the claimant against the International Oil Pollution Fund for compensation under Article 4 of the Fund Convention (or against both that fund under Article 4 of the Fund Convention and the Supplementary Fund under Article 4 of the Supplementary Fund Protocol) may be brought before a court in New Zealand, and the provisions of this Part apply accordingly. 20 25
- 23 Section 380 replaced (Notice of proceedings against International Oil Pollution Fund)**
Replace section 380 with:
- 380 Notice of proceedings against International Oil Pollution Fund or Supplementary Fund** 30
If proceedings are brought against the International Oil Pollution Fund or the Supplementary Fund under section 372, the Registrar of the court in which the documents commencing the proceedings are filed must send copies of those documents to the Director. 35

24 Section 381 replaced (Notice to and joining of International Oil Pollution Fund in certain proceedings)

Replace section 381 with:

- 381 Notice to and joining of International Oil Pollution Fund and Supplementary Fund in certain proceedings** 5
- (1) In proceedings brought in a court against the owner of a CLC ship, or the owner's insurer, to enforce a claim in respect of any liability incurred under section 372,—
- (a) either party to the proceedings may serve a notice on the International Oil Pollution Fund or on the Supplementary Fund; and 10
- (b) either party may join the fund served in the action; and
- (c) the fund served may apply to the court to be joined in the action.
- (2) A notice served under **subsection (1)(a)** must—
- (a) give sufficient details of the cause of action to allow the fund served to decide whether to apply to be joined in the action; and 15
- (b) specify a period of 30 days, or a lesser period ordered by the court, for the fund served to apply to be joined in the action.
- (3) If the fund served applies to be joined in the action, the court must join the fund in the proceedings.
- (4) If a fund has been served under **subsection (1)(a)** but has not been joined in the proceedings, the judgment of the court is final and binding on the fund to the extent that the fund may not challenge the findings of the court in any proceedings relating to the same cause of action. 20
- 25 Section 382 amended (Reciprocal enforcement of judgments against International Oil Pollution Fund)** 25
- (1) In the heading to section 382, after “**Fund**”, insert “**or Supplementary Fund**”.
- (2) In section 382(1),—
- (a) replace “shall apply” with “applies”; and
- (b) replace “the International Oil Pollution Fund in a country in respect of which the Fund Convention is in force” with “the International Oil Pollution Fund or the Supplementary Fund in a country in respect of which the Fund Convention or the Supplementary Fund Protocol (as the case may be) is in force”. 30
- (3) In section 382(2), replace “shall have no effect” with “have no effect”.
- (4) In section 382(3),— 35
- (a) after “Fund Convention”, insert “or the Supplementary Fund Protocol”; and

- (b) replace “that Convention”, with “that convention or paragraph 3 of Article 4 of that protocol (as the case may be)”; and
- (c) replace “shall be the judgment” with “is the judgment”.
- 26 Section 383 amended (Rights of subrogation of International Oil Pollution Fund)** 5
- (1) In the heading to section 383, after “**Fund**”, insert “**or Supplementary Fund**”.
- (2) In section 383,—
- (a) after “from the International Oil Pollution Fund”, insert “or the Supplementary Fund”; and
- (b) replace “then the International Oil Pollution Fund shall (up to the amount of compensation paid) be subrogated” with “the fund is (up to the amount of compensation paid) subrogated”. 10
- (3) In section 383(b),—
- (a) replace “the International Oil Pollution Fund” with “the fund”; and
- (b) replace “shall be as favourable” with “must be as favourable”. 15
- 27 Section 385 amended (Levies on oil imports)**
- (1) In section 385(1),—
- (a) delete “11,”; and
- (b) delete “from time to time”.
- (2) After section 385(1), insert: 20
- (1A) For the purpose of complying with the requirements of Articles 10 to 15 of the Supplementary Fund Protocol, the Governor-General may, by Order in Council, impose a levy on oil carried by sea and landed from a ship in any port or oil transfer site in New Zealand (whether or not landed from a country outside New Zealand). 25
- (3) In section 385(2), replace “subsection (1), any such Order in Council” with “subsections (1) and **(1A)**, an Order in Council under this section”.
- 28 New Schedule 1AA amended**
- (1) Replace clause 1 of **Schedule 1AA** (as inserted by **section 7**) with:
- 1 Interpretation** 30
- In this Part, commencement date means,—
- (a) for drug and alcohol testing amendments, the date on which the **Maritime Transport Amendment Act 2016** (other than **Part 2** of that Act) comes into force under **section 2(2)** of that Act:
- (b) for oil pollution compensation amendments, the date on which **Part 2** of that Act comes into force under **section 2(1)** of that Act. 35

- (2) In **Schedule 1AA** (as inserted by **section 7**), insert in their appropriate numerical order after **clause 6**:

Oil pollution compensation amendments

7 Amendments apply to pollution damage occurring after commencement

The amendments made by **Part 2** of the Maritime Transport Amendment Act **2016 2017** apply in relation to pollution damage only if that damage is caused by or results from an escape or a discharge of oil from a ship that occurs on or after the commencement date.

8 References to Maritime Transport (Fund Convention) Levies Order 1996

Every reference in any enactment or document to the Maritime Transport (Fund Convention) Levies Order 1996 must, unless the context otherwise requires, be read as a reference to the **Maritime Transport (International Oil Pollution Compensation Levies) Order 1996**.

Subpart 2—Consequential amendments and revocation

29 Consequential amendment to Biosecurity Law Reform Act 2012

- (1) This section amends the Biosecurity Law Reform Act 2012.
- (2) In section 86(10), replace new section 388(n) of the Maritime Transport Act 1994 with:

(n) prescribing requirements and procedures relating to the control and management of ballast water for the purposes of the convention, including provision for the Director to issue guidelines in accordance with the convention.

30 Consequential amendments and revocation: Maritime Transport (Fund Convention) Levies Order 1996

- (1) Amend the Maritime Transport (Fund Convention) Levies Order 1996 as set out in **Schedule 2**.
- (2) The Maritime Transport (Fund Convention) Levies Amendment Order 1999 (SR 1919/262) is revoked.

Part 3

Miscellaneous amendments

30A Section 33M amended (Navigation bylaws)

- (1) After section 33M(1), insert:

(1A) In relation to the launch of a vehicle or an object that a person has a licence or permit under New Zealand law to launch into outer space, a regional council may, in consultation with the Director, make bylaws—

- (a) to prohibit or regulate the use of ships:
- (b) to regulate, or authorise a person to regulate, the admission of persons to specified areas.
- (1B) The agreement dated 16 September 2016 between Her Majesty the Queen in right of New Zealand acting by and through the Minister for Economic Development, Rocket Lab Limited (a company incorporated under the Companies Act 1993 under company number 1835428), and Rocket Lab USA (a corporation incorporated in the United States of America) is to be treated as a licence or permit under New Zealand law for the purposes of **subsection (1A)**. 5
- (2) In section 33M(2), after “subsection (1)”, insert “or **(1A)**”. 10
- 31 Section 33Q replaced (Entitlement to infringement fees)**
- Replace section 33Q with:
- 33Q Entitlement to infringement fees**
- A regional council is entitled to retain any infringement fee it receives in respect of an infringement offence— 15
- (a) under section 33O if the infringement notice was issued by a harbourmaster or an enforcement officer of the council:
- (b) under section 422 if—
- (i) the infringement offence is a breach of a maritime rule or a navigation bylaw prescribed as an infringement offence by regulations made under section 201(1)(b); and 20
- (ii) the infringement notice was issued under section 423 by a harbourmaster or an enforcement officer of the council.
- 32 Section 33X amended (Delegation or transfer of council’s responsibilities)**
- (1) In section 33X(1), after “regional council”, insert “or territorial authority”. 25
- (2) After section 33X(2), insert:
- (2A) A territorial authority may transfer its responsibilities under section 33I to another public authority.
- (3) In section 33X(3), replace “under subsection (2) to a port operator” with “under subsection (2) **or (2A)** to a port operator or a council-controlled organisation”. 30
- (4) After section 33X(3), insert:
- (3A) The transfer of a responsibility described in section 33I does not have the effect of transferring ownership of any works constructed under that section.
- (5) Replace section 33X(4) with: 35
- (4) A transfer of a responsibility under this section may only be made if—

- (a) the parties to the proposed transfer have agreed on the terms of the proposed transfer; and
- (b) the parties to the proposed transfer have notified the Minister of the proposed transfer.
- (4A) A local authority that is party to a proposed transfer ~~may~~must not agree to the transfer unless satisfied, after consultation in accordance with section 82 of the Local Government Act 2002, that the benefits of the proposed transfer to the authority's district or region will outweigh any negative impacts of the proposal. 5
- (4B) From the time a transfer takes effect, the responsibilities and powers of the party receiving the transfer are extended as necessary to enable that party to undertake, exercise, and perform the transferred responsibilities. 10
- (4C) A party to a transfer may, in accordance with this section, initiate—
 - (a) a variation of the terms of the transfer; or
 - (b) the reversal of the transfer. 15

33 Section 36 amended (Maritime rules relating to other matters)

- (1) In section 36(1), replace “rules for all or any of the following purposes” with “rules that provide for all or any of the following”.
- (2) In section 36(1)(c) to (h), (j), (l) to (ta), (tc), and (td), delete “prescribing” in each place. 20
- (3) Replace section 36(1)(i) with:
 - (i) defining operating limits and pilotage limits:
 - (ia) requirements concerning pilotage, including when and where, and the classes of ships for which, pilotage is required or not required:
- (4) In section 36(1)(k),— 25
 - (a) delete “requiring”; and
 - (b) delete “prescribing”.
- (5) In section 36(1)(u), delete “prescribing or providing for”.

33A Section 60B amended (Limitation of liability where pilot engaged)

- Replace section 60B(3) with: 30
- (3) A pilot is not liable for neglect or want of skill when acting as a pilot,—
 - (a) on board a ship being provided with pilotage; or
 - (b) in accordance with the maritime rules, on land or on board another ship.

34 Section 198 amended (Coastal shipping)

- (1) In section 198(6), replace the definition of **coastal cargo** with: 35
coastal cargo, in relation to any ship,—

- (a) means—
- (i) passengers who initially board the ship at a New Zealand port for carriage to and final disembarking from that ship at another New Zealand port; or
 - (ii) goods initially loaded on the ship at a New Zealand port for carriage to and final unloading from that ship at another New Zealand port; but
- (b) does not include goods carried between a port on the mainland and a port on any New Zealand offshore island
- (2) In section 198(6), insert their appropriate alphabetical order:
- mainland**, in the definition of coastal cargo, means the North Island, the South Island, and Stewart Island
- New Zealand offshore island** means any island in New Zealand’s exclusive economic zone or the territorial sea that is not a part of the mainland
- 35 Section 201 amended (Regulations)**
- (1) In section 201(1)(d)(i), replace “shall be a fine not exceeding” with “must not exceed”.
- (2) In section 201(1)(d)(ii), replace “shall be a fine not exceeding” with “must not exceed”.
- 36 Section 225 amended (Interpretation)**
- In section 225, definition of **marine protection product**,—
- (a) before paragraph (a), insert:
 - (aa) anything or any substance specified as a marine protection product for the purposes of this definition by the marine protection rules; and
 - (b) in paragraph (b), replace “sea;—” with “sea”; and
 - (c) after paragraph (b), delete “and includes anything that is specified as a marine protection product for the purposes of this definition by the marine protection rules”.
- 36A Section 388 amended (Marine protection rules in relation to harmful and other substances)**
- (1) In section 388(a) to (d), delete “specifying” in each place.
- (2) In section 388(e) to (h) and (j) to (m), delete “prescribing” in each place.
- 37 Section 452 amended (Incorporation by reference)**
- In section 452(5), replace “offices” with “head office”.

Schedule 1
New Schedule 1AA inserted

s 7

Schedule 1AA
Transitional, savings, and related provisions

5

s 2A

Part 1
Maritime Transport Amendment Act 2016

1 Interpretation

In this Part, **commencement date** means the date on which the **Maritime Transport Amendment Act 2016** (other than **Part 2** of that Act) comes into force under **section 2(2)** of that Act.

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~~commencement date means the date on which the Maritime Transport Amendment Act 2016 comes into force.~~

Drug and alcohol testing

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2 Interpretation

In this clause and **clauses 3 to 6**,—

current DAMP operator means a person who is or becomes a DAMP operator during the transition period

existing employment agreement means an employment agreement, within the meaning of the Employment Relations Act 2000, between a current DAMP operator and a safety-sensitive worker

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transition period means the period commencing on the commencement date and ending on the day that is ~~18 months~~ 2 years after that commencement date.

3 Current DAMP operators: development and implementation of DAMP

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(1) **Part 4B** applies to a current DAMP operator only as set out in this Part.

(2) A current DAMP operator must develop a DAMP in accordance with **section 40Z** by the end of the transition period.

(3) At the end of the transition period, the current DAMP operator must immediately implement the DAMP.

30

(4) **Section 40ZA(1)** applies in relation to a DAMP developed under this clause.

- 4 Director to examine DAMP as part of safety inspection or audit**
- When, after the end of the transition period, the Director next conducts an inspection or audit under section 54 in relation to the prescribed safety system of a current DAMP operator,—
- (a) the Director must ask the operator for the DAMP developed under **clause 23**; and
 - (b) the operator must give the DAMP to the Director; and
 - (c) the Director must examine the DAMP to determine whether it has been developed in accordance with **section 40Z**.
- 5 Renewal of maritime document held by current DAMP operator**
- (1) This clause applies if a current DAMP operator applies under section 35 for renewal of the maritime document for operating the relevant ship.
 - (2) If the Director decides the renewal application during the transition period, the Director must decide without regard to the operator's obligation under **clause 23** to develop a DAMP.
 - (3) If the maritime document is renewed ~~between~~after the end of the transition period ~~and~~but before the inspection or audit referred to in **clause 34**, that clause does not apply to the operator's DAMP.
- 6 Current DAMP operators: Employment Relations Act 2000**
- (1) This clause applies to a current DAMP operator who is the employer in an existing employment agreement with a safety-sensitive worker.
 - (2) The operator may include in the agreement a provision that allows the operator to carry out random testing of the worker in accordance with the DAMP developed by the operator under **clause 23**.
 - (3) The DAMP provision included in an employment agreement under **subclause (2)** may contain such details—
 - (a) as the operator and worker think fit, in the case of an individual employment agreement; or
 - (b) as are mutually agreed on by the operator and the relevant union.

Schedule 2

Maritime Transport (Fund Convention) Levies Order 1996

s 30(1)

Title

In the title, replace “**(Fund Convention) Levies**” with “**(International Oil Pollution Compensation Levies)**”. 5

Clause 1

In clause 1(1), replace “(Fund Convention) Levies” with “(International Oil Pollution Compensation Levies)”.

Clause 2

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In clause 2(1),—

- (a) definition of **Assembly**, replace “the Fund” with “the International Oil Pollution Fund or the Supplementary Fund (as the case may be)”;
- (b) definition of **contributor**, replace “an annual levy” with “a levy”;
- (c) definition of **Director**, replace “the Fund” with “the International Oil Pollution Fund or the Supplementary Fund (as the case may be)”;
- (d) repeal the definition of **the Fund**. 15

In clause 2(1), replace the definition of **the Fund Convention** with:

Fund Convention means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (Articles 10, and 12 to 15 of the English text of which are set out in **Schedule 1**) and includes any subsequent protocol or amendment to, or revision of, that convention accepted or ratified by New Zealand 20

In clause 2(1), insert in their appropriate alphabetical order:

International Oil Pollution Fund means the International Oil Pollution Compensation Fund established under Article 2 of the Fund Convention 25

Supplementary Fund means the International Oil Pollution Compensation Supplementary Fund, 2003 established under Article 2 of the Supplementary Fund Protocol

Supplementary Fund Protocol means the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (Articles 10 to 15 of the English text of which are set out in **Schedule 2**) and includes any subsequent protocol or amendment to, or revision of, that protocol accepted or ratified by New Zealand 30

Clause 4

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Replace the heading to clause 4 with “**Levies payable as annual contributions to International Oil Pollution Fund and Supplementary Fund**”.

Clause 4—continued

In clause 4(1), replace “the Fund” with “the International Oil Pollution Fund”.

After clause 4(1), insert:

- (1A) A person is liable to pay an annual contribution to the Supplementary Fund in respect of a calendar year if, in that year, the person received, in total,—
- (a) more than 150,000 tons of contributing oil; or
 - (b) a quantity of contributing oil that, when aggregated with the quantity of contributing oil in total received by any associated person or persons in that year, was more than 150,000 tons.

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In clause 4(2), after “subclause (1)(b)”, insert “or **(1A)(b)**”.

In clause 4(3), after “annual contribution”, insert “payable under subclause (1)”.

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After clause 4(3), insert:

- (3A) The amount of the annual contribution payable under **subclause (1A)** must be calculated by the Director, on the basis of the total amount of contributions to be levied decided by the Assembly, in accordance with Article 11 of the Supplementary Fund Protocol.

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In clause 4(4),—

- (a) after “Director”, insert “of the International Oil Pollution Fund or the Supplementary Fund (as the case may be)”; and
- (b) replace “contribution to the Fund” with “contribution to the International Oil Pollution Fund or the Supplementary Fund (as the case may be)”; and
- (c) replace “directly to the Fund” with “directly to that fund”.

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Clause 5

In clause 5(1),—

- (a) replace “initial levy or annual levy” with “amount of levy”; and
- (b) replace “the Fund” with “the International Oil Pollution Fund or the Supplementary Fund (as the case may be)”.

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New Schedule 2

After the Schedule, insert as Schedule 2:

Schedule 2
Articles 10 to 15 of the Protocol of 2003 to the International
Convention on the Establishment of an International Fund for
Compensation for Oil Pollution Damage, 1992

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New Schedule 2—continued*Article 10*

1. Annual contributions to the Supplementary Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in article 11, paragraph 2(a) or (b), has received in total quantities exceeding 150,000 tons:
 - (a) in the ports or terminal installations in the territory of that State contributing oil carried by seas to such ports or terminal installations; and
 - (b) in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this sub-paragraph on first receipt in a Contracting State after its discharge in that non-Contracting State.
2. The provisions of article 10, paragraph 2, of the 1992 Fund Convention shall apply in respect of the obligation to pay contributions to the Supplementary Fund.

Article 11

1. With a view to assessing the amount of annual contributions due, if any, and taking account of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:
 - (i) **Expenditure**
 - (a) costs and expenses of the administration of the Supplementary Fund in the relevant year and any deficit from operations in preceding years;
 - (b) payments to be made by the Supplementary Fund in the relevant year for the satisfaction of claims against the Supplementary Fund due under article 4, including repayments on loans previously taken by the Supplementary Fund for the satisfaction of such claims;
 - (ii) **Income**
 - (a) surplus funds from operations in preceding years, including any interest;
 - (b) annual contributions, if required to balance the budget;
 - (c) any other income.
2. The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director of the Supplementary Fund shall, in respect of each Contracting State, calculate for each person referred to in article 10, the amount of that person's annual contribution.

New Schedule 2—continued

- (a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(a) on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such person during the preceding calendar year; and
- (b) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(b) on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a Contracting State to this Protocol at the date of the incident. 5
3. The sums referred to in paragraph 2 shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Contracting States in the relevant year. 10
4. The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Supplementary Fund. The Assembly may decide on a different date of payment. 15
5. The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Supplementary Fund, to make transfers between funds received in accordance with paragraph 2(a) and funds received in accordance with paragraph 2(b).
- Article 12* 20
1. The provisions of article 13 of the 1992 Fund Convention shall apply to contributions to the Supplementary Fund.
2. A Contracting State itself may assume the obligation to pay contributions to the Supplementary Fund in accordance with the procedure set out in article 14 of the 1992 Fund Convention. 25
- Article 13*
1. Contracting States shall communicate to the Director of the Supplementary Fund information on oil receipts in accordance with article 15 of the 1992 Fund Convention provided, however, that communications made to the Director of the 1992 Fund under article 15, paragraph 2, of the 1992 Fund Convention shall be deemed to have been made also under this Protocol. 30
2. Where a Contracting State does not fulfil its obligations to submit the communication referred to in paragraph 1 and this results in a financial loss for the Supplementary Fund, that Contracting State shall be liable to compensate the Supplementary Fund for such loss. The Assembly shall, on the recommendation of the Director of the Supplementary Fund, decide whether such compensation shall be payable by that Contracting State. 35

New Schedule 2—continued*Article 14*

1. Notwithstanding article 10, for the purposes of this Protocol there shall be deemed to be a minimum receipt of 1 million tons of contributing oil in each Contracting State.
2. When the aggregate quantity of contributing oil received in a Contracting State is less than 1 million tons, the Contracting State shall assume the obligations that would be incumbent under this Protocol on any person who would be liable to contribute to the Supplementary Fund in respect of oil received within the territory of that State in so far as no liable person exists for the aggregated quantity of oil received. 5
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Article 15

1. If in a Contracting State there is no person meeting the conditions of article 10, that Contracting State shall for the purposes of this Protocol inform the Director of the Supplementary Fund thereof.
2. No compensation shall be paid by the Supplementary Fund for pollution damage in the territory, territorial sea or exclusive economic zone or area determined in accordance with article 3(a)(ii), of this Protocol, of a Contracting State in respect of a given incident or for preventive measures, wherever taken, to prevent or minimize such damage, until the obligations to communicate to the Director of the Supplementary Fund according to article 13, paragraph 1 and paragraph 1 of this article have been complied with in respect of that Contracting State for all years prior to the occurrence of that incident. The Assembly shall determine in the Internal Regulations the circumstances under which a Contracting State shall be considered as having failed to comply with its obligations. 15
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3. Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently in respect of that incident if the obligations to communicate to the Director of the Supplementary Fund under article 13, paragraph 1 and paragraph 1 of this article, have not been complied with within one year after the Director of the Supplementary Fund has notified the Contracting State of its failure to report. 30
4. Any payments of contributions due to the Supplementary Fund shall be set off against compensation due to the debtor, or the debtor's agents.

Maritime Transport Amendment Bill

Legislative history

10 November 2016

16 November 2016

Introduction (Bill 200–1)

First reading and referral to Transport and Industrial Relations
Committee

Wellington, New Zealand:

Published under the authority of the House of Representatives—2017