

Maritime Transport (MARPOL Annex VI) Amendment Bill

Government Bill

As reported from the Transport and Infrastructure Committee

Commentary

Recommendation

The Transport and Infrastructure Committee has examined the Maritime Transport (MARPOL Annex VI) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

This bill aims to address the effects of shipping emissions on human health, environments in and around port communities, as well as on climate change, and depletion of the ozone layer.

The bill would align New Zealand's legislation with Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL). The Annex contains regulations requiring ships to minimise and manage their emissions of greenhouse gases, ozone-depleting substances, nitrogen oxides, sulphur oxides, and volatile organic compounds (Annex VI substances).

In 2019 Cabinet agreed to accede to Annex VI subject to the satisfactory completion of a parliamentary treaty examination process. This process took place and the Environment Committee recommended that New Zealand accede to Annex VI.

The Maritime Transport Act 1994 needs amending for New Zealand to meet its international obligations under MARPOL Annex VI.

The bill would amend the Act to empower the Minister of Transport to make marine protection rules in relation to Annex VI substances. It would also allow the Director of Maritime New Zealand to do a number of things in relation to Annex VI requirements, including:

- granting exemptions from the marine protection rules

- conducting inspections and audits
- requiring ports to provide reception facilities
- detaining ships and seizing marine protection products
- accepting marine protection documents.

The bill would also amend definitions in the Act to better align with MARPOL Annex VI.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

Our proposed amendments are largely minor and technical. This commentary discusses the most substantive of them.

The difference between ballast water and sediment

Clause 4 of the bill would add or modify various definitions in section 222 of the Act. As introduced, clause 4 defines “reception facility” as a facility for the reception of harmful substances, ballast water, and Annex VI substances.

We recommend amending clauses 4 and 16 so that the definitions better differentiate between ballast water and sediment, as they are dealt with in different ways under the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004.¹ Under that convention ports are required to provide reception facilities for sediments removed from ballast water tanks. Ports may provide reception facilities for ballast water, but they are not required to.

Under marine protection rules, however, if ballast water exceeds a performance standard specified in the rules, it is deemed a harmful substance. We therefore consider that the definition of “reception facility” should refer to sediment, not ballast water, as dangerous ballast water would be covered by the definition as a harmful substance.

We recommend amending the definition of “reception facility” in clause 4, new section 222(1A), to replace a reference to ballast water with a reference to sediment. The term “reception facility” is used in new section 444A (which replaces existing section 236). We also recommend replacing the term “ballast water” with “sediment” in clause 16, new section 444A(1)(b). These changes would preserve the distinction between ballast water and sediment.

¹ Ballast water is the water, with its suspended matter, that is taken on board a ship to control the ship's trim, list, draught, stability, or stresses. Sediment is the physical matter that settles out of ballast water.

Consequentially, we recommend amending section 444A(2) and (3) to remove reference to ballast water, and substances, and to define “sediment”. This would align with section 444A(1).

Power of the Director to require reception facilities

Clause 7 of the bill would repeal section 236 of the Act, relating to the power of the Director to require reception facilities. This power would instead be set out in new section 444A, inserted by clause 16.

As a consequence of this change, we recommend inserting clause 7A to ensure that the correct section is referenced in section 242 of the Act (Failure to comply with requirement of Director). Our amendment would replace an incorrect cross-reference to section 236 with a correct cross-reference to new section 444A.

Appendix

Committee process

The Maritime Transport (MARPOL Annex VI) Amendment Bill was referred to the committee on 1 June 2021. We invited the Minister of Transport to provide an initial briefing on the bill. They did so on 8 July 2021.

The closing date for submissions was 27 June 2021. We received and considered eight submissions from interested groups and individuals. We heard oral evidence from two submitters.

We received advice on the bill from Te Manatū Waka—Ministry of Transport, Maritime New Zealand, the Ministry of Business, Innovation, and Employment, and the Ministry for the Environment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Greg O'Connor (Chairperson)

Paul Eagle

Hon Julie Anne Genter

Shanan Halbert

Christopher Luxon

Dr James McDowall

Hon Mark Mitchell

Terisa Ngobi

Helen White

**Maritime Transport (MARPOL Annex VI) Amendment
Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Michael Wood

Maritime Transport (MARPOL Annex VI) Amendment Bill

Government Bill

Contents

		Page
1	Title	2
2	Commencement	2
Part 1		
Amendments to Maritime Transport Act 1994		
3	Principal Act	2
4	Section 222 amended (Interpretation)	2
5	Section 223 amended (Application of Parts 19 to 27 to ships of New Zealand Defence Force)	3
6	Section 225 amended (Interpretation)	4
7	Section 236 repealed (Power to require reception facilities)	4
<u>7A</u>	<u>Section 242 amended (Failure to comply with requirement of Director)</u>	<u>4</u>
8	Section 271 amended (Acceptance of documents)	4
9	Section 272 amended (Suspension of marine protection documents or imposition of conditions)	4
10	Section 388 amended (Marine protection rules in relation to harmful and other substances)	4
11	Section 395 amended (Director may grant exemptions from marine protection rules)	4
12	Section 396 amended (Inspections and audits)	5
13	New section 396A inserted (Inspections and audits in relation to Annex VI)	5
	396A Inspections and audits in relation to Annex VI	5

Maritime Transport (MARPOL Annex VI) Amendment Bill		
cl 1		
14	Section 397 amended (Detention, etc, of ships and seizure of marine protection products)	6
15	Section 399 amended (Failure to comply with Director's inspection or audit requirements)	6
16	New section 444A inserted (Power to require reception facilities)	6
	444A Power to require reception facilities	6
Part 2		
Amendments to Maritime Transport (Marine Protection Conventions) Order 1999		
17	Principal order	7
18	Clause 3 amended (Certain international conventions declared to be marine protection conventions)	7

The Parliament of New Zealand enacts as follows:

1	Title	
	This Act is the Maritime Transport (MARPOL Annex VI) Amendment Act 2021 .	
2	Commencement	5
	This Act comes into force on the day after the date of Royal assent.	
Part 1		
Amendments to Maritime Transport Act 1994		
3	Principal Act	
	This Part amends the Maritime Transport Act 1994.	10
4	Section 222 amended (Interpretation)	
(1)	In section 222(1), insert in their appropriate alphabetical order:	
	Annex VI means Annex VI of MARPOL (regulations for the prevention of air pollution from ships)	
	Annex VI requirements means requirements imposed for the purposes of Annex VI under this Act, or under any regulations or rules made under this Act	15
	Annex VI substance means any substance specified as an Annex VI substance for the purposes of this definition by the marine protection rules	
	fuel oil means any fuel delivered to and intended for combustion purposes for propulsion or operation on board a ship, including gas, distillate, and residual fuels	20
(2)	In section 222(1), replace the definition of discharge with:	

discharge—

- (a) includes any release, disposal, spilling, leaking, pumping, emitting, or emptying; but
- (b) does not include—
 - (i) dumping in accordance with a permit issued by the Director under section 262; or
 - (ii) the release of harmful substances for the purposes of legitimate scientific research into pollution abatement and control

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- (3) In section 222(1), replace the definition of **marine protection product** with:

marine protection product means—

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- (a) anything or any substance specified as a marine protection product for the purposes of this definition by the marine protection rules; and
- (b) anything that comprises, or is intended to comprise, any part of a ship, offshore installation, or pipeline, or that is or is intended to be installed on or fitted or supplied to a ship, offshore installation, or pipeline for the purpose of preventing, limiting, or controlling a discharge or the escape of a harmful substance, ballast water, or an Annex VI substance, including (but not limited to)—
 - (i) any plant or equipment that treats or is intended to treat a harmful substance, ballast water, or an Annex VI substance; and
 - (ii) any plant or equipment that monitors or is intended to monitor the discharge or escape of a harmful substance, ballast water, or an Annex VI substance; and
- (c) any substance used or intended to be used for the dispersal or emulsification of a harmful substance or ballast water in the sea

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- (4) In section 222(1), repeal the definition of **reception facility**.

- (5) After section 222(1), insert:

- (1A) In this Part and in Parts 19 to 30, unless the context otherwise requires,—

reception facility means a facility for the reception of—

- (a) harmful substances from ships (as defined in section 2(1)); or
- (b) sediment (as defined in **section 444A(3)**); or
- ~~(b) ballast water from ships (as defined in section 246A(3)); or~~
- (c) Annex VI substances from ships (within the meaning of MARPOL)

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ship, for the purposes of implementing Annex VI, means a ship within the meaning of Article 2(4) of MARPOL.

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5 Section 223 amended (Application of Parts 19 to 27 to ships of New Zealand Defence Force)

In section 223, insert as subsection (2):

Part 1 cl 6		Maritime Transport (MARPOL Annex VI) Amendment Bill	
(2)	Despite subsection (1) , Annex VI requirements do not apply to ships referred to in that subsection.		
6	Section 225 amended (Interpretation) In section 225, repeal the definitions of discharge , marine protection product , and reception facility .		5
7	Section 236 repealed (Power to require reception facilities) Repeal section 236.		
7A	Section 242 amended (Failure to comply with requirement of Director) In section 242, replace “236” with “ 444A ”.		
8	Section 271 amended (Acceptance of documents) In section 271(2)(c), replace “marine environment” with “environment, including the marine environment”.		10
9	Section 272 amended (Suspension of marine protection documents or imposition of conditions) After section 272(1)(e), insert:		15
	(ea) is satisfied that the holder has failed to take corrective action to ensure the condition of the ship’s equipment (including the ship’s systems, fittings, arrangements, and materials) corresponds <u>substantially</u> to the particulars of the relevant marine protection document; or		
10	Section 388 amended (Marine protection rules in relation to harmful and other substances) After section 388(n), insert:		20
	(o) prescribing requirements, procedures, and standards relating to the prevention of air pollution from ships for the purposes of implementing Annex VI.		25
11	Section 395 amended (Director may grant exemptions from marine protection rules) (1) After section 395(2)(b)(iii), insert:		
	(iiia) compliance with the requirement could impede research into the development of emission reduction and control technologies and engine design programmes in relation to ships:		30
(2)	In section 395(2)(d)(i), after “ballast water”, insert “or for the purposes of implementing Annex VI”.		

12 Section 396 amended (Inspections and audits)

- (1) Replace the heading to section 396 with “**Inspections and audits (other than in relation to Annex VI)**”.
- (2) After section 396(3), insert:
- (4) This section does not apply to inspections and audits for the purposes of implementing Annex VI.

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13 New section 396A inserted (Inspections and audits in relation to Annex VI)
After section 396, insert:

396A Inspections and audits in relation to Annex VI

- (1) The Director may, in writing, require any person described in **subsection (2)** to undergo, or carry out, such inspections or audits, or both, as the Director considers necessary in the interests of—
 - (a) protecting the environment, including the marine environment, from harm from discharges from ships that are subject to the provisions of Annex VI; or
 - (b) verifying whether a ship has discharged any substance that is subject to the provisions of Annex VI in contravention of the regulations and rules made under this Act; or
 - (c) facilitating and reviewing trials of ship emission reduction and control technologies; or
 - (d) monitoring compliance with conditions of exemptions.
- (2) This section applies to a person who—
 - (a) holds any marine protection document; or
 - (b) is required to hold any marine protection document by this Act or any regulations or marine protection rules made under this Act; or
 - (c) operates, maintains, or services, or does any other act in respect of, any ship, marine protection product, or reception facility.
- (3) The Director may, in respect of any person described in **subsection (2)**, carry out such inspections or audits, or both, as the Director considers necessary in the interests of 1 or more of the matters specified in **subsection (1)(a) to (d)**.
- (4) For the purposes of any inspection or audit carried out in respect of any person under **subsection (3)**, the Director may, in writing,—
 - (a) require that person to provide to the Director such information as the Director considers relevant to the inspection or audit:
 - (b) in respect of a ship, require the person to—
 - (i) allow the Director to take a sample of the ship’s fuel oil for the purposes of testing the sample in accordance with any requirements specified in the marine protection rules:

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Part 1 cl 14	Maritime Transport (MARPOL Annex VI) Amendment Bill	
	(ii) demonstrate to the Director the familiarity of the master or crew with essential shipboard procedures for the prevention of marine pollution: (iii) demonstrate to the Director that any operational, maintenance, or servicing procedure in respect of a ship or a marine protection product is capable of being carried out in a competent manner.	5
14	Section 397 amended (Detention, etc, of ships and seizure of marine protection products)	
(1)	In section 397(2)(g), replace “marine environment” with “environment, including the marine environment”.	10
(2)	After section 397(2)(g), insert:	
	(ga) there is likely to be a contravention of Annex VI requirements under this Act or regulations or rules made under this Act; or	
(3)	After section 397(3), insert:	
(3A)	The powers under subsection (1) may also be exercised if the Director believes on clear grounds that the master or crew are not familiar with essential shipboard procedures relating to the prevention of air pollution from ships for the purposes of implementing Annex VI.	15
15	Section 399 amended (Failure to comply with Director’s inspection or audit requirements)	20
	In section 399, replace “subsection (1) or subsection (3) of section 396” with “ section 396(1) or (3) or 396A(1) or (4) ”.	
16	New section 444A inserted (Power to require reception facilities)	
	After section 444, insert:	
444A	Power to require reception facilities	25
(1)	The Director may, by notice in writing, require any person who operates a port in New Zealand or in New Zealand continental waters to provide at that port a reception facility to receive from ships all or any of the following:	
(a)	harmful substances:	
(b)	ballast waters <u>sediment</u> :	30
(c)	Annex VI substances.	
(2)	For the purposes of subsection (1) , the substances and ballast water <u>A person required by the Director to provide a reception facility under subsection (1)</u> must comply with the requirements of the marine protection rules.	
(3)	In this section,—	35
	Annex VI substance has the meaning given to it by section 222(1)	
	ballast water has the meaning given to it by section 246A(1)	

harmful substance has the meaning given to it by section 225
marine protection rules has the meaning given to it by section 222(1)
New Zealand continental waters has the meaning given to it by section 222(1)
reception facility has the meaning given to it by **section 222(1A)**;
sediment means matter that has settled out of ballast water (as defined in section 246A(1)) within a ship (as defined in section 246A(3)(a)).

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Part 2

Amendments to Maritime Transport (Marine Protection Conventions) Order 1999

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17 Principal order

This Part amends the Maritime Transport (Marine Protection Conventions) Order 1999.

18 Clause 3 amended (Certain international conventions declared to be marine protection conventions)

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After clause 3(b), insert:

(ba) Annex VI of the International Convention for the Prevention of Pollution from Ships, 1973:

Legislative history

19 May 2021
1 June 2021

Introduction (Bill 37–1)
First reading and referral to Transport and Infrastructure Committee