

Maritime Transport Amendment Bill

Government Bill

Explanatory note

General policy statement

The Maritime Transport Amendment Bill (the **Bill**) makes miscellaneous amendments to the Maritime Transport Act 1994 (the **Act**) that address several distinct policy objectives.

First, the Bill increases the level of compensation available to meet claims for oil pollution damage caused by a spill from an oil tanker in New Zealand waters. The Bill will enable New Zealand to accede to the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992. The Protocol establishes an additional tier of compensation that can be called upon in the event of a major oil tanker spill in the waters of a contracting State.

Second, the Bill includes provisions that open the way for New Zealand to exercise its right, as a party to the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, to make reservations that exclude limitation of liability for three different categories of maritime claim. Reservations may exclude limitation for claims relating to: wreck removal; cargo removal; damage caused by hazardous and noxious substances. Exclusion of such claims from limitation potentially leaves more money available to meet claims for pollution damage in the event of a major maritime incident such as the grounding of the *Rena*. The Bill contains the provisions required to support all three types of reservation.

Third, the Bill includes, as *new Part 4B*, amendments that establish measures to more effectively manage the risks associated with alcohol and drug use in the commercial maritime sector. These measures:

- require commercial maritime operators to have drug and alcohol and management plans to manage the risks associated with drug and alcohol use:

- require the management plans to provide for random drug and alcohol testing of staff carrying out safety sensitive activities:
- empower the Director (the **Director**) to undertake drug or alcohol testing in accordance with the testing requirements in operator management plans. This testing is not limited to random testing and can occur at any reasonable time and in any reasonable circumstances the Director considers appropriate:
- provide that, in the event of a test being returned with a result other than a negative result, an operator must implement their response plan and may not permit the individual in question to perform any safety-sensitive activity until the operator determines that it is safe for the individual to do so:
- require that an individual must consent to testing but the operator must respond to an individual's refusal in the same way as it would respond to a test result that is anything other than a negative result.

The intention is that operators will implement their drug and alcohol management plans by incorporating them into employment agreements for employees, in line with the treatment of drug and alcohol testing under current employment law, and contracts for services for contractors.

Amendments to the maritime rules will establish requirements concerning the content of and procedural requirements for drug and alcohol management plans, procedural requirements for random drug and alcohol testing, and other related matters. Existing Maritime Transport Act offence, penalty and cost recovery provisions are sufficient to cover enforcement of, and funding for, the new drug and alcohol management requirements.

The fourth group of amendments comprise miscellaneous measures intended to improve the operation of existing provisions of the Act and address minor anomalies. The Bill includes amendments to:

- amend a number of the Minister of Transport's maritime rule making powers in section 36(1) of the Act to provide more flexibility for rules to "provide for" rather than to "prescribe" matters in respect of which the Minister may make maritime rules. The effect, in conjunction with section 451(4) of the Act, is to make maritime rules more flexible in what they can require or provide:
- allow regional councils to retain fees from infringement offence notices issued for breaches of maritime rules, to provide an incentive for councils to enforce the national rules directly rather than replicate them in local bylaws:
- improve access to coastal shipping services to non-mainland ports by allowing for foreign-registered ships to carry freight to and from New Zealand's offshore islands, including the Chatham Islands:
- amend section 452(5) of the Act so that only the Head Office of Maritime NZ is required to hold copies of all documents incorporated in maritime and marine protection rules:

- amend section 33X(1) of the Act to enable territorial authorities to transfer responsibilities in relation to maritime activity to council-controlled organisations and port operators:
- clarify that powers transferred to a public authority under section 33X of the Act can be varied or withdrawn, by mirroring the relevant process from the Local Government Act 2002:
- enable territorial authorities to transfer their powers to carry out harbour works under section 33I(1)(b) of the Act to another public authority:
- clarify the wording of section 388(n) of the Act to enable the Director to issue guidelines consistent with requirements and procedures under the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004:
- clarify the definition of "marine protection product" in section 225 of the Act, for the purposes of marine protection rules.

Departmental disclosure statement

The Ministry of Transport is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2016&no=200>

Regulatory impact statement and national interest analysis

The Ministry of Transport produced a regulatory impact statement on 2 February 2016 to help inform the main policy decisions taken by the Government relating to the amendments made by *Part 1* of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.transport.govt.nz/assets/Uploads/About/Documents/RIS-Options-to-reduce-the-risks-of-alcohol-and-drug-related-impairment-in-aviation-maritime-and-rail.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

An extended national interest analysis, that takes the place of a regulatory impact statement, has been prepared to help inform the main policy decisions taken by Government relating to amendments made by *Part 2* of this Bill to the provisions of Part 26 of the Maritime Transport Act 1994. The Ministry of Transport produced the national interest statement on 24 November 2014. The national interest statement was presented to the House of Representatives on 16 March 2015, in accordance with Standing Order 397(2) (presentation of national interest analyses for international treaties).

A copy of this national interest analysis can be found at—

- <http://www.transport.govt.nz/assets/Uploads/Sea/Documents/Supplementary-Fund-NIA-Dec2014.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 gives the Title of the Bill, when enacted, as the Maritime Transport Amendment Act 2016.

Clause 2 provides that all amendments made by the Bill (other than amendments made by *Part 2*) come into force the day after the day the Bill receives the Royal assent. *Part 2*, which makes amendments in relation to international oil pollution compensation and the Convention on the Limitation of Liability for Maritime Claims 1976 (the **LLMC Convention**), comes into force 6 months after Royal assent.

Clause 3 provides that the Bill amends the Maritime Transport Act 1994 (the **principal Act**).

Part 1

Drug and alcohol testing amendments

Clause 4 inserts *new section 2A*, which gives effect to the transitional, savings, and related provisions that are set out in *new Schedule 1AA* of the principal Act.

Clause 5 amends section 36, which enable the Minister to make maritime rules on specified subjects. The clause inserts *new section 36(1)(ea)*, which authorises rules that support the DAMP scheme in *new Part 4B* of the principal Act.

Clause 6 inserts *new Part 4B*, which establishes a scheme for the development and implementation of drug and alcohol management plans (DAMPs) by certain commercial operators. *New Part 4B* provides as follows:

- *new section 40X* provides that *new Part 4B* does not limit the Health and Safety at Work Act 2015. This recognises that the HSWA continues to apply in workplaces where *new Part 4B* applies.
- *new section 40Y* inserts definitions for *new Part 4B*, including the following:
 - **DAMP operator** means a person who operates any ship other than a pleasure craft, holds a maritime document for that operation, has established a safety system under the rules and carries out safety-sensitive activities:
 - **safety-sensitive activity** means an activity of a worker that might significantly affect the health and safety of any person (including the worker performing the activity) on board the ship and includes an activity prescribed by the maritime rules:
 - **safety-sensitive worker** means a person who works in any capacity for a DAMP operator in a role that involves performing a safety-sensitive

activity. This would include being an employee or contractor, but is not limited to these persons. The definition includes the DAMP operator himself or herself if the operator is an individual:

- **random testing** means drug or alcohol testing of a safety-sensitive worker by a DAMP operator where the worker to be tested is selected in a non-discriminatory manner and is not given advance notification of the test:
- **testable drug** means a drug that could impair the performance of a safety-sensitive activity and that is specified in the DAMP.
- *new section 40Z* requires a DAMP operator to develop a DAMP, as follows:
 - *subsection (1)* provides that the DAMP's purpose is managing health and safety risks arising from drug and alcohol use by safety-sensitive workers:
 - *subsection (2)* provides that the DAMP is incorporated into the DAMP operator's prescribed safety system, applies to all safety-sensitive activities carried out, and must provide for random drug and alcohol testing of safety-sensitive workers, include a response plan, and comply with further requirements in the maritime rules. The DAMP must specify the testable drugs it applies to and set out other relevant matters including any permissible levels of alcohol or drugs and testing procedures:
- *new section 40ZA* describes the relationship between a DAMP and the maritime document that allows the DAMP operator to operate the ship. *Subsection (1)* states that compliance with new Part 4B is a condition of the maritime document. *Subsection (2)* has the effect of requiring the operator to keep the DAMP in the same way as the maritime document must be kept.
- *new section 40ZB* requires a DAMP operator to carry out the random testing contemplated by the DAMP. The testing must be carried out only if the worker consents (*subsection (2)*). The person who actually carries out the testing must be capable of doing so (*subsection (3)*), must request consent and explain the consequences of refusing consent (*subsection (4)(a) and (b)*) and carry out tests in accordance with the DAMP and the maritime rules (*subsection (4)(c)*).
- *new section 40ZC* provides for Director testing of the safety-sensitive workers of DAMP operators. Under *subsection (2)*, the testing must be carried out without advance notification, but with the worker's consent. It may be carried out whenever and in whatever circumstances the Director considers appropriate, but must be carried out by a person who is capable of carrying out the test. The Director (or the person acting on the Director's behalf under delegation) must carry a document containing identification and other information, and must show it to a worker on request (*subsection (3)(a) and (b)*), and ask for the worker's name and consent (*subsection (3)(c) and (d)*), give the worker a written statement (*subsection (3)(e)*) and test only in accordance with the DAMP (*subsection (3)(f)*). *Subsection (4)* sets out the content of the statement that

must be given to the worker, including information about: the testing and the tester, the consequences of refusing consent or returning a result that is not negative, how the worker is informed of a test result, the right to request a second test, and the right of appeal. *Subsection (5)* requires the Director to give test results to the worker's DAMP operator. *Subsection (6)* gives a worker a right of appeal under section 424.

- *new section 40ZD* provides for the consequences of a refusal of consent or the return of a test result other than a negative result. The DAMP operator must prohibit the worker from performing safety-sensitive activities until the worker is able to perform them safely, and must implement the response plan under the DAMP. In the case of Director testing, the operator is notified of the circumstances by the Director.
- *new section 40ZE* allows the worker, in the case of Director testing, to request a second test. The Director must conduct the second test, but the worker must pay the direct costs.
- *new section 40ZF* limits the uses that can be made of test results obtained by a DAMP operator in carrying out random testing. Such information may be used only in relation to a prosecution for an offence against the principal Act, the Health and Safety at Work Act 2015, the Maritime Security Act 2004, or the Hazardous Substances and New Organisms Act 1996.

Clause 7 inserts *new Schedule 1AA* (as set out in *Schedule 2*) into the principal Act. This schedule contains transitional, savings, and related provisions relating to *Part 1* of the Bill.

Part 2

Oil pollution compensation and LLMC Convention amendments

Subpart 1—Amendments to Maritime Transport Act 1994

Clause 8 amends section 86, which concerns claims that are subject to limitation of liability under the LLMC Convention. *Subclause (2)* replaces section 86(4), specifying claims that are not affected by the LLMC Convention, including claims relating to the removal or destruction of wrecks and their cargo and 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 any amendment or protocol to that convention). In addition, a reference to the LLMC Convention in section 86(1) is amended to reflect the fact that the LLMC Convention has been amended by the Protocol of 1996 to amend the LLMC Convention (the **LLMC Protocol**).

Clause 9 amends section 87(5) by correcting a reference to the LLMC Convention (adding reference to its subsequent amendment by the LLMC Protocol).

Clause 10 amends section 88(2) by correcting a reference to the LLMC Convention (adding reference to its subsequent amendment by the LLMC Protocol).

Clause 11 amends section 342 by replacing the definition of CLC ship with the definition contained in the International Convention on Civil Liability for Oil Pollution Damage 1969, which is the convention implemented by Part 25 of the principal Act.

Clause 12 amends the Part 26 heading to include a reference to what is called the Supplementary Fund. At present, Part 26 implements the International Oil Pollution Compensation Fund established under the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. The Supplementary Fund was established by a 2003 protocol to that convention.

Clause 13 amends section 370, which contains definitions for Part 26 of the principal Act, by adding new definitions of International Oil Pollution Supplementary Fund and Supplementary Fund Protocol and by making other amendments to definitions to support changes being made to the provisions of Part 26.

Clause 14 amends the cross-heading above section 371 to include a reference to the Supplementary Fund.

Clause 15 replaces section 371, which presently deems the International Oil Pollution Fund to be a body corporate for the purposes of Part 26. The new section deems that fund and also the Supplementary Fund to be legal entities for the purposes of Part 26.

Clause 16 amends section 372, which imposes liability on the existing International Oil Pollution Fund. *Subclause (3)* inserts *new subsection (2)*, which requires the Supplementary Fund to pay compensation for oil pollution damage where the existing fund is insufficient to compensate for the damage. Other subclauses make consequential and minor drafting amendments.

Clause 17 amends section 373, which sets a maximum amount of compensation to be paid from the existing fund. *Subclause (3)* inserts *new subsection (1A)*, which provides the maximum amount of compensation payable from the Supplementary Fund. Other subclauses make consequential and minor changes.

Clause 18 makes minor and consequential changes to section 374.

Clause 19 makes minor and consequential changes to section 375.

Clause 20 amends the cross-heading above section 378 to include a reference to the Supplementary Fund.

Clause 21 amends section 378, which provides for the timing of compensation claims under Part 26, so that the section applies to claims on the Supplementary Fund as well as the existing fund.

Clause 22 amends section 379, which provides for the court's jurisdiction in relation to compensation claims under Part 26. *Subclause (2)* amends the jurisdictional limitation in subsection (1) so that it bars relevant actions against both funds. *Subclause (3)* replaces subsection (2), which concerns the court's jurisdiction to hear a claim that has been made to a court in a State that is not a party to the relevant conventions: the new subsection extends this jurisdiction to claims on the Supplementary Fund.

Clause 23 replaces section 380, which requires copies of documents commencing proceedings to be sent to the Director. This new section extends this requirement to

proceedings against the Supplementary Fund and includes some drafting improvements.

Clause 24 replaces section 381, which relates to the joining of the existing fund in other proceedings. The new section extends the joinder and its associated process to the Supplementary Fund and includes a number of drafting improvements.

Clause 25 amends section 382, which allows for the reciprocal enforcement of compensation judgments in courts in co-signatory States. The new section extends this facility to the Supplementary Fund and makes other minor or consequential amendments.

Clause 26 amends section 383, which provides for the existing fund's right of subrogation against third parties (including the ship owner and the owner's insurer) when compensation has been paid. The amendments extend this right subrogation to the Supplementary Fund and include minor drafting improvements.

Clause 27 amends section 385, which authorises the Governor-General to impose a levy, for the purposes of funding compensation from the existing fund, on oil carried by sea. *Subclause (2)* inserts *new subsection (1A)*, which authorises a further levy to fund compensation from the Supplementary Fund. Other subclauses make consequential and other minor amendments.

Clause 28 amends *new Schedule 1AA* by inserting transitional and interpretive provisions relating to international oil pollution compensation. *Clauses 7 and 8 of new Schedule 1AA* apply to amendments made by *Part 2* of the Bill in relation to oil pollution compensation. *Clause 7* makes clear that those amendments apply only in relation to incidents that occur on or after the commencement date. *Clause 8* is an interpretation provision that ensures that any external reference to the Maritime Transport (Fund Convention) Levies Order 1996 are to be read as a reference to the Maritime Transport (International Oil Pollution Compensation Levies) Order 1996 (as renamed by in *Schedule 1* of the Bill).

Subpart 2—Consequential amendments to other enactments

Clause 29 amends section 86(10) of the Biosecurity Law Reform Act 2012. That subsection, which is not yet in force, inserts *new paragraph (n)* into section 388 of the principal Act, authorising the Minister of Transport to make marine protection rules in relation to the control and management of ballast water for the purposes of the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004, including by enabling the Director to issue guidelines containing exemptions from the rules. This clause replaces proposed *new paragraph (n)* of section 388. *New paragraph (n)*, as replaced by this Bill, increases the scope of those guidelines, which need not be limited to the granting of exemptions.

Clause 30 provides that the Maritime Transport (Fund Convention) Levies Order 1996 is amended as set out in *Schedule 2* and revokes the Maritime Transport (Fund Convention) Levies Amendment Order 1999.

Part 3

Miscellaneous amendments

Clause 31 replaces section 33Q, which allows regional councils to retain certain infringement fees. The new section provides that a regional council may retain not only infringement fees paid under section 33O (as at present) but also infringement fees for breaches of maritime rules or navigation bylaws (paid under section 422).

Clause 32 amends section 33X by extending the ability of various public authorities to transfer their responsibilities to another person or body:

- *subclause (1)* amends subsection (1) so that a regional council's ability to transfer responsibilities is shared by a territorial authority:
- *subclause (2)* inserts *new subsection (2A)*, which allows a territorial authority to transfer its section 33I responsibilities (carrying out harbour works) to another public authority:
- *subclause (3)* amends subsection(3) so that a public authority may delegate responsibilities transferred under *new subsection (2A)* as well as subsection (2) and that these responsibilities may be delegated to a council-controlled organisation as well as a port operator:
- *subclause (4)* inserts *new subsection (3A)*, which provides that a transfer of a responsibility in relation to construction works under section 33I does not transfer ownership of the works:
- *subclause (5)* replaces subsection (4) with *new subsections (4) to (4C)*, which make provision in alignment with section 17(3) to (7) of the Local Government Act 2002. Subsection (4) currently applies most of those provisions, but it is preferable to provide directly for these matters. *New subsection (4)* requires a transfer to be agreed between the relevant parties and to be notified to the Minister. *New subsection (4A)* requires a local authority, before agreeing to a transfer, to consult (in accordance with section 82 of the Local Government Act 2002) and be satisfied that the benefits of a proposed transfer outweigh any negative impacts and to consult. *New subsection (4B)* ensures that an authority that receives a transfer of responsibility may carry out that responsibility, by extending the responsibilities and powers of that authority. *New subsection (4C)* allows a party to a transfer to initiate a variation or reversal of the transfer.

Clause 33 makes minor amendments to section 36, which authorises the Minister to make maritime rules. The changes remove restrictive language from section 36(1), with the effect that the rule-making power is more flexible and also better aligned with the corresponding power in the Civil Aviation Act 1990.

Clause 34 amends section 198, which limits coastal cargo shipping to certain ships and certain ports. *Subclause (1)* replaces the definition of coastal cargo in section 198(6) with a definition that excludes goods carried between a port on New Zealand's mainland and a port on any New Zealand offshore island. *Subclause (2)* inserts relevant definitions.

Clause 35 makes a plain English drafting improvement to section 201(1)(d), which empowers the making of regulations.

Clause 36 alters the definition of marine protection product in section 225 to ensure that the marine protection products specified in relevant maritime rules are not limited to the 2 categories of product currently referred to.

Clause 37 amends section 452 so that only the head office, and not all offices, of Maritime New Zealand must ensure that copies of material incorporated by reference in rules under the Act are available for public inspection free of charge.

Schedule 1 contains *new Schedule 1AA*, which is being inserted into the principal Act. *New Schedule 1AA* contains transitional, savings, and related provisions that relate to the application of amendments made by *Part 1* of this Bill, as follows:

- *clause 1* defines commencement date:
- *clauses 2 to 6* relate to the insertion of *new Part 4B* by *Part 1* of the Bill. These clauses apply to a current DAMP operator, who is defined as a person who is or becomes a DAMP operator during the 18 month period after the commencement of *new Part 4B* (*clause 2*):
- the current DAMP operator has the 18 month transition period in which to develop a DAMP, but must then immediately begin to carry out random testing under the DAMP (*clause 3*):
- under *clauses 4 and 5*, the DAMP is to be examined by the Director at the first safety audit after the 18 month transition period, or on renewal of the maritime document that allows the DAMP operator to operate the relevant ship if that renewal occurs first. The DAMP is not examined during the transition period:
- under *clause 6*, a current DAMP operator must include a provision allowing for random testing in any employment agreement with a safety-sensitive worker. Details about how the random testing is to be carried out are to be determined by the operator and the worker or, in the case of a collective agreement, the worker's union.

Schedule 2 contains consequential amendments to the Maritime Transport (Fund Convention) Levies Order 1996. Many provisions are amended, and the amendments do the following:

- the name of the order is changed to Maritime Transport (International Oil Pollution Compensation Levies) Order 1996, to cover the Supplementary Fund as well as the existing fund:
- this name change is consequentially applied to all external references to the order:
- amendments are made to several clauses of the order extending their terms, either by amendment or by the insertion of new subclauses, so that the clauses apply to the Supplementary Fund as well as the existing fund:
- *new Schedule 2*, containing relevant articles of the Supplementary Fund Protocol, is inserted into the order.

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 on the day that is 6 months after the day 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

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) prescribing 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) prescribing matters to be stated in a document under **section 40ZC(3)(a)(iii)**:

(vi) requiring DAMP operators and the Director to keep records for the purposes of that Part:

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**

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

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— 5

- (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— 10

- (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 15

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— 20

- (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— 25

- (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 30

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 35
- (b) includes an activity prescribed by the maritime rules

safety-sensitive worker—

<ul style="list-style-type: none"> (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 	5
<p>testable drug, in relation to a DAMP developed by a DAMP operator, means a drug of any kind that—</p>	
<ul style="list-style-type: none"> (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 this Part. 	10
<p>40Z DAMP operator must develop a DAMP</p>	
<ul style="list-style-type: none"> (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— 	15
<ul style="list-style-type: none"> (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— <ul style="list-style-type: none"> (i) specifying the testable drugs to be tested for under the DAMP; and (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 (e) complies with any further requirements in the maritime rules, including requirements for— <ul style="list-style-type: none"> (i) the content of the DAMP; and (ii) procedures for developing the DAMP; and (iii) record-keeping. 	20 25 30
<p>40ZA Relationship between DAMP and DAMP operator’s maritime document</p>	
<ul style="list-style-type: none"> (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. 	35

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 out the testing, including by having any necessary experience or qualifications. 5
- (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 10
 - (c) carry out tests in accordance with the DAMP and any requirements in the maritime rules.

40ZC Director testing

- (1) The Director may carry out drug or alcohol testing of 1 or more safety-sensitive workers of a DAMP operator. 15
- (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 at any reasonable time and in any reasonable circumstances the Director considers appropriate; and 20
 - (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 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— 25
 - (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
 - (b) show the document to the worker on first approaching the worker and at any later time on request; and 30
 - (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 35
 - (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.
- (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: 5
 - (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:
 - (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): 10
 - (f) advice about the worker's right to appeal under section 424 against the decision to test the worker:
 - (g) advice about the worker's right to request a second test under **section 40ZE** and the cost to the worker of carrying out a second test. 15
- (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.
- (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 District Court under section 424. 20
- 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— 25
- (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. 30
- (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. 35
- (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.

40ZF Test results only to be used in certain prosecutions

Test results obtained by a DAMP operator from carrying out random testing are not admissible in any proceedings other than the prosecution of an offence against any of the following: 5

- (a) this Act;
- (b) the Health and Safety at Work Act 2015;
- (c) the Maritime Security Act 2004; 10
- (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 15

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: 20
- (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: 25
 - (b) claims in respect of the removal, destruction, or rendering harmless of the cargo of a ship:
 - (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: 30
 - (d) anything in the Accident Compensation Act 2001, the Carriage of Goods Act 1979, or Parts 18 to 26A of this Act.

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)

In section 88(2), replace “LLMC Convention” with “LLMC Convention (as amended by the LLMC Protocol)” in each place. 5

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

(2) In section 342, insert as subsection (2): 10

(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. 15

12 Heading to Part 26 amended

In the heading to Part 26, after “**International Oil Pollution Fund**”, insert “**and Supplementary Fund**”.

13 Section 370 amended (Interpretation) 20

(1) In section 370,—

(a) repeal the definition of **Convention ship**; and

(b) the definition of **International Oil Pollution Fund**, delete “or **the Fund**”.

(2) In section 370, replace the 2 definitions of **owner** with: 25

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) 30

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 35

- 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)** 5
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. 10
- 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**”. 15
- (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”.
- (3) In section 372, insert as subsection (2): 20
- (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. 25
- 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,—”. 30
- (3) After section 373(1), insert: 35

- (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)**. 5
- (4) In section 373(2),—
- (a) replace “The maximum” with “A maximum”; and
 - (b) replace “shall apply” with “applies”; and
 - (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)** 10
- (1) In section 374(2), replace “shall not be liable under section 372” with “is not liable under **section 372(1)**”.
- (2) In section 374(3), replace “shall be reduced” with “is reduced”.
- (3) In section 374(4), replace “shall apply” with “applies”. 15
- 19 Section 375 amended (Several claims for compensation from International Oil Pollution Fund)**
- (1) In section 375(1),—
- (a) replace “section 372” with “**section 372(1)**”; and
 - (b) replace “shall determine” with “must determine”. 20
- (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
 - (c) replace “shall order” with “must order”.
- 20 Cross-heading above section 378 amended** 25
- 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)**
- (1) In the heading to section 378, after “**Fund**”, insert “**or Supplementary Fund**”. 30
- (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
 - (c) replace “served on the International Oil Pollution Fund” with “served on the fund”. 35

- 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**”.
- (2) In section 379(1), after “Fund”, insert “or the Supplementary Fund”.
- (3) Replace section 379(2) with: 5
- (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. 10
- 23 Section 380 replaced (Notice of proceedings against International Oil Pollution Fund)** 15
- Replace section 380 with:
- 380 Notice of proceedings against International Oil Pollution Fund or Supplementary Fund**
- 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. 20
- 24 Section 381 replaced (Notice to and joining of International Oil Pollution Fund in certain proceedings)** 25
- Replace section 381 with:
- 381 Notice to and joining of International Oil Pollution Fund and Supplementary Fund in certain proceedings**
- (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,— 30
- (a) either party to the proceedings may serve a notice on the International Oil Pollution Fund or on the Supplementary Fund; and
- (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. 35
- (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

- (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. 5
- 25 Section 382 amended (Reciprocal enforcement of judgments against International Oil Pollution Fund)** 10
- (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”. 15
- (3) In section 382(2), replace “shall have no effect” with “have no effect”.
- (4) In section 382(3),— 20
- (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”. 25
- 26 Section 383 amended (Rights of subrogation of International Oil Pollution Fund)**
- (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 30
- (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”.
- (3) In section 383(b),— 35
- (a) replace “the International Oil Pollution Fund” with “the fund”; and
- (b) replace “shall be as favourable” with “must be as favourable”.

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: 5
- (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). 10
- (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

In **Schedule 1AA** (as inserted by **section 7**), insert in their appropriate numerical order: 15

*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** 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. 20

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**. 25

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: 30
- (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. 35

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 is 5
revoked.

Part 3**Miscellaneous amendments****31 Section 33Q replaced (Entitlement to infringement fees)**

Replace section 33Q with: 10

33Q Entitlement to infringement fees

A regional council is entitled to retain any infringement fee it receives in respect of an infringement offence—

- (a) under section 33O if the infringement notice was issued by a harbourmaster or an enforcement officer of the council: 15
- (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
- (ii) the infringement notice was issued under section 423 by a harbourmaster or an enforcement officer of the council. 20

32 Section 33X amended (Delegation or transfer of council's responsibilities)

- (1) In section 33X(1), after “regional council”, insert “or territorial authority”.
- (2) After section 33X(2), insert:
- (2A) A territorial authority may transfer its responsibilities under section 33I to another public authority. 25
- (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”.
- (4) After section 33X(3), insert: 30
- (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:
- (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 35

- (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 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.
- 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”. 15
- (2) In section 36(1)(c) to (h), (j), (l) to (ta), (tc), and (td), delete “prescribing” in each place.
- (3) Replace section 36(1)(i) with:
- (i) defining operating limits and pilotage limits: 20
- (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),—
- (a) delete “requiring”; and
- (b) delete “prescribing”. 25
- (5) In section 36(1)(u), delete “prescribing or providing for”.
- 34 Section 198 amended (Coastal shipping)**
- (1) In section 198(6), replace the definition of **coastal cargo** with:
- coastal cargo**, in relation to any ship,—
- (a) means— 30
- (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 35

- (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 5
- 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”. 10
- (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: 15
- (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”. 20
- 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,—

10

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

Drug and alcohol testing

2 InterpretationIn this clause and **clauses 3 to 6**,—

15

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

20

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

3 Current DAMP operators: development and implementation of DAMP(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.

25

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

(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**

30

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,—

<ul style="list-style-type: none"> (a) the Director must ask the operator for the DAMP developed under clause 2; 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
5	Renewal of maritime document held by current DAMP operator
<ul style="list-style-type: none"> (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 application during the transition period, the Director must decide without regard to the operator’s obligation under clause 2 to develop a DAMP. (3) If the maritime document is renewed between the end of the transition period and the inspection or audit referred to in clause 3, that clause does not apply to the operator’s DAMP. 	10
6	Current DAMP operators: Employment Relations Act 2000
<ul style="list-style-type: none"> (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 2. (3) The DAMP provision included in an employment agreement under subclause (2) may contain such details— <ul style="list-style-type: none"> (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. 	25

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)”. 10

Clause 2

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

Replace the heading to clause 4 with “Levies payable as annual contributions to International Oil Pollution Fund and Supplementary Fund”. 35

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 5
 - (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.

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

In clause 4(3), after “annual contribution”, insert “payable under subclause (1)”. 10

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. 15

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 20
- (c) replace “directly to the Fund” with “directly to that fund”.

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)”. 25

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: 5
 - (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. 10
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. 15

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: 20
 - (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; 25
 - (ii) **Income** 30
 - (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. 35

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.