

Maritime Transport (Offshore Installations) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Maritime Transport Act 1994 (the **Act**). The purpose of the Bill is to clarify and strengthen the requirements on owners of offshore oil and gas installations to hold insurance or other financial security in relation to their liability for clean-up and compensation resulting from an oil spill.

Although the likelihood of a major marine oil spill is very low, the environmental, financial, and cultural impacts of such an incident would be significant. The Act implements a polluter-pays regime, under which owners have unlimited liability for the cost of pollution damage resulting from a spill at their facilities in New Zealand waters. Anyone affected by oil damage from an offshore installation is entitled to make a claim against the owner. The owner's liability includes the cost of measures to prevent or reduce pollution damage, the cost of reasonable measures to reinstate the environment, and the loss of profit from impairment of the environment. The Bill does not change the owner's liability.

The Act also provides for owners to hold insurance or other financial security in respect of their liability. The insurance or other financial security is intended to mitigate the financial risks to the Crown and other parties should the owner be unable to meet their liabilities in the event of a significant oil spill. Detailed requirements for the insurance or other financial security are specified in marine protection rules made under the Act.

The Bill amends the Act to provide certainty in relation to the liability of insurers (or, in the case of financial security, the persons providing the financial security) to the Crown and to other third parties who are affected by the pollution. The Bill also clarifies that rules may specify the types of liability that will need to be insured against

and may provide for the insurance or other financial security to cover the cost of well control measures and other costs of implementing marine oil spill contingency plans.

The amendments to the Act will be supported by amendments to the rules, which will specify more detailed requirements relating to the insurance or financial security. The rules will include a scaled framework for specifying the amount of cover required, based on the modelling of a credible worst-case scenario event from that particular installation.

These changes will enable owners of regulated offshore installations to meet the Act's requirements using insurance policies that are consistent with internationally available best practice policy wording and available on the international market. These policies will be required to cover the key risks and costs of clean-up and pollution damage associated with the owner's installation.

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=2019&no=154>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides for the Bill to come into force on 1 November 2019.

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

Part 1

Amendments to Part 26A of principal Act

Part 1 amends Part 26A of the principal Act (civil liability for pollution of marine environment from marine structures).

Clause 4 removes the definition of insurance from section 385A. The definition is not necessary for purposes of Part 26A.

Clause 5 replaces section 385J.

Section 385J provides that a person (an **insurer**) who provides insurance or other financial security to the owner of a regulated offshore installation for liability for pollution damage in accordance with Part 26A of the Act can be sued directly by a person (a **claimant**) who has a claim against the owner in respect of pollution damage.

Existing section 385J is silent on whether the insurer's liability is capped at the level of insurance, and in respect of the type of insurance, that the insurer has provided to the owner. As a consequence, an insurer's liability under existing section 385J is, potentially, unlimited.

New section 385J is based closely on New South Wales' Civil Liability (Third Party Claims Against Insurers) Act 2017. The new section provides that a claimant who has a claim against an owner in respect of pollution damage may recover the insured amount of the liability from the insurer. As a consequence, an insurer's liability to a claimant is limited to the amount and types of insurance that the insurer has provided to the owner. The new section also clarifies some related matters.

Part 2

Other amendments to principal Act

Clause 6 amends section 387 of the principal Act. Section 387 enables the making of marine protection rules that may specify, among other things, requirements and criteria for insurance or other financial security that must be held in relation to regulated offshore installations. The amendments allow for those rules to provide for more specific requirements for insurance and other financial security.

Clause 7 inserts a new clause into Schedule 1AA of the principal Act to clarify the effect of the replacement section 385J on any proceedings that are under way. The new clause provides that existing section 385J continues to apply to any proceeding that are under way.

Hon Julie Anne Genter

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Maritime Transport (Offshore Installations) Amendment Act **2019**.

2 Commencement

This Act comes into force on 1 November 2019.

3 Principal Act

This Act amends the Maritime Transport Act 1994 (the **principal Act**).

Part 1

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Amendments to Part 26A of principal Act

4 Section 385A amended (Interpretation)

In section 385A, repeal the definition of **insurance**.

5 Section 385J replaced (Rights of third parties against insurers of regulated offshore installations)

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Replace section 385J with:

385J Rights of third-party claimants against insurers of regulated offshore installations

(1) This section applies if the owner of a regulated offshore installation has a liability to a person (a **claimant**) under any of the following sections:

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(a) section 385B (liability to the Crown and marine agencies for costs of cleaning up pollution):

(b) section 385C (liability for pollution damage from marine structures and operations):

(c) section 385D (liability for unattributable pollution damage from marine structures and operations).

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(2) The claimant may recover the insured amount of the liability from any person (in this section, the **insurer**) providing insurance or other financial security for the owner's liability for pollution damage to which any certificate of insurance referred to in section 385H relates.

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(3) The insured amount of the liability is the amount of indemnity (if any) payable under the terms of the contract of insurance or other financial security in respect of the owner's liability to the claimant.

(4) In proceedings brought by a claimant against an insurer under this section,—

(a) the insurer stands in the place of the owner as if the proceedings were proceedings to recover damages, compensation, or costs from the owner; and

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(b) the parties have the same rights and liabilities, and the court has the same powers, as if the proceedings were proceedings brought against the insured person; and

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- (c) the insurer is entitled to rely on any defence or any other matter in answer to the claim or in reduction of its liability to the claimant—
 - (i) that the insurer would have been entitled to rely on in a claim made by the owner under the terms of the contract of insurance or other financial security; or 5
 - (ii) that the owner would have been entitled to rely on in proceedings brought by the claimant against the owner in respect of the liability.
- (5) Nothing in this section—
 - (a) entitles a claimant to recover any amount from a re-insurer under a contract or arrangement for re-insurance: 10
 - (b) prejudices any claim, or the enforcement of any claim, by any person against the owner of a regulated offshore installation in respect of pollution damage.
- (6) Any payment made by the insurer to the claimant under this section in respect of the liability discharges, to the extent of the payment, the liability of the insurer to make a payment to the owner under the terms of the contract of insurance or other financial security in respect of the liability. 15
- (7) An insurer’s liability to a claimant under this section is not reduced, discharged, or otherwise affected by— 20
 - (a) any compromise or settlement between the insurer and the owner in respect of the liability; or
 - (b) any payment by the insurer to the owner in respect of the liability unless and to the extent that the amount of the payment is or has been paid by the owner to the claimant in respect of the liability. 25
- (8) The rights conferred on a claimant under this section are in addition to the rights conferred under section 9 of the Law Reform Act 1936 or any other law.
Compare: Civil Liability (Third Party Claims Against Insurers) Act 2017 (NSW) ss 4, 7, 9–11

Part 2

Other amendments to principal Act 30

- 6 Section 387 amended (Marine protection rules relating to marine protection documents)**
- (1) In section 387(4), replace “relevant insurance policy, bond, or other form of financial security” with “relevant insurance or other financial security”.
- (2) After section 387(4), insert: 35
- (4A) Without limiting subsection (4), the marine protection rules may—

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- (a) provide for the types of liability and the amount for which insurance or other financial security must be held under section 385H (and may provide for different amounts for different types of liability); and
- (b) set requirements and criteria for regulated offshore installations that must be satisfied in respect of insurance or other financial security for the costs of complying with a marine oil spill contingency plan in accordance with section 313.

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7 Schedule 1AA amended

In Schedule 1AA, after Part 1, insert:

Part 2

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4 Old section 385J applies to existing proceedings

Section 385J (as in force immediately before its replacement by the Maritime Transport (Offshore Installations) Amendment Act **2019**) continues to apply to any proceedings brought under that section that are commenced before that Act comes into force.

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