

MARINE POLLUTION AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Marine Pollution Act 1974.

Clause 1 relates to the Short Title and commencement.

Clause 2: Subclauses (1), (3), and (4) define the terms “incineration”, “marine incineration facility”, and “New Zealand marine incineration facility” for the purposes of *clauses 4, 5, and 7* of the Bill.

Subclause (2) redefines the term “internal waters of New Zealand” to exclude rivers and other inland waters, pollution of which can be dealt with under the Water and Soil Conservation Act 1967.

Subclause (5) amends the definition of the term “owner”. The present provision is open to the interpretation that, once it is shown that a ship is one to which section 32 of the principal Act applies, the “owner” of that ship must be identified for all the purposes of the Act by reference to the definition of that term in section 32 (9), rather than section 2 (1), of the Act. This was not intended, and the amendments are designed to remove this argument.

Subclause (6) is consequential upon *subclause (5)*.

Clause 3 doubles every maximum fine prescribed by the principal Act.

Clauses 4, 5, and 7, in effect, extend the present provisions of Part II of the principal Act to cover incineration at sea of waste and other matter. Part II relates to the dumping of waste and other matter into the sea, and gives effect in New Zealand to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972. That Convention has now been extended to include incineration at sea of waste and other matter, and these clauses bring New Zealand law into line with those amendments.

Broadly, they impose the same requirements in respect of incineration as Part II presently imposes in respect of dumping.

Clause 6 corrects a drafting error in section 24 of the principal Act.

Clause 8 amends section 37 (6) of the principal Act. Section 37 provides that the owner of a ship to which the section applies, when the ship is carrying any pollutant in bulk, must maintain insurance or other financial security to cover his liability for pollution damage under Part IV of the Act. Subsection (2) requires every such ship to carry a certificate of insurance or other financial security, and subsection (6) provides that this certificate must be produced on demand by certain specified officers.

This clause adds the Harbourmaster to the list of officers who may demand production of the certificate.

Clause 9 substitutes a new provision for section 58 of the principal Act. That section authorises the making of regulations imposing a levy on oil landed in New Zealand, for the purposes of Articles 10 to 15 of the Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971.

The new clause directly requires importers to pay a contribution fixed under the Convention, without recourse to regulations.

Subsections (1) and (2) are interpretative provisions.

Subsection (3) imposes an obligation to pay a contribution on every person who takes delivery of more than 150,000 tonnes of oil in any year.

Subsection (4) provides that the amount of any such contribution shall be that fixed for the time being by the Assembly of the Oil Fund under Articles 11 and 12 of the Convention.

Subsection (5) provides for the aggregation of the respective amounts of oil received by interconnected bodies corporate for the purposes of determining the amount of contribution payable. The aim is to prevent a parent company avoiding liability by importing more than 150,000 tonnes through a number of subsidiaries.

Subsections (6) to (8) are of a procedural nature. They empower the Minister of Transport to require persons to give information necessary to enable the Oil Fund to ensure that persons liable to pay contributions are in fact doing so, and *subsections (9) and (10)* are supportive penal provisions.

Clause 10 amends section 60 (6) of the principal Act which provides for the recovery of unpaid fines by distress and sale of the ship and equipments. The clause extends these powers to the recovery of expenses assessed by the Court under section 10 (b) of the Act (being expenses incurred in cleaning-up operations).

Hon. Mr McLachlan

MARINE POLLUTION AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Marine Pollution Act 1974

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Marine Pollution Amendment Act 1980, and shall be read together with and deemed part of the Marine Pollution Act 1974* (hereinafter referred to as the principal
10 Act).

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.

(3) Section 9 of this Act shall come into force on a date to
15 be fixed by the Governor-General by Order in Council.

*1974, No. 14

Amendments: 1974, No. 101; 1975, No. 89; 1977, No. 12; 1977, No. 130

2. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “incident”, the following definition:

“‘Incineration’, in relation to waste or other matter, means the deliberate combustion on a marine incineration facility of the waste or other matter for the purpose of the thermal destruction of the waste or other matter; but does not include the incineration of waste or other matter incidental to, or derived from, the normal operations of ships, aircraft, offshore installations, platforms, or other man-made structures at sea or their equipment; and ‘to incinerate’ and ‘incinerated’ have corresponding meanings:”.

(2) The said section 2 (1) is hereby further amended by repealing the definition of the term “internal waters of New Zealand”, and substituting the following definition:

“‘Internal waters of New Zealand’ means all ports and other areas of the sea that are on the landward side of the baseline of the territorial sea of New Zealand; but does not include rivers and other inland waters:”.

(3) The said section 2 (1) is hereby further amended by inserting, before the definition of the term “marine life”, the following definition:

“‘Marine incineration facility’ means a ship, an offshore installation, a fixed or floating platform, or any other artificial structure that is situated in the sea or on the sea-bed, used for the purpose of the incineration at sea of waste or other matter:”.

(4) The said section 2 (1) is hereby further amended by inserting, after the definition of the term “New Zealand Government ship”, the following definition:

“‘New Zealand marine incineration facility’ means a marine incineration facility that is owned or managed by—

“(a) A person who is ordinarily resident in New Zealand; or

“(b) A company that is registered under the Companies Act 1955:”.

(5) The said section 2 (1) is hereby further amended—

(a) By omitting from paragraph (a) of the definition of the term “owner” the words “(other than a ship to which section 32 of this Act applies), includes”, and substituting the words “, includes, except in section 32 and Part V of this Act,”:

- (b) By omitting from subparagraph (i) of that paragraph of that definition the expression “and III”, and substituting the expression “III, and IIIA”:
- 5 (c) By omitting from paragraph (b) of that definition the words “to which section 32 of this Act applies,”, and substituting the words “, in section 32 and Part V of this Act”.
- (6) Subsection (1) of section 29A of the principal Act (as inserted by section 3 of the Marine Pollution Amendment 10 Act (No. 2) 1977) is hereby amended by omitting the definition of the term “owner”.

15 **3. Maximum fines increased**—The provisions of the principal Act specified in the first column of the Schedule to this Act are hereby amended in the manner indicated in the second column of that Schedule.

4. **Heading and 5 new sections substituted in principal Act**—Part II of the principal Act is hereby amended by omitting the heading and repealing sections 20 to 22, and substituting the following heading and sections:

- 20 “DUMPING AND INCINERATION OF WASTES
- “20. **Application of this Part**—(1) This Part of this Act shall apply to—
- 25 “(a) All ships and aircraft that, in New Zealand or in New Zealand waters, take on board waste or other matter for the purpose of dumping or incineration:
 - “(b) All ships and aircraft that dump waste or other matter in New Zealand waters:
 - 30 “(c) All New Zealand ships and all home-trade ships that dump waste or other matter into the sea:
 - “(d) All New Zealand aircraft that dump waste or other matter into the sea:
 - “(e) All marine incineration facilities that incinerate waste or other matter in New Zealand waters:
 - 35 “(f) All New Zealand marine incineration facilities that incinerate waste or other matter at sea:
 - “ (g) All offshore installations or fixed or floating platforms or other artificial structures that are used or intended to be used for the dumping or incineration of waste or other matter, and that are 40 situated in the sea or on the sea-bed and are under New Zealand jurisdiction:

“(h) All ships and aircraft dumped into New Zealand waters, and all New Zealand ships, home-trade ships, and New Zealand aircraft dumped into the sea.

(2) This Part of this Act, with any necessary modifications, applies to hovercraft in the same manner and to the same extent as it applies to ships. 5

“21. **Interpretation**—In this Part of this Act the term ‘Convention State’ means a State that is a party to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972. 10

“22. **Offence to dump or incinerate waste or other matter without permit**—(1) The persons mentioned in subsection (3) of this section commit an offence if, otherwise than in accordance with a permit issued under section 22B of this Act,— 15

“(a) Any waste or other matter is taken on board any ship or aircraft in New Zealand or in New Zealand waters for the purpose of dumping or incineration; or 20

“(b) Any waste or other matter is dumped into New Zealand waters from any ship or aircraft to which this Part of this Act applies; or

“(c) Any waste or other matter is incinerated on any marine incineration facility in New Zealand waters; or 25

“(d) Any waste or other matter is dumped into the sea from any offshore installation or fixed or floating platform or other artificial structure to which this Part of this Act applies; or 30

“(e) A ship or aircraft is dumped into New Zealand waters, or a New Zealand ship or a home-trade ship or a New Zealand aircraft is dumped into the sea; or

“(f) An offshore installation or fixed or floating platform or other artificial structure to which this Part of this Act applies is dumped into the sea. 35

“(2) The persons mentioned in subsection (4) of this section commit an offence if, otherwise than in accordance with a permit issued under section 22B of this Act or a permit issued under the corresponding law of any Convention State,— 40

- “(a) Any waste or other matter is dumped into the sea, other than in New Zealand waters, from any New Zealand ship or home-trade ship or New Zealand aircraft; or
- 5 “(b) Any waste or other matter is incinerated at sea, other than in New Zealand waters, on any New Zealand marine incineration facility.
- “(3) The persons who are guilty of an offence under subsection (1) of this section are as follows:
- 10 “(a) In any case to which paragraph (a), or paragraph (b), or paragraph (c) of that subsection applies, the owner and the master of the ship, or (as the case may be) the owner of the aircraft and the person in possession of the aircraft:
- 15 “(b) In any case to which paragraph (c) of that subsection applies, the owner of the marine incineration facility and the master (if the facility is a ship) or (if the facility is not a ship) the person having control of the facility:
- 20 “(c) In any case to which paragraph (d) or paragraph (f) of that subsection applies, the owner of the platform or structure and the person having control of its operations.
- “(4) The persons who are guilty of an offence under subsection (2) of this section are as follows:
- 25 “(a) In any case to which paragraph (a) of that subsection applies, the owner and the master of the ship, or (as the case may be) the owner of the aircraft and the person in possession of the aircraft:
- 30 “(b) In any case to which paragraph (b) of that subsection applies, the owner of the marine incineration facility and the master (if the facility is a ship) or (if the facility is not a ship) the person having control of the facility.
- 35 “(5) Every person who is guilty of an offence under this section—
- “ (a) Is liable on summary conviction to a fine not exceeding \$100,000; and
- 40 “ (b) Is also liable to pay such amount as the Court may assess in respect of the expenses and costs that have been incurred or will be incurred in removing or cleaning up or dispersing any waste or other matter to which the offence relates from any New Zealand waters or from any foreshore or harbour works in New Zealand.
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“22A. **Regulations**—(1) Without limiting the general power to make regulations conferred by section 68 of this Act, but subject to subsection (2) of this section, the Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes: 5

- “(a) Prohibiting the issue of permits authorising the dumping or incineration of any specified type of waste or other matter or of any specified class of waste or other matter:
- “(b) Requiring a special permit to be obtained for the dumping or incineration of any specified type of waste or other matter or of any specified class of waste or other matter: 10
- “(c) Requiring a general permit to be obtained for the incineration of any waste or other matter, not being of a type or class that can lawfully be incinerated under this Part of this Act only in accordance with a special permit: 15
- “(d) Providing for applications for special permits and general permits, and the issue, renewal, duration, suspension, and revocation of special permits and general permits: 20
- “(e) Prescribing the criteria to govern the issue of special permits and general permits:
- “(f) Providing for the survey, testing, approval, and monitoring of marine incineration facilities and their equipment; providing for the survey, testing, approval, and monitoring of incineration systems to be used on any such facility, and prescribing operational requirements in respect of such systems; and prohibiting the alteration of any marine incineration facility or its equipment or any incineration system without prior approval: 25 30
- “(g) Prescribing fees in respect of any matter referred to in paragraph (d) or paragraph (f) of this subsection: 35
- “(h) Providing for such other matters as may be necessary or desirable to give effect in New Zealand to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972, and of any Annexes and Regulations forming part of that Convention: 40
- “(i) Prescribing offences in respect of the contravention of, or non-compliance with, any regulations made under this section, and the amounts of fines that 45

may be imposed in respect of any such offences, which fines shall be an amount not exceeding \$4,000, and, where the offence is a continuing one, a further amount not exceeding \$400 for each day during which the offence has continued.

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“(2) No regulations shall be made under this section except on the advice of the Minister after consultation by him with the Minister of Health and the Minister of Science.

“22B. **Permits**—(1) The Minister may, in accordance with the succeeding provisions of this section, and with any regulations made under section 22A of this Act, consider and determine applications for permits, and issue permits, for the purposes of this Part of this Act.

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(2) A special permit shall be obtained—

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“(a) Before each occasion on which it is intended to dump or incinerate waste or other matter:

“(b) Before each occasion on which waste or other matter is taken on board a ship or aircraft in New Zealand or New Zealand waters for the purpose of

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dumping or incineration:
“(c) Before each occasion on which a ship, an aircraft, an offshore installation, a fixed or floating platform, or any other artificial structure to which this Part of this Act applies is to be dumped.

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“(3) A general permit shall be obtained before the commencement of each period (not exceeding 12 months) during which it is intended to dump or incinerate waste or other matter.

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“(4) Every application for a permit shall be made in writing to the Minister, and shall contain the following information:

“(a) The characteristics and composition of the waste or other matter intended to be dumped or incinerated; and

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“(b) The method by which the waste or other matter is to be dumped or incinerated; and

“(c) Such other information as may be prescribed by regulations made under section 22A of this Act or as may be required by the Minister.

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“(5) In determining any application for a permit, the Minister shall have special regard to—

“(a) The criteria prescribed by regulations made under section 22A of this Act; or

“(b) While no such regulations are in force, the criteria specified in section 24 or (as the case may require) section 24A of this Act,—
and may issue the permit if, in his opinion, such of those criteria as are applicable have been met. 5

“(6) Every permit shall specify—

“(a) The waste or other material to be dumped or incinerated; and

“(b) The quantity to be dumped or incinerated; and

“(c) The method of dumping or incineration to be used; 10
and

“(d) The specific location at sea of the dumping site or marine incineration facility; and

“(e) The ship, aircraft, offshore installation, fixed or floating platform, or other artificial structure, or the 15
marine incineration facility, to be used in the dumping or incineration; and

“(f) The person who shall be responsible for carrying out the dumping or incineration; and

“(g) Such other conditions, stipulations, and requirements 20
as the Minister thinks fit, having special regard to any regulations made under section 22A of this Act or, while no such regulations are in force, the criteria specified in section 24 or (as the case may require) section 24A of this Act. 25

“(7) Notwithstanding anything in this Part of this Act or in any special permit, no permit shall authorise the dumping of any waste or other matter in breach of section 242 of the Harbours Act 1950.

“(8) Every person commits an offence and is liable on 30
summary conviction to a fine not exceeding \$20,000 for each day or part of each day on which the offence has continued who fails to comply with any condition, specification, or requirement contained in a permit.”

5. Special defences—Section 23 of the principal Act is 35
hereby amended—

(a) By omitting the expression “section 22”, and substituting the expression “section 22B”:

(b) By inserting, after the word “dumping” wherever it occurs, the words “or incineration”. 40

6. Criteria to govern dumping of waste and other matter into the sea—Section 24 of the principal Act is hereby amended by omitting from item 9 in paragraph B the word “Schedule”, and substituting the word “section”.

5 **7. Criteria to govern incineration of waste and other matter at sea**—The principal Act is hereby amended by inserting, after section 24, the following section:

“24A. The following matters are to be taken into account in establishing criteria for the incineration of waste and other
10 matter at sea:

“A. *Characteristics and Composition of the Matter*—Such of the matters specified in paragraph A of section 24 of this Act as are applicable to incineration.

15 “B. *Characteristics of Incineration Site and Method of Incineration*—1. Such of the matters specified in paragraph B of section 24 of this Act as are applicable to incineration.

“2. The atmospheric dispersal characteristics of the area (for example, wind speed and direction, atmospheric stability, frequency of inversions and fog, precipitation types
20 and amounts, and humidity), in order to determine the potential impact on the surrounding environment of pollutants released from the marine incineration facility, giving particular attention to the possibility of atmospheric transport of pollutants to coastal areas.

25 “3. The oceanic dispersal characteristics of the area, in order to evaluate the potential impact of plume interaction with the water surface.

“4. The availability of navigational aids.

30 “C. *General Considerations and Conditions*—Such of the matters specified in paragraph C of section 24 of this Act as are applicable to incineration.”

8. Production of insurance certificate—Section 37 (6) of the principal Act is hereby amended by inserting, before the words “any officer of Customs”, the words “the Harbour-
35 master, or to”.

9. Contributions to Oil Fund—The principal Act is hereby amended by repealing section 58, and substituting the following section:

40 “58. (1) In this section, unless the context otherwise requires,—

“ ‘Contributing oil’ means—

“(a) Crude oil, that is, any liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation; and includes crude oils from which certain distillate fractions have been removed (topped crudes) or to which certain distillate fractions have been added (spiked or reconstituted crudes); and 5

“(b) Fuel oil, that is, heavy distillates or residues from crude oil, or blends of such materials, intended for use as a fuel for the production of heat or power of a quality equivalent to or heavier than the American Society for Testing and Materials’ Specification for Number Four Oil (Designation D396-69). 10 15

“(2) For the purposes of this section, any 2 bodies corporate are to be treated as interconnected if one of them is a body corporate of which the other is a subsidiary (within the meaning of section 158 of the Companies Act 1955) or if both of them are subsidiaries (within the meaning of that section) of one and the same body corporate; and in this section the term “interconnected bodies corporate” shall be construed accordingly. 20

“(3) Every person who, in any year, takes delivery on his own account of more, in the aggregate, than 150,000 tonnes of contributing oil landed from a ship in any harbour or terminal installation in New Zealand (whether or not landed from a country outside New Zealand) shall be liable in accordance with the succeeding provisions of this section to pay a contribution to the Oil Fund. 25 30

“(4) Every contribution payable under this section in any year by any person shall be—

“(a) Of such amount as may be determined by the Assembly of the Oil Fund under Articles 11 and 12 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 and notified to that person by the Oil Fund: 35

“(b) Payable in such instalments, becoming due at such times, as may be so notified to that person,— 40
and if any amount due from that person remains unpaid after the date on which it became due, it shall from then on bear interest, at a rate determined from time to time by the Assembly of the Oil Fund, until it is paid.

“(5) Where, in any year, any 2 or more interconnected bodies corporate take delivery on their own accounts of more, in the aggregate, than 150,000 tonnes of contributing oil landed from a ship in any harbour or terminal installation
5 in New Zealand (whether or not landed from a country outside New Zealand),—

“(a) That aggregate amount of contributing oil shall be deemed for the purposes of this section to have been delivered to one and the same person:

10 “(b) Each of the interconnected bodies corporate shall be jointly and severally liable to pay the contribution payable under this section in respect of that aggregate amount of contributing oil.

“(6) For the purpose of transmitting to the Oil Fund the
15 names and addresses of the persons who under this section are liable to make contributions to the Oil Fund for any year, and the quantity of contributing oil in respect of which they are so liable, the Minister of Transport may, by notice, require any person engaged or in any way involved in import-
20 ing, producing, treating, distributing, or transporting contributing oil to furnish such information as may be specified in the notice.

“(7) A notice under subsection (6) of this section may—

25 “(a) Require any interconnected body corporate to give such information as may be required to ascertain whether or not its liability is affected by subsection (5) of this section:

“(b) Specify the way in which, and the time within which, it is to be complied with.

30 “(8) In any proceedings by the Oil Fund against any person to recover any amount due under this section, particulars contained in any list transmitted by the Minister of Transport to the Oil Fund shall, so far as those particulars are based on information obtained under this section, be
35 admissible as evidence of the facts stated in the list; and so far as particulars that are so admissible are based on information given by the person against whom the proceedings are brought, those particulars shall be presumed to be accurate until the contrary is proved.

40 “(9) If any person fails without reasonable excuse to pay any contribution when required to do so under this section, then, without limiting his civil liability in respect of that contribution, that person commits an offence and is liable on summary conviction to a fine not exceeding \$20,000.

“(10) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who—

“(a) Refuses or wilfully neglects to comply with a notice under subsection (6) of this section; or

“(b) In furnishing any information in purported compliance with a notice under that subsection, makes any statement that he knows to be false in a material particular, or recklessly makes any statement that is false in a material particular.” 5

10. Recovery of expenses—Section 60 (6) of the principal Act is hereby amended by inserting, after the words “under this Act”, the words “, or any amount assessed by the Court under section 10 (b) of this Act to be paid by the owner or master of a ship in respect of such an offence,” 10

SCHEDULE

Section 3

AMENDMENTS INCREASING MAXIMUM FINES

Provision	Amendment
Section 10 (a)	By omitting the expression "\$50,000", and substituting the expression "\$100,000".
Section 11 (7)	By omitting the expression "\$3,000", and substituting the expression "\$6,000".
Section 11 (8)	By omitting the expression "\$3,000", and substituting the expression "\$6,000".
Section 13 (2)	By omitting the expression "\$500", and substituting the expression "\$1,000".
Section 14 (4)	By omitting the expression "\$3,000", and substituting the expression "\$6,000".
Section 15 (3)	By omitting the expression "\$3,000", and substituting the expression "\$6,000".
Section 16 (5)	By omitting the expression "\$10,000", and substituting the expression "\$20,000".
Section 17 (8)	By omitting the expression "\$500", and substituting the expression "\$1,000".
Section 18 (5)	By omitting the expression "\$20,000", and substituting the expression "\$40,000".
Section 28 (2)	By omitting the expression "\$10,000", and substituting the expression "\$20,000".
Section 29r (as inserted by section 3 of the Marine Pollution Amendment Act (No. 2) 1977)	By omitting from subsection (2) the expression "\$2,000", and substituting the expression "\$4,000".
Section 37 (8)	By omitting the expression "\$50,000", and substituting the expression "\$100,000".
Section 37 (9)	By omitting the expression "\$2,000", and substituting the expression "\$4,000".
Section 68 (b)	By omitting the expression "\$2,000", and substituting the expression "\$4,000".
	By omitting the expression "\$200", and substituting the expression "\$400".