

Departmental Disclosure Statement

Maritime Transport Amendment Bill 2016

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Transport.

The Ministry of Transport certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

19 October 2016.

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Part One: 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 of Maritime New Zealand (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 s451(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) to another public authority:
- clarify the wording of subsection 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.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>Consultation document: <i>New Zealand's accession to the Supplementary Fund Protocol – provides background information about the Supplementary Fund Protocol</i>, Ministry of Transport, May 2014. http://www.transport.govt.nz/assets/Uploads/Sea/Documents/Consultation-document-Supplementary-Fund-Protocol-2003.pdf</p> <p>Discussion paper: <i>Clear heads: options to reduce the risks of alcohol-and drug-related impairment in aviation, maritime and rail</i>, Ministry of Transport, March 2015. http://www.transport.govt.nz/assets/Uploads/Our-Work/Documents/Clearheads/Clear-heads-options-to-reduce-the-risks.pdf</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	YES
<p>The Bill is intended to give effect to the <i>Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992</i>. https://www.parliament.nz/resource/en-NZ/00DBSCH_ITR_62146_1/453ea5e0073beae9fe24418a7caf2b4ac659306b</p> <p>The Bill contain provisions to give effect to the exercise of New Zealand's right, as a party to the <i>Protocol of 1996 to amend the Convention on the Limitation of Liability for Maritime Claims 1976</i>, to make reservations that exclude limitation of liability for certain types of maritime claim. http://www.legislation.govt.nz/act/public/1994/0104/latest/link.aspx?id=DLM5693344</p>	

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	YES
<p>National Interest Analysis: <i>Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (Supplementary Fund Protocol)</i>, Ministry of Transport, May 2014. http://www.transport.govt.nz/assets/Uploads/Sea/Documents/National-Interest-Analysis-Supplementary-Fund-Protocol-2003.pdf</p> <p>No Parliamentary examination was required in relation to reservations under the <i>Protocol of 1996 to amend the Convention on the Limitation of Liability for Maritime Claims, 1976</i>: Parliamentary examination of the Protocol was undertaken prior to the Maritime Transport Amendment Act 2013, which gave effect to the Protocol.</p>	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>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</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The regulatory impact statement did not meet the threshold for RIA Team assessment.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
<p>For drug and alcohol management, more analysis is available in the NZIER report. The report provides an assessment of the relative risk of fatalities across transport modes, where alcohol and drug impairment are contributing factors in accidents.</p> <p>http://www.transport.govt.nz/assets/Uploads/Our-Work/Documents/Clearheads/A-cross-modal-risk-analysis-of-substance-impairment.pdf</p>	

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>For the <i>Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992</i> refer:</p> <p>http://www.transport.govt.nz/assets/Uploads/Sea/Documents/National-Interest-Analysis-Supplementary-Fund-Protocol-2003.pdf</p> <p>Exercising the right to exclude certain claims under the <i>Protocol of 1996 to amend the Convention on the Limitation of Liability for Maritime Claims, 1976</i> could leave more money available to meet other types of claims that remain subject to limitation. Benefits are not readily quantifiable, as they would arise only where total claims exceeded the liability limit for the ship in question, which depends on the size of the ship. The scale of any benefits would also depend on whether an incident actually involved claims that were excluded from liability and, in turn, the value of such claims. Ship owners or their insurers would incur the cost of meeting costs that would otherwise have fallen within a ship's liability limit.</p> <p>For the drug and alcohol work, the Cabinet paper "Reducing the Risks of Alcohol and Drug Impairment in Aviation, Maritime and Rail" can be found on the Ministry's website</p> <p>http://www.transport.govt.nz/assets/Uploads/Our-Work/Documents/Release-of-the-draft-discussion-paper-Clear-heads-Options-to-reduce-the-risks-of-alcohol-and-drug-related-impairment-in-aviation-maritime-and-rail.pdf</p> <p>The RIS 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</p> <p>No measures in this Bill have the potential to cause a substantial unavoidable loss of income or wealth for any group of persons.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>For the drug and alcohol work, the Cabinet paper “Reducing the Risks of Alcohol and Drug Impairment in Aviation, Maritime and Rail” can be on the Ministry’s website http://www.transport.govt.nz/assets/Uploads/Our-Work/Documents/Release-of-the-draft-discussion-paper-Clear-heads-Options-to-reduce-the-risks-of-alcohol-and-drug-related-impairment-in-aviation-maritime-and-rail.pdf</p> <p>The RIS 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</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The Ministry of Transport's drafting instructions to the Parliamentary Counsel Office for measures to give effect to the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 were designed to ensure that the new measures did not alter the Act's implementation of obligations under the 1992 Convention.

Clause 6, which covers exclusions of limitation of liability for certain types of maritime claim, reflects New Zealand's right, as a party to the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims 1976, to make reservations excluding limitation of liability for those particular types of maritime claim.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Ministry of Justice (Treaty of Waitangi Negotiations) was consulted on the amendment to section 33X of the Act to allow the transfer of power from a regional or unitary council to a public authority be varied or withdrawn. The need for this amendment was identified in discussions with the Department of Internal Affairs and the Office of Treaty Settlements around a proposal that Treaty of Waitangi settlement legislation (which will give effect to the Whanganui River Deed of Settlement, signed on 5 August 2014) deem Te Awa Tupua (the Whanganui River) a public authority for the purposes of section 33X of the Act.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO

The drug and alcohol management plan proposals are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. There are no gender or disability implications. The drug and alcohol management plans sit exclusively within the employment relationship. Any prosecutions by the Crown Agencies are unlikely to have new New Zealand Bill of Rights Act 1990 implications as the prosecutions would be for existing offences.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted during the policy process for drug and alcohol management policy.</p> <p>The Ministry of Justice (Treaty of Waitangi Negotiations) was consulted on the amendment to section 33X of the Act, as discussed in relation to question 3.2</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
<p>The bill includes a new provision requiring operators to implement random drug and alcohol testing, which involves the collection and testing of body samples, and subsequent management of this information. All relevant drug and alcohol testing processes are set out in drug and alcohol management plans. Implementation of random testing is managed through employment contracts with employees, or contracts for services with contractors.</p> <p>The bill also includes a provision empowering regulators to carry out drug and alcohol testing, which includes the collection and testing of body samples and subsequent management of this information.</p> <p>It is expected that management of the personal information collected will be in compliance with privacy law provisions.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Refer to Appendix One for details</p> <p>No disclosure draft of this Bill has been released.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The provisions of the Bill that give effect to the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 follow the approach that Part 25 of the Act already applies to implementation of the 1992 Convention.</p> <p>For the drug and alcohol management policy, a number of operators are already undertaking the drug and alcohol requirements successfully. This policy will bring all operators into line with best practice. Other jurisdictions, such as Australia, have successfully implemented similar proposals.</p> <p>Secondary legislation (maritime rules) will complete policy and implementation details concerning such matters as application of the obligation to have drug and alcohol management plans, identification of safety sensitive activities, content of the management plans, and procedural requirements for random testing.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>The Bill establishes the mechanism for receivers of oil imported into New Zealand to pay any levy relating to the International Oil Pollution Compensation Supplementary Fund. The levy funds a second tier of additional compensation available for damage caused by an oil spill from an oil tanker, in the waters of any State party to the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992. The Act already employs the same type of mechanism in relation to levies payable by oil importers to fund compensation payable under the 1992 Convention that provides for compensation over and above the costs of pollution damage for which the ship owner is directly liable.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>The Bill provides for an individual who has returned a drug or alcohol test with a result other than negative, or has declined to take a test, to be stood down from any safety sensitive activity until such time as the individual is again safe to undertake such activity.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Clause 6 amends a number of the Minister of Transport's rule making powers in section 36(1) of the Act to provide more flexibility for rules to "provide for" rather than to "prescribe" requirements concerning the matters in respect of which the Minister may make maritime rules.</p> <p>Clause 29 amends section 388(n) of the Act, as amended by section 86(10) of the Biosecurity Law Reform Act 2012, to align the rule-making power more closely with the relevant international convention provision.</p> <p>The Bill does not create or amend a delegated law-making power for the purpose of implementing drug and alcohol measures. However, as the current rule-making powers are sufficient rules for that purpose, such rules could in effect expand the scope of powers contained in delegated legislation.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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Appendix One: Further Information Relating to Part Three

External consultation – question 3.6

Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992

National Interest Analysis

Public consultation was undertaken with interested parties, which included the oil importing companies, oil cargo carriers, and local authorities, and direct discussions were held with some respondents.

Consultation was undertaken with the Ministry of Business, Innovation and Employment; the Environmental Protection Authority; Te Puni Kōkiri; Maritime New Zealand; the Treasury; the Ministry for the Environment; the Department of Conservation; the Ministry of Foreign Affairs and Trade. The Department of the Prime Minister and Cabinet was informed.

Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 - reservations

Cabinet paper

Consultation was undertaken with Maritime New Zealand and the Ministry of Foreign Affairs and Trade. The Treasury, Department of the Prime Minister and Cabinet and the Ministry for the Environment were informed.

Maritime Transport Amendment Bill 2016

Proposals in the Bill were developed in conjunction with Maritime New Zealand. Consultation was undertaken with the Ministry of Foreign Affairs and Trade, Ministry of Justice (Treaty of Waitangi Negotiations), Ministry of Business, Innovation and Employment (Commerce and Consumer Affairs), Ministry for Primary Industries (Biosecurity) and Department of Internal Affairs (Local Government) were consulted on the proposals. The Department of the Prime Minister and Cabinet was informed.

Options for Management of Drug and Alcohol impairment

Public consultation was undertaken on the discussion document *Clear heads: options to reduce the risks of alcohol-and drug-related impairment in aviation, maritime and rail* (see <http://www.transport.govt.nz/ourwork/clear-heads/>).

The Ministry received 37 submissions and held 10 face-to-face meetings with 14 organisations. The organisations represented large firms, small and medium enterprises, industry representative groups and members of the public.

The Ministry of Transport worked with Maritime New Zealand, the Civil Aviation Authority the Transport Accident Investigation Commission and the New Zealand Police in developing the policy proposal.

The Treasury, the Ministry of Business, Innovation and Employment, WorkSafe New Zealand, the Ministry of Justice and the Department of Internal Affairs were consulted on the policy to be given effect by this Bill. The Department of the Prime Minister and Cabinet was informed.