

# Maritime Transport Amendment Bill

## Questions and Answers

### A. Supplementary Fund Protocol

#### Q1. What is the Supplementary Fund?

- The Supplementary Fund Protocol establishes a third tier of compensation under international conventions for pollution damage caused by oil spills from oil tankers. This raises the total compensation available for a tanker spill to \$NZ1.432 billion.
- New Zealand has acceded to the international conventions that establish the first two tiers of compensation, but not the Supplementary Fund Protocol.

#### Q2. What are the other two tiers of compensation?

- Tier one comprises compensation of up to \$NZ175 million, payable by the tanker owner or its insurer under the International Convention on Civil Liability for Oil Pollution Damage, 1992 (the CLC).
- Tier two comprises compensation from the International Oil Pollution Fund (IOPF) established by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992.
- The IOPF 'tops up' compensation provided under the CLC, to a combined total of \$NZD388 million, and is funded by levies that it collects from oil importers in contracting states.

#### Q3. How does the Supplementary Fund work?

- The Supplementary Fund provides access to compensation to bring the combined total of compensation available under the CLC, IOPC and the Supplementary Fund to \$NZ1.432 billion.
- Like the IOPF, the Supplementary Fund is funded by levies on oil importers.
- The Supplementary Fund will collect levies only when the cost of an oil spill in a contracting state exceeds the \$388 million compensation payable under the CLC and IOPC. Funds are not built up from regular annual levies.

#### Q4. Why is it important that New Zealand consider acceding to the Supplementary Fund?

- Oil tankers in operation in New Zealand generally carry between 55,000 and 100,000 tons. It is likely that it would take an oil spill of 10,000-20,000 tons affecting particularly sensitive areas of New Zealand's coast for the current \$388 million compensation level to be exceeded.
- Accession to the Supplementary Fund would provide New Zealand with access to a relatively inexpensive global insurance scheme. The potential levy costs in the event of a claim on the Supplementary Fund are considered appropriate to the level of risk that New Zealand is exposed to from the transport of oil.

#### Q5. What parts of New Zealand are at risk of an oil tanker spill?

- The area most likely to experience a heavy oil spill from an oil tanker is the Whangarei Harbour, where oil tankers carry imported heavy oil to the Marsden Point Oil Refinery. The Northland east coast approach to Marsden Point is also considered high risk, as is the Taranaki coast, due to oil tanker movements to collect oil from offshore installations.

**Q6. What other risks are there?**

- A tanker oil spill in New Zealand waters may give rise to negative environmental and economic effects. These include potential damage to New Zealand's aquaculture industry and fishing stocks, and decreased demand for New Zealand seafood.
- A major oil spill could also potentially affect shipping access to any port in the vicinity of the spill, resulting in delays and costs for exporters and importers.
- New Zealand's tourism industry could be affected if our coastline is damaged, or by the simple fact that a large oil spill has occurred in our waters.

**Q7. Who would contribute to New Zealand's payment to the Supplementary Fund?**

- Contributions would be collected through a levy on the quantity of oil received by ship and would be paid by New Zealand oil importers that receive more than 150,000 tons of oil per year. There are currently four companies importing oil to New Zealand – BP Oil, Chevron NZ, Mobil Oil NZ and Z Energy.

**Q8. What are the expected costs to New Zealand oil importers**

- As already noted, levies will not apply unless claims for pollution damage exceed the compensation available from tanker owners and the IOPF.
- It has not so far been necessary for the Supplementary Fund to impose levies, as no tanker spill in a contracting state has involved costs that exceed the compensation available through the CLC and IOPF.
- In comparison, since 1996, New Zealand oil importers have contributed between \$0.285 million and \$0.377 million (2012 dollars) per year to the IOPC.

## **B. The Convention on the Limitation of Liability for Maritime Claims 1976 (LLMC)**

### **Q9. What is the LLMC?**

- The LLMC, to which New Zealand is a party, provides an international system for ship owners to limit financial liability for maritime incidents in order to encourage international shipping and trade.
- New Zealand implements the LLMC through Part VII of the Maritime Transport Act 1994.

### **Q10. How does the LLMC Convention work?**

- The LLMC sets out ship owners' rights to limit their liability in respect of various types of maritime claim, including loss of life or personal injury, loss of or damage to property and loss resulting from delay in the carriage by sea of cargo, passengers or luggage.
- The LLMC also identifies conduct that will bar a limitation claim, the formula for calculating the limits of liability and the unit of account to be used.

### **Q11. What are the benefits of the LLMC?**

- The limitation system provided by the LLMC encourages international shipping and trade by providing assured compensation for claims, up to limits based on a ship's size, while providing ship owners and insurers with certainty as to the limits of their liability for such claims.

### **Q12. What is the Protocol of 1996?**

- The Protocol of 1996 came into force in 2004 and effectively superseded the LLMC.
- One of the main reasons for the Protocol was that inflation had eroded the value of the LLMC's liability limits.
- The Protocol raised the limits of liability (compensation payable) from those contained in the 1976 Convention and established a mechanism to amend the limitation limits to counteract inflation in future.
- The amendment mechanism was employed to significantly increase the Protocol's limitation limits with effect from May 2015.

### **Q13. Are higher liability limits the only difference between the LLMC and its Protocol?**

- No, the Protocol allows each Contracting State the right, at any time, to exclude claims for wreck removal, cargo removal and damage from liability limitation. Under the 1976 Convention a State could only exercise that right at the time it became a Contracting State.
- The Protocol also introduced the right for a Contracting State to, at any time, exclude the Protocol's liability limits for claims of damage from hazardous and noxious substances.
- A Contracting State may exercise its right to exclude liability limits for such claims by depositing a treaty reservation with the International Maritime Organization.

### **Q14. What is a treaty reservation?**

- A reservation is a statement made by a State to exclude or alter the legal effect of certain treaty provisions of a treaty in their application to that treaty.

### **Q15. What is the main benefit for New Zealand of making an LLMC reservation with respect to maritime incidents involving wreck removal, cargo removal and damage from hazardous and noxious substances?**

- The reservations, which will exclude these categories of maritime incident from limitation of liability, will provide greater scope for the Crown and affected businesses and communities to receive compensation.

**Q16. Have other countries made reservations with respect to the Protocol of 1996?**

- Yes, many States, including Australia, the United Kingdom and Canada, have made reservations to remove the Protocol's liability limits for claims in respect of wreck removal, cargo removal and damage from hazardous and noxious substances cargo.

**Q17. Are there any disadvantages to making these treaty reservations?**

- The only disadvantage is that, depending on the total value of claims arising from a particular incident, New Zealand interests may need to negotiate, and potentially litigate, compensation settlements for these three categories of maritime incident instead of benefiting from the streamlined settlement process provided by the LLMC.

**Q18. What changes to New Zealand law are required to implement the treaty reservations?**

- The Maritime Transport Amendment Bill includes amendments to the Maritime Transport Act 1994 to give statutory effect to the reservations.

**Q19. The Protocol supersedes but does not replace the Protocol – could this cause confusion?**

- In November 2015, Cabinet agreed that New Zealand denounce the LLMC in favour of the Protocol to clarify that only the higher liability limits of the Protocol apply to maritime claims in New Zealand. The intention is to avoid any confusion.

## **C. Reduce the risks of alcohol and drug impairment in aviation and maritime**

### **Q20. Why has the Government decided to introduce mandatory drug and alcohol management plans?**

- The Government believes there should be zero tolerance of impairment of operators in safety sensitive roles from drugs and alcohol, when the public is being transported.
- This policy will address the small numbers of operators who are not already managing this risk associated with alcohol and drugs requiring them to establish appropriate plans.

### **Q21. How will drug and alcohol management plans (DAMP) help reduce the risks of alcohol and drug impairment among maritime and operators?**

- DAMPs will encourage workplace cooperation in developing or strengthening a strong safety culture within the commercial maritime sector.
- Commercial maritime operators will tailor their plan according to the risk level of their operation.
- This will help ensure operators are taking appropriate steps to manage the risks of alcohol and drug impairment associated with their operation.
- All drug and alcohol management plans will need to include random testing, ensuring a minimum level of unpredictable testing for staff.

### **Q22. How will director testing help reduce the risks of alcohol and drug impairment in maritime?**

- Director testing means that the relevant regulator can test any safety sensitive staff either randomly or with good-cause to suspect impairment.
- The possibility of being tested without notice will have a strong deterrent factor for any safety sensitive staff.
- This power will also allow the regulator to respond immediately to any reports of risky behaviour.

### **Q23. Why isn't there a stronger emphasis on enforcement as part of the law changes?**

- The Government has taken an approach that focuses on employer responsibility rather than enforcement.
- Employer responsibility helps improve the safety culture of a workplace, which in turn improves safety outcomes.

### **Q24. Will we be able to comment on the proposed changes?**

- Yes. The public will be able to comment on the changes during both the Select Committee process and the consultation for the Maritime Rules.

### **Q25. When will the changes come into force?**

- The changes will come into force 18 months after the enactment of the legislation. After this time, every commercial maritime operator must have implemented a drug and alcohol management plan.

**Q26. Will there be any changes in relation to alcohol or drug impairment in the recreational maritime sector?**

- No. This reflects the measures already in place, the potentially complex and costly nature of enforcement for these sectors, and the limited direct evidence of a problem.

**Q27. Isn't recreational maritime the riskiest activity of all? Why haven't you proposed any changes?**

- There is limited direct evidence of a problem and there are already adequate mechanisms in place to address impairment, causing danger or harm, the recreational maritime sector.
- Section 65 of the Maritime Transport Act 1994 prohibits dangerous activity involving ships or maritime vessels.

**Q28. Why has the Government not acted on TAIC's recommendation for setting allowable maximum levels for alcohol in legislation?**

- Legislating a limit would add complexities without achieving better results.
- There are a number of difficulties with legislating maximum limits, including:
  - how to set limits
  - the practicality of testing for enforcement purposes, with aviation and maritime environments being difficult to access to be able to undertake testing
  - whether limits should be the same as in the Land Transport Act and in the Maritime Transport Act provisions governing alcohol use by merchant seafarers. A number of organisations have already set a zero tolerance limit. Setting a legislated limit at a higher level has the potential to undermine the current zero tolerance culture in some transport modes.
- The Government believes that the same deterrent effect can be achieved without legislating the limits.

**Q29. Why do we need more, beyond what is in the Health and Safety at Work Act?**

- The approach to managing drug and alcohol impairment in the workplace is consistent with the Health and Safety at Work Act. This Act continues to place obligations on those people in work environments who create the risk and are best able to manage it. In some sectors, such as transport, the risks are greater and stricter requirements are justified.

## **D. Miscellaneous amendments**

### **Q30. Does the Bill do anything to make maritime regulation more flexible and responsive?**

- Amendments to section 36(1) of the Maritime Transport Act will improve the adaptability of maritime rules, thereby reducing reliance on the specification of technical requirements in rules.
- The amendments will allow greater flexibility for rules to “provide for” rather than “prescribe” the matters about which the Minister of Transport may make maritime rules.
- For example, rules could provide for the Director of Maritime New Zealand to specify and update technical details and procedures to reflect changes in technology, international standards, and industry practice. This will improve responsiveness to sector needs and potentially require fewer rule amendments in the future.
- Increased adaptability will not replace the use of prescriptive provisions where technical specificity is required, or when the public needs certainty as to enforceability.

### **Q31. Why is the Bill allowing regional councils to retain fees from infringement offence notices, issued for breaches of national maritime rules?**

- The purpose is to provide an incentive for councils to enforce the national rules directly, rather than replicate them in local bylaws. The main benefit is to discourage proliferation of local bylaws that replicate national rules.

### **Q32. Will enabling regional councils to retain these fees create another income stream for regional councils?**

- The amount of money involved is insufficient to motivate over-enforcement of national maritime rules. It will help to cover the costs of enforcing national maritime rules.

### **Q33. How will the amendments to section 198 improve shipping services to the Chatham Islands and New Zealand offshore islands?**

- The amendments will improve access to shipping services to the Chatham Islands and other offshore islands by easing the restriction on the use of foreign-registered ships to carry freight between these places and mainland New Zealand.
- This will mean that any suitable ship may be used to serve these locations, regardless of whether it is a New Zealand ship or a foreign ship.
- The main beneficiary is likely to be the Chatham Islands. The amendment will also be of assistance to the Department of Conservation in getting equipment and materials to offshore islands to assist with pest management programmes.

### **Q34. What is incorporation by reference, for the purposes of section 452(5)?**

- Section 452 of the Act provides for material such as standards, requirements and recommended practices of international or national organisations, to be incorporated by reference in maritime rules and marine protection rules so that they are read as being part of the rule. This provision enables rules to refer to, rather than replicate, the requirements of other documents, such as international conventions and New Zealand Standards, which would be too large or impractical to be included in the rule.

**Q35. Why does section 452(5) need to be amended?**

- An issue exists with section 452(5) of the Act because it requires Maritime NZ to make material incorporated by reference available for inspection by the public free of charge “at the offices of the Authority”. This creates a logistical problem, because Maritime NZ has 10 regional offices in addition to its Head Office in Wellington.

**Q36. What does the proposal to amend section 452(5), regarding incorporation by reference, refer to?**

- The proposal is to require that Maritime NZ make available physical copies of documents incorporated by reference for inspection by the public, free of charge, at its Head Office only. Currently, all Maritime NZ offices are required to hold this documentation.

**Q37. What will be the impact on the maritime sector of this section 452(5) amendment?**

- Very little. In the age of electronic documentation, most compliance documents are available electronically. Electronic documents will be accessible at all Maritime NZ offices. As things stand, Maritime NZ receives few requests for physical documents.

**Q38. Why is section 33X being amended, relating to delegation or transfer of council’s responsibilities?**

- The purposes of the amendments are to:
  - enable a territorial authority to transfer its responsibilities under section 33I (Carry out harbour works) to another public authority, such as a regional council that is better equipped than the territorial authority to undertake this role.
  - enable a territorial authority to transfer responsibilities in relation to maritime activity to council-controlled organisations and port operators (as a regional council is already able to do)
  - clarify that powers transferred to a public authority (such as an iwi authority or a statutory body) can be varied or withdrawn, by including a new provision modelled on the equivalent process specified in the Local Government Act 2002.

**Q39. What is the purpose of the amending the definition of ‘marine protection product’ in section 225?**

- Over time, the definition of ‘marine protection product’ in section 225 (Interpretation) of the Act has fallen out of line with the term’s usage in certain practical applications. The result is that some products cited as marine protection products in marine protection rules may inadvertently fall outside the section 225 definition.
- The proposed solution is to clarify section 225’s definition of ‘marine protection product’ so that any product specified as such, for the purposes of marine protection rules, is not limited to the classes of product defined by the current definition.

**Q40. What is an example of a marine protection product?**

- An example is oil dispersants, as cited in Marine Protection Rules Part 132: Dispersants and Demulsifiers.