

Maritime Transport (MARPOL Annex VI) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill addresses the impacts of shipping emissions by aligning domestic legislation with Annex VI of the International Convention for the Prevention of Pollution from Ships (**MARPOL**).

New Zealand's international obligations under MARPOL are largely implemented through the Maritime Transport Act 1994 (the **MTA**) and maritime and marine protection rules made under the MTA. At the end of 2019, Cabinet agreed New Zealand would accede to Annex VI, which deals with air emissions from ships.

Before New Zealand can accede to Annex VI, minor amendments to the MTA are needed to ensure that the provisions relating to rule-making powers and enforcement provide the authority to fully implement the legal obligations of Annex VI.

This Bill provides a power for the Minister to make marine protection rules in relation to Annex VI substances and for the Director of Maritime New Zealand to conduct inspections and audits in relation to Annex VI requirements and to detain ships that are in contravention of Annex VI requirements.

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=2021&no=37>

National interest analysis

An extended national interest analysis has been prepared that takes the place of a regulatory impact assessment. The Ministry of Transport produced the national interest analysis on 3 October 2019 to help inform the main policy decisions taken by the Government relating to the contents of this Bill. The national interest analysis was presented to the House of Representatives on 5 February 2020, in accordance with Standing Order 397(2) (presentation of national interest analyses for international treaties) of 2017.

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

- <https://www.transport.govt.nz/assets/Uploads/Report/MARPOL-Annex-VI-National-Interest-Analysis.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 relates to commencement. The Act is to come into force on the day after the date of Royal assent.

Part 1

Amendments to Maritime Transport Act 1994

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

Clause 4 amends section 222 of the principal Act to insert new definitions of Annex VI, Annex VI requirements, Annex VI substance, and fuel oil. That clause also replaces the definitions of discharge, and marine protection product. A new definition of ship (taking its meaning from MARPOL) is also inserted in *new section 222(1A)* and will apply, for the purposes of implementing Annex VI, in *Parts 18 to 30* of the principal Act. The definition of ship in Article 2(4) of MARPOL states: “‘Ship’ means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms.” The definition of reception facility is also replaced and relocated into *new section 222(1A)* to align with the insertion of *new section 444A* into Part 29 of the principal Act by *clause 16*.

Clause 5 amends section 223 of the principal Act. Section 223 sets out the application of *Parts 19 to 27* of the principal Act to warships and other ships of the New Zealand Defence Force when those ships are in waters outside the territorial sea of New Zealand. The amendment provides an exception to that application provision and states that Annex VI requirements do not apply to those ships.

Clause 6 amends section 225 of the principal Act to repeal the definitions of discharge, marine protection product, and reception facility. Those definitions are being

moved—with some changes to take into account Annex VI requirements—by *clause 4* to section 222 of the principal Act.

Clause 7 repeals section 236 of the principal Act, which provides a power to the Director of Maritime New Zealand (the **Director**) to require, at ports, reception facilities for qualifying harmful substances from ships. That power is being provided for in *new section 444A*, inserted by *clause 16*.

Clause 8 amends section 271 of the principal Act. Section 271 relates to the acceptance of certain marine protection documents by the Director. The amendment expands subsection (2)(c) to capture the wider environment and ensures that the section is wide enough for the purposes of implementing Annex VI. The subsection, as amended, provides that the Director must not accept a marine protection document if the Director has clear grounds for believing that a ship presents an unreasonable threat to the environment, including the marine environment.

Clause 9 amends section 272 of the principal Act. Section 272 provides the powers the Director has to suspend marine protection documents or impose conditions in relation to those documents. The amendment expands the list of the contexts in which those powers may be exercised to include where the holder of a document fails to take corrective action in respect of the condition of the ship's equipment.

Clause 10 amends section 388 of the principal Act. Section 388 sets out the purposes for which the Minister may make marine protection rules. *Clause 10* inserts an additional purpose of prescribing requirements, etc, relating to the prevention of air pollution from ships for the purposes of implementing Annex VI.

Clause 11 amends section 395 of the principal Act, which provides the Director with the power to grant exemptions from marine protection rules. The amendment inserts the Director's power to grant an exemption if compliance with a requirement could impede research into the development of ship emission reduction technologies and ship engine design programmes. A further amendment is included to provide that granting an exemption from a marine protection rule made for the purposes of Annex VI must not significantly increase the risk of harm to the environment, human health, property, or resources. The amendments under this clause are also intended for the purposes of implementing Annex VI.

Clause 12 amends section 396 to distinguish that provision from the *new section 396A*. The former relates to inspections and audits for matters other than in relation to Annex VI, while the latter relates to inspections and audits in relation to Annex VI.

Clause 13 inserts *new section 396A*, which relates to inspections and audits in relation to Annex VI. The Director will have the power to require, and to carry out, inspections and audits for the purposes of implementing Annex VI.

Clause 14 amends section 397 of the principal Act, which provides the Director with the power to detain ships and seize marine protection products, etc. The amendments made by this clause ensure that the powers can be exercised to prevent air pollution from ships and to facilitate implementation of Annex VI.

Clause 15 amends section 399 of the principal Act, which provides an offence for failing to comply with the Director's inspection or audit requirements. That section is expanded to make it an offence to fail to comply with the Director's inspection or audit requirements in relation to Annex VI requirements under *new section 396A(1) or (4)*.

Clause 16 inserts *new section 444A*. That section provides the Director with the power to require, at ports, reception facilities for qualifying harmful substances, ballast water, and Annex VI substances from ships. Those powers are expanded from the power in section 236 of the principal Act, which is being repealed by *clause 7*.

Part 2

Amendments to secondary legislation

Clause 17 states that *Part 2* amends the Maritime Transport (Marine Protection Conventions) Order 1999 (the **Order**).

Clause 18 amends clause 3 of the Order to insert Annex VI into the list of international conventions declared to be marine protection conventions.

Hon Michael Wood

Maritime Transport (MARPOL Annex VI) Amendment Bill

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**Part 2
Amendments to Maritime Transport (Marine Protection
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The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Maritime Transport (MARPOL Annex VI) Amendment Act **2021**.

2 Commencement 5
This Act comes into force on the day after the date of Royal assent.

**Part 1
Amendments to Maritime Transport Act 1994**

3 Principal Act 10
This Part amends the Maritime Transport Act 1994.

4 Section 222 amended (Interpretation)
(1) In section 222(1), insert in their appropriate alphabetical order:
Annex VI means Annex VI of MARPOL (regulations for the prevention of air pollution from ships)

Annex VI requirements means requirements imposed for the purposes of Annex VI under this Act, or under any regulations or rules made under this Act 15

Annex VI substance means any substance specified as an Annex VI substance for the purposes of this definition by the marine protection rules

fuel oil means any fuel delivered to and intended for combustion purposes for propulsion or operation on board a ship, including gas, distillate, and residual fuels 20

(2) In section 222(1), replace the definition of **discharge** with:
discharge—
(a) includes any release, disposal, spilling, leaking, pumping, emitting, or emptying; but 25

- (b) does not include—
- (i) dumping in accordance with a permit issued by the Director under section 262; or
 - (ii) the release of harmful substances for the purposes of legitimate scientific research into pollution abatement and control
- (3) In section 222(1), replace the definition of **marine protection product** with:
- marine protection product** means—
- (a) anything or any substance specified as a marine protection product for the purposes of this definition by the marine protection rules; and
 - (b) anything that comprises, or is intended to comprise, any part of a ship, offshore installation, or pipeline, or that is or is intended to be installed on or fitted or supplied to a ship, offshore installation, or pipeline for the purpose of preventing, limiting, or controlling a discharge or the escape of a harmful substance, ballast water, or an Annex VI substance, including (but not limited to)—
 - (i) any plant or equipment that treats or is intended to treat a harmful substance, ballast water, or an Annex VI substance; and
 - (ii) any plant or equipment that monitors or is intended to monitor the discharge or escape of a harmful substance, ballast water, or an Annex VI substance; and
 - (c) any substance used or intended to be used for the dispersal or emulsification of a harmful substance or ballast water in the sea
- (4) In section 222(1), repeal the definition of **reception facility**.
- (5) After section 222(1), insert:
- (1A) In this Part and in Parts 19 to 30, unless the context otherwise requires,—
- reception facility** means a facility for the reception of—
- (a) harmful substances from ships (as defined in section 2(1)); or
 - (b) ballast water from ships (as defined in section 246A(3)); or
 - (c) Annex VI substances from ships (within the meaning of MARPOL)
- ship**, for the purposes of implementing Annex VI, means a ship within the meaning of Article 2(4) of MARPOL.
- 5 Section 223 amended (Application of Parts 19 to 27 to ships of New Zealand Defence Force)**
- In section 223, insert as subsection (2):
- (2) Despite **subsection (1)**, Annex VI requirements do not apply to ships referred to in that subsection.

- 6 Section 225 amended (Interpretation)**
In section 225, repeal the definitions of **discharge, marine protection product, and reception facility.**
- 7 Section 236 repealed (Power to require reception facilities)**
Repeal section 236. 5
- 8 Section 271 amended (Acceptance of documents)**
In section 271(2)(c), replace “marine environment” with “environment, including the marine environment”.
- 9 Section 272 amended (Suspension of marine protection documents or imposition of conditions)** 10
After section 272(1)(e), insert:
(ea) is satisfied that the holder has failed to take corrective action to ensure the condition of the ship’s equipment (including the ship’s systems, fittings, arrangements, and materials) corresponds to the particulars of the relevant marine protection document; or 15
- 10 Section 388 amended (Marine protection rules in relation to harmful and other substances)**
After section 388(n), insert:
(o) prescribing requirements, procedures, and standards relating to the prevention of air pollution from ships for the purposes of implementing Annex VI. 20
- 11 Section 395 amended (Director may grant exemptions from marine protection rules)**
(1) After section 395(2)(b)(iii), insert:
(iiia) compliance with the requirement could impede research into the development of emission reduction and control technologies and engine design programmes in relation to ships: 25
(2) In section 395(2)(d)(i), after “ballast water”, insert “or for the purposes of implementing Annex VI”.
- 12 Section 396 amended (Inspections and audits)** 30
(1) Replace the heading to section 396 with “**Inspections and audits (other than in relation to Annex VI)**”.
(2) After section 396(3), insert:
(4) This section does not apply to inspections and audits for the purposes of implementing Annex VI. 35

13 New section 396A inserted (Inspections and audits in relation to Annex VI)

After section 396, insert:

396A Inspections and audits in relation to Annex VI

- (1) The Director may, in writing, require any person described in **subsection (2)** to undergo, or carry out, such inspections or audits, or both, as the Director considers necessary in the interests of— 5
- (a) protecting the environment, including the marine environment, from harm from discharges from ships that are subject to the provisions of Annex VI; or
 - (b) verifying whether a ship has discharged any substance that is subject to the provisions of Annex VI in contravention of the regulations and rules made under this Act; or 10
 - (c) facilitating and reviewing trials of ship emission reduction and control technologies; or
 - (d) monitoring compliance with conditions of exemptions. 15
- (2) This section applies to a person who—
- (a) holds any marine protection document; or
 - (b) is required to hold any marine protection document by this Act or any regulations or marine protection rules made under this Act; or
 - (c) operates, maintains, or services, or does any other act in respect of, any ship, marine protection product, or reception facility. 20
- (3) The Director may, in respect of any person described in **subsection (2)**, carry out such inspections or audits, or both, as the Director considers necessary in the interests of 1 or more of the matters specified in **subsection (1)(a) to (d)**.
- (4) For the purposes of any inspection or audit carried out in respect of any person under **subsection (3)**, the Director may, in writing,— 25
- (a) require that person to provide to the Director such information as the Director considers relevant to the inspection or audit:
 - (b) in respect of a ship, require the person to— 30
 - (i) allow the Director to take a sample of the ship’s fuel oil for the purposes of testing the sample in accordance with any requirements specified in the marine protection rules: 30
 - (ii) demonstrate to the Director the familiarity of the master or crew with essential shipboard procedures for the prevention of marine pollution: 35
 - (iii) demonstrate to the Director that any operational, maintenance, or servicing procedure in respect of a ship or a marine protection product is capable of being carried out in a competent manner.

- 14 Section 397 amended (Detention, etc, of ships and seizure of marine protection products)**
- (1) In section 397(2)(g), replace “marine environment” with “environment, including the marine environment”.
- (2) After section 397(2)(g), insert: 5
- (ga) there is likely to be a contravention of Annex VI requirements under this Act or regulations or rules made under this Act; or
- (3) After section 397(3), insert:
- (3A) The powers under subsection (1) may also be exercised if the Director believes on clear grounds that the master or crew are not familiar with essential ship-board procedures relating to the prevention of air pollution from ships for the purposes of implementing Annex VI. 10
- 15 Section 399 amended (Failure to comply with Director’s inspection or audit requirements)**
- In section 399, replace “subsection (1) or subsection (3) of section 396” with “**section 396(1) or (3) or 396A(1) or (4)**”. 15
- 16 New section 444A inserted (Power to require reception facilities)**
- After section 444, insert:
- 444A Power to require reception facilities**
- (1) The Director may, by notice in writing, require any person who operates a port in New Zealand or in New Zealand continental waters to provide at that port a reception facility to receive from ships all or any of the following: 20
- (a) harmful substances:
- (b) ballast water:
- (c) Annex VI substances. 25
- (2) For the purposes of **subsection (1)**, the substances and ballast water must comply with the requirements of the marine protection rules.
- (3) In this section,—
- Annex VI substance** has the meaning given to it by section 222(1)
- ballast water** has the meaning given to it by section 246A(1) 30
- harmful substance** has the meaning given to it by section 225
- marine protection rules** has the meaning given to it by section 222(1)
- New Zealand continental waters** has the meaning given to it by section 222(1)
- reception facility** has the meaning given to it by **section 222(1A)**. 35

Part 2
**Amendments to Maritime Transport (Marine Protection
Conventions) Order 1999**

17 Principal order

This Part amends the Maritime Transport (Marine Protection Conventions) Order 1999. 5

18 Clause 3 amended (Certain international conventions declared to be marine protection conventions)

After clause 3(b), insert:

(ba) Annex VI of the International Convention for the Prevention of Pollution from Ships, 1973: 10