



Maritime Transport (Offshore Installations) Amendment Act 2019

Public Act 2019 No 80
Date of assent 19 December 2019
Commencement see section 2

Contents

| | Page |
|--|------|
| 1 Title | 1 |
| 2 Commencement | 2 |
| 3 Principal Act | 2 |
| Part 1 | |
| Amendments to Part 26A of principal Act | |
| 4 Section 385A amended (Interpretation) | 2 |
| 5 Section 385J replaced (Rights of third parties against insurers of regulated offshore installations) | 2 |
| 385J Rights of third-party claimants against insurers of regulated offshore installations | 2 |
| Part 2 | |
| Other amendments to principal Act | |
| 6 Section 387 amended (Marine protection rules relating to marine protection documents) | 4 |
| 7 Schedule 1AA amended | 4 |

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 January 2020.

3 Principal Act

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

Part 1
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)

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 is alleged to have incurred liability to a person (a **claimant**) under any of the following sections:
 - (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).
- (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.
- (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) Proceedings may only be brought by a claimant against an insurer under this section with the leave of the court.
- (5) 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

- (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
- (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
 - (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.
- (6) However, despite subsections (3) and (5)(c)(i), the insurer is not entitled to rely on any defence arising from an act or omission by the owner that occurred after the event that gave rise to the liability (for example, a defence based on a failure by the owner to comply with a condition that the owner provide information or assistance to the insurer).
- (7) Nothing in this section—
 - (a) entitles a claimant to recover any amount from a re-insurer under a contract or arrangement for re-insurance:
 - (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.
- (8) 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.
- (9) An insurer's liability to a claimant under this section is not reduced, discharged, or otherwise affected by—
 - (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.

Compare: Civil Liability (Third Party Claims Against Insurers) Act 2017 (NSW) ss 4, 7, 9–11

Part 2

Other amendments to principal Act

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:
 - (4A) Without limiting subsection (4), the marine protection rules may—
 - (a) provide for the types of liability and the amount for which insurance or other financial security must be held for the purpose of 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.

7 Schedule 1AA amended

In Schedule 1AA, after Part 1, insert:

Part 2

Maritime Transport (Offshore Installations) Amendment Act 2019

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.

5 Rules may provide for early expiry of certificates of insurance

- (1) For the purpose of implementing the Maritime Transport (Offshore Installations) Amendment Act 2019 (the **amendment Act**), transitional provisions in rules made under section 387(4) or (4A)(a) may have the effect that any certificate of insurance in force under section 385H (even if issued before the commencement date of the amendment Act or the relevant rule) will expire on a date earlier than the expiry date specified for the certificate by the Director when it was issued.
- (2) Nothing in subclause (1) limits the ability of rules made under this Act to provide for transitional matters.

Legislative history

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| 20 June 2019 | Introduction (Bill 154–1) |
| 27 June 2019 | First reading and referral to Transport and Infrastructure Committee |
| 18 November 2019 | Reported from Transport and Infrastructure Committee (Bill 154–2) |
| 10 December 2019 | Second reading |
| 11 December 2019 | Committee of the whole House (Bill 154–3) |
| 12 December 2019 | Third reading |
| 19 December 2019 | Royal assent |

This Act is administered by the Ministry of Transport.