

MARINE POLLUTION AMENDMENT (NO. 2)

EXPLANATORY NOTE

This Bill amends the Marine Pollution Act 1974.

Clause 1 specifies the Short Title.

Clause 2 empowers the Minister of Transport to direct a Harbour Board to deal with any oil or pollutant which has been discharged or has escaped into a harbour.

Clause 3 inserts a new Part IIIA in the principal Act to provide for the imposition of levies on ships entering New Zealand ports, in order to maintain a fund to deal with oil pollution. The money levied will be applied to reimburse public expenditure on oil pollution control; and will also be available to reimburse Harbour Boards that have dealt with oil pollution and, despite reasonable endeavours, have not been able to recover the costs from the persons liable. The new provisions will not limit existing remedies against persons causing pollution, and if money is subsequently recovered from those persons, it must be reimbursed to the fund.

New section 29A defines expressions used in the new Part.

New section 29B empowers the Governor-General, by Order in Council, to impose oil pollution levies on mechanically propelled ships exceeding 100 gross tons.

It also provides that levies may be imposed on an annual basis or, for overseas ships, in respect of individual voyages. Where provision is made for an annual levy in respect of an overseas ship, the person liable will have the option to pay on the basis of individual voyages.

An Order in Council may also provide for a refund of levies paid in advance, where appropriate.

In the case of a home-trade ship or New Zealand fishing boat, the maximum levy will be 60 cents per gross ton on an annual basis, unless it is carrying a cargo of more than 2000 tonnes of persistent oil in bulk, in which case the maximum levy will be 300 cents per gross ton on an annual basis.

For an overseas ship, the maximum levy will be 2 cents per gross ton on the first port of entry on a voyage, and 1 cent per gross ton for each subsequent port of entry on the voyage; or 60 cents per gross ton if payment is made on an annual basis. However, where the ship carries a cargo of more than 2000 tonnes of persistent oil in bulk, the maximum will be 5 times this rate.

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No levy will be payable by ships owned by Harbour Boards, or by other ships to which the principal Act does not apply, or in cases of entry to a port only for emergency purposes.

New section 29c provides that a ship will incur liability for a levy on its entry into a New Zealand port from beyond the harbour limits or, in the case of an annual levy, on its first entry during the period for which the levy is payable.

New section 29d provides that the owner and the master of the ship are liable to pay the levies.

New section 29e provides that a certificate of clearance under section 74 of the Customs Act 1966 will not be issued in respect of a ship unless a receipt showing payment of all levies owing is produced to the Collector of Customs.

New section 29f establishes an Oil Pollution Trust Account into which all levies are to be paid. The fund thus established will be available for the purposes already described.

New section 29g establishes an Oil Pollution Advisory Committee, under the chairmanship of the Director of Marine, and consisting of such other members representing the shipping and oil industries and Harbour Boards as the Minister may appoint. The committee will advise the Minister on rates of levies, and other matters relating to the administration of the new Part.

New section 29h provides for information as to the nature of the use of a ship, and of changes in use, to be given to the Secretary for Transport by the owner and the master.

New section 29i relates to offences.

New section 29j provides for the recovery of levies and other money owing to the Oil Pollution Trust Account as debts due to the Crown.

Hon. Mr McLachlan

MARINE POLLUTION AMENDMENT (NO. 2)

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—This Act may be cited as the Marine Pollution Amendment Act (No. 2) 1977, and shall be read together with and deemed part of the Marine Pollution Act 1974* (hereinafter referred to as the principal Act).

*1974, No. 14

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

2. Provision of substances and equipment in harbours—

(1) Section 13 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Where any oil or pollutant has been discharged or has escaped into a harbour from a ship, a place on land, or a pipeline, the Minister may direct the Harbour Board to deal with, clean up, remove, or disperse that oil or pollutant. 5

(2) Section 13 of the principal Act is hereby further amended—

(a) By inserting in subsection (2), after the figure “(1)”, the expression “or subsection (1A)”: 10

(b) By omitting the words “substances, materials, or the equipment, as the case may be, are provided in accordance with the directions”, and substituting the words “directions are complied with”. 15

3. New Part IIIA inserted—The principal Act is hereby amended by inserting, after Part III, the following new Part:

“PART IIIA**“OIL POLLUTION LEVIES**

“29A. **Interpretation—**(1) In this Part of this Act, unless the context otherwise requires,— 20

“‘Contributing ship’ means a ship in excess of 100 gross tons, whose principal means of propulsion is mechanical:

“‘Gross tons’, subject to subsection (2) of this section, has the same meaning as it has in section 2 (1) of the Shipping and Seamen Act 1952: 25

“‘In bulk’, in relation to persistent oil, means loaded on to or discharged from a ship by a pipeline system:

“‘New Zealand fishing boat’ has the same meaning as it has in section 2 (1) of the Shipping and Seamen Act 1952: 30

“‘Oil pollution levy’ and ‘levy’ mean an oil pollution levy under this Part of this Act:

“‘Owner’, in relation to a contributing ship (whether or not it is a ship to which section 32 of this Act applies) includes any person specified in paragraph (a) of the definition of the term “owner” in section 2 (1) of this Act: 35

“‘Persistent oil’ means crude oil, fuel oil, lubricating oil, heavy diesel oil, or any other persistent oil. 40

“(2) Where the certificate of registry or other national papers of a contributing ship indicate that it has been assigned alternative gross tonnages, the higher of those gross tonnages shall be deemed to be the gross tonnage for the purposes of this Part of this Act.

“29B. **Oil pollution levies**—(1) The Governor-General may from time to time, by Order in Council, impose in respect of contributing ships, or of any class or description of contributing ships, oil pollution levies that shall be payable for the purposes of this Part of this Act.

“(2) Any order made under this section may—

- “(a) Fix different rates of oil pollution levies in respect of different classes or descriptions of contributing ships; and
- 15 “(b) Fix different rates of levies in respect of the same class or description of contributing ships in differing circumstances; and
- “(c) Provide for levies in respect of home-trade ships and New Zealand fishing boats to be assessed at flat annual rates in lump sums, but not otherwise; and
- 20 “(d) Provide for levies for contributing ships (other than those specified in paragraph (c) of this subsection) to be assessed either at flat annual rates in lump sums or separately in respect of each entry into a New Zealand port; and
- 25 “(e) Require levies assessed on an annual basis to be paid in advance or otherwise, and prescribe dates for payment, and the annual periods in respect of which they shall be payable; and
- 30 “(f) Provide for the refund of the whole or any part of a levy paid in advance or otherwise, in circumstances specified in the order and in respect of any contributing ship or class or description of contributing ship specified in the order.
- 35 “(3) No order made under this section may impose any oil pollution levy that exceeds any of the following limits:
 - “(a) In the case of a contributing ship (other than a ship carrying a cargo of more than 2,000 tonnes of persistent oil in bulk)—
 - 40 “(i) If it is a home-trade ship or a New Zealand fishing boat, 60 cents per gross ton on an annual basis; or

“(ii) In any other case, 2 cents per gross ton on the first entry into a New Zealand port on any voyage and 1 cent per gross ton on each subsequent entry into a New Zealand port on that voyage, or 60 cents per gross ton if payment is made on an annual basis: 5

“(b) In the case of a contributing ship carrying a cargo of more than 2,000 tonnes of persistent oil in bulk—

“(i) If it is a home-trade ship, 300 cents per gross ton on an annual basis: 10

“(ii) In any other case, 5 times the appropriate rate for ships referred to in subsection (3) (a) (ii) of this section.

“(4) No order made under this section may require an oil pollution levy in respect of a contributing ship (other than a home-trade ship or a New Zealand fishing boat) to be paid on an annual basis instead of separately in respect of each entry into a New Zealand port. 15

“(5) No order made under this section shall apply to—

“(a) A contributing ship owned by a Harbour Board; or 20

“(b) A contributing ship in respect of its entry into a port in New Zealand—

“(i) For the purpose of saving or preventing danger to human life, or of obtaining medical treatment for any person; or 25

“(ii) Because of stress of weather or any other circumstances that neither the owner nor the master of the ship could have prevented or forestalled—

provided that if a ship referred to in paragraph (b) of this subsection loads or discharges cargo or embarks or disembarks passengers other than in pursuance of the purposes specified in that paragraph, the exemption conferred by this subsection shall not apply to it. 30

“29c. **Incurring of levies**—Where any oil pollution levy is imposed in respect of a contributing ship, the liability to pay that levy shall arise— 35

“(a) Where the levy is assessed on an annual basis, on the first entry of that ship into a New Zealand port from outside the harbour limits of that port during the period for which the levy is assessed; and 40

“(b) In any other case, on the entry of that ship into a New Zealand port from outside the harbour limits of that port.

“29D. **Liability for levies**—(1) Where any oil pollution levy is payable in respect of a contributing ship, the owner and the master shall each be liable to pay that levy.

5 “(2) Oil pollution levies shall be paid in the following manner:

“(a) Where the levy is assessed on an annual basis, to the Secretary for Transport:

10 “(b) In any other case, to the Collector of Customs at the port where the levy is incurred or at any other port that may be prescribed for the purpose by any Order in Council made under section 29B of this Act.

“(4) All oil pollution levies so received shall be paid by the persons who receive them into the Public Account.

15 “29E. **Ships may be detained until levies paid**—(1) A receipt shall be given to every person paying any oil pollution levy to the Secretary for Transport or to a Collector of Customs.

20 “(2) Where any oil pollution levy is payable in respect of a contributing ship, the ship shall not be entitled to a certificate of clearance pursuant to section 74 of the Customs Act 1966 until the receipt for the levy is produced to the Collector of Customs to whom application is made for the issue of a certificate of clearance.

25 “29F. **Application of levies**—(1) The money that is required by this Part of this Act to be paid into the Public Account shall be paid into a separate trust account within the Public Account to be known as the Oil Pollution Trust Account.

30 “(2) The money in the Oil Pollution Trust Account shall be applied in the following manner:

35 “(a) In refunding to the Consolidated Revenue Account, or to any other account within the Public Account from which money has been appropriated by Parliament for the purpose, all expenditure incurred by the Crown, in order to prevent, control or eliminate oil pollution, in respect of the costs of—

40 “(i) Acquiring, storing, transporting, and maintaining supplies, equipment, and material for dealing with, cleaning up, removing, and dispersing oil; and

“(ii) Dealing with, cleaning up, removing, and dispersing oil (including surveillance and all other incidental measures that are necessary or reasonably expedient for such purposes); and

“(iii) Training personnel (whether employed by the Crown or not), and engaging personnel, in the use and handling of equipment, supplies, and material for dealing with, cleaning up, removing, and dispersing oil; and

“(iv) Any other general purposes in relation to oil pollution control; and

“(v) Travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951, for members of the Oil Pollution Advisory Committee in the service of the committee; and

“(b) The reasonable costs incurred by any Harbour Board in dealing with, cleaning up, removing, or dispersing any oil, in order to prevent, control or eliminate oil pollution, where those costs have not been recovered by the Harbour Board from any person responsible, after reasonable efforts have been made by it to recover those costs.

“(3) Nothing in this section shall limit the liability of any person to pay to the Crown or to any Harbour Board any costs referred to in subsection (2) of this section; and where the Government or any Harbour Board recovers any such costs from that person after they have been paid from the Oil Pollution Trust Account, the costs recovered shall forthwith be refunded to the Oil Pollution Trust Account.

“29G. **Oil Pollution Advisory Committee**—(1) There is hereby established a committee, to be called the Oil Pollution Advisory Committee, which shall consist of the Director of Marine as chairman, and such other members representing the shipping and oil industries and Harbour Boards as the Minister may from time to time appoint.

“(2) The Committee shall meet at such times as its chairman may determine, and may regulate its own procedure.

“(3) The functions of the Oil Pollution Advisory Committee shall be to advise the Minister on—

“(a) The rate or rates of oil pollution levies which should from time to time be imposed pursuant to section 29B of this Act; and

“(b) The maximum amount of money which should be allowed to accumulate in the Oil Pollution Trust Account; and

5 “(c) Such other matters associated with the administration of this Part of this Act as the Minister may from time to time refer to the committee for its advice.

“29H. Evidence of nature, and change of use—(1) Every person, being the owner or master of a contributing ship in respect of which an oil pollution levy is payable, shall
10 forthwith on the occurrence of any change in the use of the ship that would render him liable to the payment of a levy at a different rate, notify the Secretary for Transport in writing of that change.

“ (2) Where the Secretary for Transport has reasonable
15 cause to suspect that a change specified in subsection (1) of this section has occurred in respect of a contributing ship for which an oil pollution levy is payable under this Part of this Act, he may by notice in writing to the owner or master of the ship require him to deliver to the Secretary for Transport
20 within 14 days after service of the notice on him a statutory declaration by the owner or master verifying the nature of the use of the ship.

“29I. Offences against this Part—(1) Every person commits an offence who contravenes or fails to comply with any
25 obligation or requirement imposed on him by this Part of this Act or by any order made under section 29B of this Act.

“(2) Every person who commits an offence under this section is liable on summary conviction to a fine not exceeding \$2,000.

30 “(3) Nothing in section 60 (7) of this Act shall apply to an offence under this section.

“29J. Recovery of levies—If any person who is liable under this Part of this Act to pay an oil pollution levy or to refund any money to the Oil Pollution Trust Account fails
35 to do so, the amount of the levy or of the money to be refunded may be recovered from him as a debt due to the Crown.”