

## SUBMARINE CABLES AND PIPELINES PROTECTION BILL

---

### EXPLANATORY NOTE

THE purpose of this Bill is generally to provide for the protection of submarine cables and pipelines and, more specifically, to give effect to those articles of the 1958 Convention on the High Seas relating to this protection. The relevant parts of the Convention are contained in Articles 26 to 29, which read as follows:

#### “ARTICLE 26

“1. All states shall be entitled to lay submarine cables and pipelines on the bed of the high seas.

“2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal state may not impede the laying or maintenance of such cables or pipelines.

“3. When laying such cables or pipelines the state in question shall pay due regard to cables or pipelines already in position on the seabed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

#### “ARTICLE 27

“Every state shall take the necessary legislative measures to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable shall be a punishable offence. This provision shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

#### “ARTICLE 28

“Every state shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owners of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

No. 7—1

*Price 1s.*

## "ARTICLE 29

"Every state shall take the necessary legislative measures to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand."

At present the Public Works Act 1928 and the Post Office Act 1959 provide for the protection of cables and Post Office lines and an Act of the United Kingdom called the Submarine Telegraph Act 1885, relating to the protection of submarine telegraphic cables, is in force in New Zealand. All those enactments are limited in their application. This Bill proposes a special code applicable to all submarine cables and pipelines.

*Clause 2:* The effect of the definitions contained in this clause is that the Act will apply to all cables and pipelines lying beneath the territorial sea or the internal waters of New Zealand or the high seas.

*Clause 3* provides that the Act, in its criminal jurisdiction, will apply to acts or omissions by any person in the territorial sea or internal waters of New Zealand or on a New Zealand ship on the high seas or by a New Zealand citizen on board any ship on the high seas. The Act will not apply to any cable or pipeline on the landward side of low-water mark nor to any part of a cable or pipeline not ordinarily below the surface of the sea.

*Clause 4* provides that it shall be an offence wilfully to break or injure a submarine cable or pipeline. It will be a defence to a prosecution if the defendant proves that he took all necessary precautions and acted with the sole object of saving life or his ship.

*Clause 5* imposes an absolute liability on a person to bear the cost of repairing a submarine cable or pipeline if the injury is caused in the course of repairing or laying another submarine cable or pipeline of which he is the owner.

*Clause 6* enables the owner of any gear sacrificed to avoid injury to a submarine cable or pipeline, after reasonable precautions have been taken, to recover the cost of the gear from the owner of the cable or pipeline.

*Clause 7* authorises the Governor-General in Council to declare areas to be protected or restricted areas for the purposes of the Act. Fishing or anchoring in any such area will be an offence. Power is also given to prescribe terms and conditions in respect of any area.

*Clause 8* provides that the leave of the Attorney-General is necessary before a prosecution is commenced under the Act. The purpose of this provision is to ensure that prosecutions are not taken against persons not subject to the jurisdiction of the New Zealand courts.

*Clause 9:* This clause provides that civil liability for damage to a submarine cable or pipeline will be determined in accordance with the ordinary law of tort. The reason for this is that the Public Works Act 1928 and the Post Office Act 1959 impose an absolute liability, that is liability without proof of negligence, in respect of damage to the lines subject to those Acts. The effect of this clause will be to override the Public Works and Post Office provisions so far as they apply to cables below the surface of the sea.

*Clause 10* provides that, except as expressly provided, other enactments are not affected.

*Clause 11* repeals the Submarine Telegraph Act 1885 (U.K.) in its application to New Zealand.

*Clause 12* provides that the Act shall bind the Crown.

*Clause 13* authorises the making of regulations to implement the Act.

---

*Rt. Hon. Mr Holyoake*

## SUBMARINE CABLES AND PIPELINES PROTECTION

---

### ANALYSIS

Title	6. Indemnity for loss of gear
1. Short Title and commencement	7. Protected and restricted areas
2. Interpretation	8. Leave of Attorney-General to prosecute
3. Application of Act	9. Civil liability
4. Offence to break or injure submarine cable or pipeline	10. Other Acts not affected
5. Absolute liability in respect of damage to cables or pipelines	11. Repeal
	12. Act to bind Crown
	13. Regulations

---

### A BILL INTITULED

**An Act to make provision with respect to the protection of submarine cables and pipelines**

BE IT ENACTED by the General Assembly of New Zealand  
5 in Parliament assembled, and by the authority of the same,  
as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Submarine Cables and Pipelines Protection Act 1966.
- 10 (2) This Act shall come in force on the first day of November, nineteen hundred and sixty-six.

**2. Interpretation**—In this Act, unless the context otherwise requires,—

“Cable” includes an electric line within the meaning of section 319 of the Public Works Act 1928 and a line within the meaning of section 141 of the Post Office Act 1959: 5

“High seas” means all parts of the sea that are not included in the territorial sea or in the internal waters of any country:

“Low-water mark”, in relation to New Zealand, has the meaning assigned thereto by the Territorial Sea and Fishing Zone Act 1965: 10

“New Zealand ship” means a New Zealand ship within the meaning of the Crimes Act 1961:

“Pipeline” means a pipeline used or intended to be used for the conveyance of gas (including natural gas), petroleum, oil, water, or any other mineral, liquid, or substance; and includes all fittings, pumps, tanks, appurtenances or appliances used in connection with a pipeline: 15 20

“Ship” means every description of vessel (including barges, lighters, and like vessels) used in navigation, however propelled:

“Submarine cable” means a cable which lies beneath the high seas, or the territorial sea or internal waters of New Zealand: 25

“Submarine pipeline” means a pipeline which lies beneath the high seas, or the territorial sea or internal waters of New Zealand:

**3. Application of Act**—(1) For the purpose of jurisdiction in respect of offences against this Act or regulations under this Act, and subject to section 8 of this Act, this Act applies to all acts or omissions— 30

(a) By any person (whether or not a New Zealand citizen or ordinarily resident in New Zealand) within the territorial sea or internal waters of New Zealand; 35  
or

(b) By any person (whether or not a New Zealand citizen or ordinarily resident in New Zealand) on board or by means of a New Zealand ship on the high seas; or

5 (c) By a New Zealand citizen or a person ordinarily resident in New Zealand on board or by means of any ship on the high seas.

(2) This Act does not apply to any part of a cable or pipeline situated on the landward side of low-water mark in any  
10 area nor to any part of a cable or pipeline not ordinarily beneath the surface of the sea.

**4. Offence to break or injure submarine cable or pipeline—**

(1) Any person who, wilfully, breaks or injures or causes or permits a ship to break or injure a submarine cable or submarine pipeline, commits an offence against this Act, and shall  
15 be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding five hundred pounds, or to both.

(2) Notwithstanding the provisions of subsection (1) of this  
20 section, it shall be a defence to a prosecution under this section if the breakage or injury to which the prosecution relates was caused by persons acting with the sole object of saving their lives or their ships after having taken all necessary precautions to avoid the breakage or injury.

(3) For the purposes of this section, any person who causes  
25 an event by an act or omission which he knows or ought to know would probably cause it, being reckless whether that event happens or not, shall be deemed to have caused it wilfully.

30 **5. Absolute liability in respect of damage to cables or pipelines—**If any person, in the course of laying or repairing a submarine cable or submarine pipeline of which he is the owner, causes a break in or injury to another submarine cable or submarine pipeline, he shall be liable, in addition  
25 to any other liability to which he may be subject, to bear the cost of repairing the break or injury, whether or not he has been guilty of any offence and whether or not the damage was caused through his negligence.

**6. Indemnity for loss of gear**—If, after all reasonable precautionary measures have been taken, an anchor, a net, or any other fishing gear belonging to a ship is sacrificed in order to avoid injuring a submarine cable or submarine pipeline, the owner of the ship shall be entitled to be indemnified for his loss by the owner of the cable or pipeline. 5

**7. Protected and restricted areas**—(1) The Governor-General may from time to time by Order in Council declare any area within the territorial sea or internal waters of New Zealand to be a protected area for the purposes of this Act. 10

(2) The Governor-General may from time to time by Order in Council declare any area within the fishing zone of New Zealand to be a restricted area for the purposes of this Act.

(3) Any Order in Council under this section may prescribe such terms and conditions as the Governor-General in Council thinks necessary or desirable for the protection of submarine cables and submarine pipelines and may apply generally in respect of any area to which it relates or in respect of specified areas or classes of areas and may also apply generally in respect of all ships or in respect of specified ships or classes of ships. 15 20

(4) Subject to any Order in Council under this section, any person who conducts, or causes or permits to be conducted, fishing operations from a ship in a protected or restricted area or who anchors, or causes or permits to be anchored, a ship in any such area, or who commits a breach of any terms or conditions prescribed by any Order in Council under this section, commits an offence against this Act and shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding five hundred pounds, or to both. 25 30

(5) Notwithstanding the provisions of this section, it shall be a defence to a prosecution under this section if any anchoring to which the prosecution relates was made necessary by *force majeure* or for the purpose of saving life or a ship in distress. 35

**8. Leave of Attorney-General to prosecute**—Notwithstanding anything in any other enactment, proceedings for the trial and punishment of any person charged with having committed an offence against this Act or regulations under this Act shall not be instituted in any Court except with the consent of the Attorney-General and on his certificate that it is expedient that the proceedings should be instituted. 40

5 **9. Civil liability**—Notwithstanding the provisions of any other enactment, liability for damages in respect of any break or injury to a submarine cable or submarine pipeline shall, except as expressly provided by this Act, be determined in accordance with the general law for the time being in force in respect of liability in tort.

10 **10. Other Acts not affected**—The provisions of this Act are in addition to and not in substitution for the provisions of any other enactment and, except as expressly provided by this Act, nothing in this Act shall derogate from the provisions of any other enactment.

**11. Repeal**—The Submarine Telegraph Act 1885, being an Act of the Parliament of the United Kingdom, shall cease to have effect as part of the law of New Zealand.

15 **12. Act to bind Crown**—This Act shall bind the Crown.

**13. Regulations**—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- 20 (a) Regulating the navigation or conduct of ships engaged in the laying, repairing, or maintenance of submarine cables or submarine pipelines and prescribing the lights or signals to be displayed by any such ships while engaged in any such operations:
- 25 (b) Prescribing the duties of owners of submarine cables or submarine pipelines in respect of the marking or definition of those cables and pipelines and prescribing records to be kept in respect of the location of any such cables or pipelines:
- 30 (c) Regulating the navigation or conduct of ships in relation to other ships engaged in the laying, repairing, or maintenance of submarine cables or submarine pipelines or in relation to any such cables or pipelines or in relation to any buoys or signals indicating the presence or proximity of any such
- 35 (d) Prescribing the duties of persons in respect of reporting damage caused or likely to be caused to submarine cables or submarine pipelines:



6      *Submarine Cables and Pipelines Protection*

- (e) Prescribing offences against the regulations and defining the persons or classes of persons liable to conviction for any such offences:
- (f) Prescribing penalties for offences against the regulations, not exceeding imprisonment for a term not exceeding three months or a fine not exceeding five hundred pounds: 5
- (g) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof. 10