

House of Representatives

Supplementary Order Paper

Tuesday, 24 September 2013

Marine Legislation Bill

Proposed amendments

Hon Gerry Brownlee, in Committee, to move the following amendments:

Clause 2

Before *clause 2(1)* (before line 5 on page 12), insert:

- (1AA) **Sections 87A to 87J** come into force on a date appointed by the Governor-General by Order in Council.

Clause 4(3)

In *clause 4(3)*, Long Title, *new paragraph (i)*, delete “; and” (line 6 on page 13).

In *clause 4(3)*, Long Title, delete *new paragraph (j)* (lines 7 to 9 on page 13).

Clause 5A

Replace *clause 5A* (lines 6 to 12 on page 15) with:

5A Section 4 amended (Application of this Act)

After section 4(3), insert:

- “(4) Except where the context otherwise requires, where this Act applies to ships, it applies to New Zealand ships wherever they may be.”

Clause 6

In *clause 6*, replace *new section 33L(5)* (lines 32 to 36 on page 25) with:

- “(5) The regional council must notify its intention to sell or otherwise dispose of the ship in 2 issues of a daily newspaper circulating in the region in which the ship is situated.

In *clause 6*, replace *new section 33L(8)* (lines 14 to 17 on page 26) with:

- “(8) The regional council may sell or otherwise dispose of a ship if—
“(a) it has complied with **subsections (4) to (7)**; and

“(b) more than 1 month has elapsed since the date of the second notice under **subsection (5)**.

“(8A) A person to whom a ship is sold or disposed of under **subsection (8)** becomes the lawful owner of the ship.

In *clause 6*, replace *new section 33MB(4)* (lines 31 to 34 on page 28) with:

“(4) Despite section 25 of the Criminal Procedure Act 2011, a charging document for an offence against **subsection (1)** may be filed within 12 months of the time when the matter to which the charging document relates arose.

Clause 11: new section 40N

In *clause 11*, *new section 40N(6)(a)(ii)*, replace “section 19 of the Summary Proceedings Act 1957” (line 9 on page 52) with “section 34 of the Criminal Procedure Act 2011”.

Clause 25(4)

In *clause 25(4)*, *new section 86(4)* (line 2 on page 69), replace “This section” with “**This Part**”.

Clause 39(2)

In *clause 39(2)*, replace “, **364, or**” (line 5 on page 74) with “or”.

Clause 45(2)

In *clause 45(2)*, before the definition of **hazardous substance other than oil** (before line 27 on page 75), insert:

“**harmful substance** means—

“(a) any substance specified as a harmful substance for the purposes of section 225 by the marine protection rules:

“(b) any hazardous substance other than oil

Clause 52

Delete *clause 52(1)* (lines 12 to 28 on page 77).

Delete *clause 52(3)* (line 31 on page 77 to line 2 on page 78).

Clause 54

Delete *clause 54* (line 25 on page 78 to line 4 on page 79).

Clause 56

Delete *clause 56* (lines 9 to 12 on page 79).

Clause 58

Delete *clause 58* (lines 16 to 33 on page 79).

New clause 58A

After *clause 58* (after line 33 on page 79), insert:

58A Section 364 repealed

Repeal section 364.

Clause 60(4)

In *clause 60(4)*, *new section 366(5)*, delete “or **364**” (line 25 on page 80).

Clause 61

In *clause 61*, *new section 367(1)*, delete “or **364**” (line 34 on page 80).

In *clause 61*, *new section 367(2)*, delete “or **364**” (line 3 on page 81).

In *clause 61*, *new section 367(3)*, delete “or **364**” (line 8 on page 81).

Clause 63

In *clause 63*, replace “, **364, or**” (line 18 on page 87) with “or”.

Clause 65(1)

In *clause 65(1)*, replace “, **364, or**” (line 27 on page 87) with “or”.

Clause 78

After *clause 78(1)* (after line 34 on page 91), insert:

(1A) Replace section 451(2) with:

“(2) Any rule made under this Act may apply—

“(a) generally throughout New Zealand, New Zealand waters, or New Zealand continental waters (as defined in section 222(1));

“(b) within any specified part or parts of New Zealand, New Zealand waters, or New Zealand continental waters:

“(c) in respect of New Zealand ships, wherever they may be.

“(2A) Except as otherwise expressly provided, where a rule applies to ships, it applies to New Zealand ships wherever they may be.”

After *clause 78(2)* (after line 8 on page 92), insert:

(3) After section 451(5), insert:

“(5A) A rule made by the Governor-General under this Act is a legislative instrument for the purposes of the Legislation Act 2012.”

(4) In section 451(6), replace “A rule” with “Any other rule”.

Clause 79: new section 452

In *clause 79*, *new section 452(7)*, replace “The Acts and Regulations Publication Act 1989” (line 30 on page 93) with “Part 2 of the Legislation Act 2012”.

In *clause 79*, *new section 452(8)*, replace “section 4 of the Regulations (Disallowance) Act 1989” (lines 33 and 34 on page 93) with “section 41 of the Legislation Act 2012”.

Clause 84(3)

Before *clause 84(3)(a)* (before line 23 on page 95), insert:

(aa) Lake Taupo (Crown Facilities, Permits and Fees) Regulations 2004:

New clauses 87A to 87J and cross-heading

After clause 87 (after line 16 on page 97), insert:

Amendments to come into force by Order in Council

87A Section 222 amended (Interpretation)

In section 222(1), definition of marine protection document, paragraph (b), replace “section 363 or **385H**” with “section 363, **363A, or 385H**”.

87B Section 342 amended (Interpretation)

(1) In section 342, insert in their appropriate alphabetical order:

“**bunker oil** means—

“(a) any hydrocarbon mineral oil used, or intended to be used, for the operation or propulsion of a ship; and

“(b) any residues of that oil

“**Bunker Oil Convention**—

“(a) means the International Convention on Civil Liability for Bunker Oil Pollution Damage done at London on 23 March 2001; and

“(b) includes any subsequent protocol or amendment to, or revision of, that convention accepted or ratified by New Zealand

“**Bunker Oil Convention ship** means a ship registered in, or (if unregistered) flying the flag of, a Bunker Oil Convention State

“**Bunker Oil Convention State** means any State that is a party to the Bunker Oil Convention”.

(2) In section 342, replace the definition of **harmful substance** with:

“**harmful substance** means—

“(a) any substance specified as a harmful substance for the purposes of section 225 by the marine protection rules:

“(b) oil:

“(c) bunker oil”.

87C Section 354 replaced (Ships owned by CLC State)

Replace section 354 with:

“354 Ships owned by Convention States

“(1) In any action under section 345 or 346 for damages for pollution damage in respect of a ship owned by a convention State, that State is to be taken to have waived any defence based on its status as a sovereign State, and to have submitted to the jurisdiction of the court, if the State is—

“(a) a CLC State and the pollution damage is in respect of the discharge or escape of oil:

- “(b) a Bunker Oil Convention State and the pollution damage is in respect of the discharge or escape of bunker oil.
- “(2) This section does not permit enforcement against the property of any convention State.”

87D Section 361 amended (Time for bringing proceedings)

In section 361, after “CLC ship”, insert “, or in respect of the discharge or escape of bunker oil from a Bunker Oil Convention ship.”.

87E New section 363A inserted (Certain ships to have bunker oil certificates of insurance)

After section 363, insert:

“363A Certain ships to have bunker oil certificates of insurance

- “(1) This section applies to—
 - “(a) every ship of 1 000 gross tonnage or more that is entering or leaving a port in New Zealand or New Zealand marine waters:
 - “(b) every New Zealand ship of 1 000 gross tonnage or more, wherever it may be.
- “(2) The owner must ensure that there is for the time being in force in respect of the ship, and carried on board the ship, a certificate of insurance—
 - “(a) issued, recognised, or accepted by the Director under section 270 or 271:
 - “(b) confirming that the owner has provided evidence that there is insurance or other financial security covering the owner’s liability under the Bunker Oil Convention.”

87F Section 366 amended (Rights of third parties against insurers of regulated oil tankers and regulated ships)

In **section 366(5)**, replace “section 363” with “section 363 or **363A**”.

87G Section 367 amended (Offences)

In **section 367(1), (2), and (3)**, replace “section 363” with “section 363 or **363A**”.

87H Section 387 amended (Marine protection rules relating to marine protection documents)

In section 387(4), replace “section 363 or **385H**” with “section 363, **363A, or 385H**”.

87I Section 390 amended (Marine protection rules in relation to marine oil spills and other matters)

In section 390(1)(c), replace “section 363 or **385H**” with “section 363, **364, or 385H**”.

87J Consequential amendments

Amend the enactments listed in **Schedule 2A** in the manner set out in that schedule.

Clause 107, new section 87C(1)

In *clause 107, new section 87C(1)* (line 4 on page 122), replace “**85B**” with “**87B**”.

Schedule 2: Part 3

In *Schedule 2, Part 3*, delete the item relating to Marine Protection Rules Part 102: Certificates of Insurance (line 15 on page 167 to line 24 on page 171).

New Schedule 2A

After *Schedule 2* (after line 23 on page 172), insert:

Schedule 2A **s 87J**
**Amendments to rules to come into force by
Order in Council**

Marine Protection Rules Part 102: Certificates of Insurance

In rule 102.2, delete the definitions of **Regulated offshore installation** and **Regulated ship**.

In rule 102.2, insert in their appropriate alphabetical order:

“**Bunker Oil Convention** has the meaning given to it in section 342 of the Act

“**Bunker Oil Convention State** has the meaning given to it in section 342 of the Act

“**New Zealand continental waters** has the meaning given to it in section 222(1) of the Act

“**offshore installation** has the meaning given to it in section 222(1) of the Act

“**regulated offshore installation**—

“(a) means an offshore installation within New Zealand continental waters; and

“(b) includes any pipeline connected to that installation

“**regulated ship** means a New Zealand or foreign ship of 400 gross tonnage or more other than a regulated oil tanker”.

Marine Protection Rules Part 102: Certificates of Insurance—*continued*

Replace the heading above rule 102.3 with:

“Subpart 1—Ships”.

Replace rule 102.3 with:

“102.3 Application

- “(1) This subpart applies to ships that are required by section 363 or **363A** of the Act to have a certificate of insurance.
- “(2) The owner of a ship may apply under rule 102.4 for the issue or recognition of a certificate of insurance in respect of the owner’s liability under the Civil Liability Convention or the Bunker Oil Convention.
- “(3) The owner of a CLC ship may apply under rule 102.6 for acceptance of a certificate of insurance in respect of the owner’s liability under the Civil Liability Convention.
- “(4) The owner of a Bunker Oil Convention ship may apply under **rule 102.6A** for acceptance of a certificate of insurance in respect of the owner’s liability under the Bunker Oil Convention.”

In rule 102.4(2)(b), replace “section 347 of the Maritime Transport Act” with “Part 7 or section 347 of the Act, as the case may be”.

In rule 102.4(2)(d), replace “section 347 of the Act” with “Part 7 or section 347 of the Act, as the case may be”.

In rule 102.4(2)(d) and (e), replace “Insurance Companies (Ratings and Inspections) Act 1994” with “Insurance (Prudential Supervision) Act 2010”.

Replace rule 102.4(3) with:

- “(3) Every certificate of insurance issued by the Director for a ship must—
 - “(a) contain the following particulars—
 - “(i) the name of the ship, the ship’s distinctive number or letters, and the ship’s port of registry; and
 - “(ii) the name of the owner of the ship and the principal place of business of that owner; and
 - “(iii) the ship’s IMO ship identification number; and
 - “(iv) the nature of the contract of insurance or other financial security; and
 - “(v) the name and principal place of business of the insurer or other person giving security and the place of business where the insurance or security is established; and
 - “(vi) the period of validity of the insurance or other financial security; and

Marine Protection Rules Part 102: Certificates of Insurance—*continued*

- “(vii) the period of validity of the certificate, which must not exceed the period of validity of the insurance or other financial security; and
- “(b) in the case of a regulated oil tanker, be in the form specified in—
 - “(i) Appendix 1, in respect of liability under the Civil Liability Convention:
 - “(ii) **Appendix 4** in respect of liability under the Bunker Oil Convention:
- “(c) in the case of a regulated ship of 1 000 gross tonnage or more, be in the form specified in **Appendix 4** in respect of liability under the Bunker Oil Convention:
- “(d) in the case of a regulated ship of less than 1 000 gross tonnage, be in the form specified in Appendix 3 in respect of civil liability for oil pollution damage.”

In rule 102.5, replace “section 347 of the Maritime Transport Act 1994” with “Part 7 or section 347 of the Act, as the case may be”.

After rule 102.6, insert:

“Foreign ships registered in Bunker Oil Convention States**“102.6A Acceptance of certificates of insurance**

- “(1) For the purpose of sections 271 and 363 of the Act, a certificate of insurance for a foreign ship registered in a Bunker Oil Convention State means—
 - “(a) a valid certificate evidencing a contract of insurance or other financial security issued, or recognised, by or under the authority of the Bunker Oil Convention State in accordance with the Bunker Oil Convention; or
 - “(b) in the case of a State-owned ship used for a commercial purpose for which insurance or other financial security is not maintained, a valid certificate issued by or under the authority of the government of that State stating liability for pollution damage within the meaning of Article 1 of the Bunker Oil Convention is covered up to the limits determined in accordance with Part 7 of the Act.
- “(2) In this rule, **flag State** means—
 - “(a) the State in which the ship is registered; or
 - “(b) if the ship is not registered, the State whose flag the ship flies.”

Replace the heading above rule 102.7 with:

“Subpart 2—Offshore installations”.

In rule 102.7, replace “section 364” with “**section 385H**”.

Revoke rules 102.10 to 102.12 and the heading above rule 102.10.

Marine Protection Rules Part 102: Certificates of Insurance—*continued*

In the Appendix 1 heading, replace “**Regulated Oil Tankers**” with:
“**CLC Certificates for Regulated Oil Tankers**”.

In the Appendix 3 heading, replace “**Regulated Ships**” with: “**Civil Liability for Oil Pollution Damage Certificates for Regulated Ships**”.

After Appendix 3, insert:

“Appendix 4: Bunker Oil Convention Certificates

“CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE

“Issued in accordance with the provisions of Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.

Name of ship	Distinctive number or letters	IMO ship identification number	Port of registry	Name and full address of the principal place of business of the registered owner
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“This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.

“Type of security:

“Duration of security:

“From:

“To:

“Name and address of the insurer(s) and/or guarantor(s):

“Name:

“Address:

“This certificate is valid until:

“Issued and certified on behalf of the Government of New Zealand

“at:

“on:

“Signature:

“(Director of Maritime New Zealand)

Marine Protection Rules Part 102: Certificates of Insurance—*continued***“Explanatory Notes:**

- “1 If desired, the designation of the State may include a reference to the competent public authority of the country where the Certificate is issued.
- “2 If the total amount of security has been furnished by more than one source, the amount furnished by each source should be indicated.
- “3 If security is furnished in several forms, these should be enumerated.
- “4 The entry ‘Duration of security’ must stipulate the date on which such security takes effect.
- “5 The entry ‘Address’ of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.”

Explanatory note

This Supplementary Order Paper amends the Marine Legislation Bill. It makes changes mainly in relation to *Part 1* of the Bill.

Clause 2 is the commencement clause. This Supplementary Order Paper amends *clause 2* to allow the amendments relating to the implementation of the Bunker Oil Convention to be brought into force by Order in Council (after the Convention has been ratified by New Zealand).

Clause 4 amends the Long Title to add 3 new paragraphs. This Supplementary Order Paper revises *clause 4* to delete *new paragraph (j)*.

Clause 5A amends section 4 of the Maritime Transport Act 1994 (the **principal Act**) to provide that the Act applies to New Zealand ships wherever they may be and foreign ships in New Zealand waters. This Supplementary Order Paper revises *clause 5A* to clarify that the principal Act applies to New Zealand ships wherever they may be.

Clause 6 inserts a *new Part 3A* into the principal Act to provide for local regulation of maritime activity. This Supplementary Order Paper—

- amends *new section 33L(5) and (8)* to clarify that a regional council must give at least 1 month’s notice of the sale or disposal of an abandoned ship; and
- revises *new section 33MB(4)* to make changes to terminology as a result of changes introduced by the Criminal Procedure Act 2011.

Clause 11 inserts a *new Part 4A* into the principal Act to provide for regulation of alcohol consumption by seafarers. This Supplementary Order Paper revises *new section 40N(6)* to make a consequential change as a result of the enactment of the Criminal Procedure Act 2011.

Clause 25 amends section 86. This Supplementary Order Paper amends *clause 25* to clarify that section 86(4) applies despite anything in Part 7 (not just section 86).

Clause 39 amends section 222. This Supplementary Order Paper makes consequential changes to *clause 39* as a result of the amendment to *clause 2* to allow the provisions relating to the Bunker Oil Convention to be brought into force by Order in Council.

Clause 45 amends section 247 of the principal Act, which prescribes definitions for use in Part 20 of the Act. This Supplementary Order Paper amends *clause 45* to insert a new definition of harmful substance.

Clause 52 amends section 342. This Supplementary Order Paper deletes *clause 52(1) and (3)* as a result of the amendment to *clause 2* to allow the provisions relating to the Bunker Oil Convention to be brought into force by Order in Council.

Clause 54 substitutes a *new section 354*. This Supplementary Order Paper deletes *clause 54* as a result of the amendment to *clause 2* to allow the provisions relating to the Bunker Oil Convention to be brought into force by Order in Council.

Clause 56 amends section 361. This Supplementary Order Paper deletes *clause 56* as a result of the amendment to *clause 2* to allow the provisions relating to the Bunker Oil Convention to be brought into force by Order in Council.

Clause 58 substitutes a *new section 364*. This Supplementary Order Paper deletes *clause 58* and replaces it with a *new clause 58A*, which repeals section 364 as a result of the amendment to *clause 2* to allow the provisions relating to the Bunker Oil Convention to be brought into force by Order in Council.

Clause 60 amends section 366. This Supplementary Order Paper makes consequential changes to *clause 60* as a result of the amendment to *clause 2* to allow the provisions relating to the Bunker Oil Convention to be brought into force by Order in Council.

Clause 61 substitutes a *new section 367*. This Supplementary Order Paper makes consequential changes to *new section 367* as a result of the amendment to *clause 2* to allow the provisions relating to the Bunker Oil Convention to be brought into force by Order in Council.

Clause 63 amends section 387. This Supplementary Order Paper makes consequential changes to *clause 63* as a result of the amendment to *clause 2* to allow the provisions relating to the Bunker Oil Convention to be brought into force by Order in Council.

Clause 65 amends section 390. This Supplementary Order Paper makes consequential changes to *clause 65* as a result of the amendment to *clause 2* to allow the provisions relating to the Bunker Oil Convention to be brought into force by Order in Council.

Clause 78 amends section 451 of the principal Act. This Supplementary Order Paper amends *clause 78* to—

- replace section 451(2) to provide that maritime and marine protection rules may apply to New Zealand ships wherever they may be:

- insert a *new section 451(5A)* and amend section 451(6) to provide that rules to be made by the Governor-General under *new sections 36A and 390A* are legislative instruments for the purposes of the Legislation Act 2012.

Clause 79 substitutes section 452 of the principal Act to prescribe revised provisions relating to the incorporation of materials by reference into maritime and marine protection rules. This Supplementary Order Paper updates references in the *new section 452* as a result of the enactment of the Legislation Act 2012.

Clause 84 prescribes saving provisions relating to Parts 39A, Part 43, and sections 699A to 699D of the Local Government Act 1974, which are being replaced by new provisions in this Bill. This Supplementary Order Paper amends *clause 84* to add the Lake Taupo (Crown Facilities, Permits and Fees) Regulations 2004 to the list of regulations to be continued.

Clause 87 makes provision for consequential amendments in *Schedule 2* as a result of changes in *Part 1* of the Bill. This Supplementary Order Paper amends *Schedule 2* to remove the amendments to Marine Protection Rules Part 102: Certificates of Insurance as a result of the amendment to *clause 2* to allow the provisions relating to the Bunker Oil Convention to be brought into force by Order in Council.

New clauses 87A to 87J re-locate amendments relating to the Bunker Oil Convention, amendments that are to be brought into force by Order in Council:

- *clause 87A* amends section 222, the definition of marine protection document, to make consequential amendments. These amendments were previously in *clause 39* of the Bill:
- *clause 87B* amends section 342 to insert new definitions. These amendments were previously in *clause 52(1) and (3)* of the Bill:
- *clause 87C* substitutes a *new section 354* relating to the waiver of defences by State parties to the Bunker Oil Convention. These amendments were previously in *clause 54* of the Bill:
- *clause 87D* amends section 361 to apply the limitation period for bringing actions in respect of oil pollution damage to the discharge or escape of bunker oil from Bunker Oil Convention ships. These amendments were previously in *clause 56* of the Bill:
- *clause 87E* inserts a *new section 363A*, which relates to certificates of insurance for Bunker Oil Convention liability. These amendments were previously in *clause 58* of the Bill:
- *clause 87F* amends section 366 to make consequential amendments. These amendments were previously in *clause 60* of the Bill:
- *clause 87G* amends section 367 to make consequential amendments. These amendments were previously in *clause 61* of the Bill:
- *clause 87H* amends section 387 to make consequential amendments. These amendments were previously in *clause 63* of the Bill:
- *clause 87I* amends section 390 to make consequential amendments. These amendments were previously in *clause 65* of the Bill:

- *clause 87J* inserts a *new Schedule 2A* to make consequential amendments to Marine Protection Rules Part 102: Certificates of Insurance. These amendments were previously in *Schedule 2, Part 3* of the Bill.

Clause 107 inserts a *new subpart 2A* into Part 3 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012. This SOP amends *new section 87C* to correct a cross-reference.

Schedule 2 makes consequential amendments to other enactments as a result of the changes in *Part 1* of the Bill. This Supplementary Order Paper amends *Part 3 of Schedule 2* to delete the changes to be made to the Marine Protection Rules Part 102: Certificates of Insurance (which have been relocated to *new Schedule 2A* being inserted by this SOP).

Departmental disclosure statement

The Ministry of Transport considers that a disclosure statement is not required to be prepared for this Supplementary Order Paper.
