

Departmental Disclosure Statement

Maritime Transport (Offshore Installations) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It defines:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill; and
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Transport.

The Ministry of Transport certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

14 June 2019.

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Part One: General Policy Statement

This Bill amends the Maritime Transport Act 1994 (the Act). The purpose of the Bill is to clarify and strengthen the requirements on owners of offshore oil and gas installations to hold insurance or other financial security in relation to their liability for clean-up and compensation resulting from an oil spill.

Although the likelihood of a major marine oil spill is very low, the environmental, financial, and cultural impacts of such an incident would be significant. The Act implements a polluter-pays regime, under which owners have unlimited liability for the cost of pollution damage resulting from a spill at their facilities in New Zealand waters. Anyone affected by oil damage from an offshore installation is entitled to make a claim against the owner. The owner's liability includes the cost of measures to prevent or reduce pollution damage, the cost of reasonable measures to reinstate the environment, and the loss of profit from impairment of the environment. The Bill does not change the owner's liability.

The Act also provides for owners to hold insurance or other financial security in respect of their liability. The insurance or other financial security is intended to mitigate the financial risks to the Crown and other parties should the owner be unable to meet their liabilities in the event of a significant oil spill. Detailed requirements for the insurance or other financial security are specified in marine protection rules made under the Act.

The Bill amends the Act to provide certainty in relation to the liability of insurers (or in the case of financial security, the persons providing the financial security) to the Crown and to other third parties who are affected by the pollution. The Bill also clarifies that rules may specify the types of liability that will need to be insured against and may provide for the insurance or other financial security to cover the cost of well control measures and other costs of implementing marine oil spill contingency plans.

The amendments to the Act will be supported by amendments to the rules, which will specify more detailed requirements relating to the insurance or financial security. The rules will include a scaled framework for specifying the amount of cover required, based on the modelling of a credible worst-case scenario event from that particular installation.

These changes will enable owners of regulated offshore installations to meet the Act's requirements using insurance policies that are consistent with internationally available best practice policy wording and available on the international market. These policies will be required to cover the key risks and costs of clean-up and pollution damage associated with the owner's installation.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>Navigatus consulting produced a report for the Ministry of Transport and the Ministry of Business, Innovation and Employment.</p> <p>This report was finalised on 24 November 2015.</p> <p>The report can be found on the Ministry of Transport's website: https://www.transport.govt.nz/assets/Uploads/Sea/Documents/71965e2e5f/2015-11-30-Financial-Assurance-Review-Main-Report.pdf</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The Ministry of Transport authored two Regulatory Impact Statements (RIS) which informed policy decisions that led to this Bill.</p> <p>The initial RIS is titled: "Review of the Financial Security Regime for Offshore Exploration and Production." It was completed on 22 June 2017 and can be found on the Ministry of Transport's website: https://www.transport.govt.nz/assets/Import/Uploads/About/Documents/a5b83eaac1/RIS-Review-of-the-Financial-Security-Regime-for-Offshore-Exploration-and-Production.pdf</p> <p>The Ministry of Transport also completed an update to the 2017 RIS titled "Strengthening the financial assurance regime for offshore oil and gas installations".</p> <p>This RIS will be published on the Ministry of Transport's website in due course along with the final Cabinet paper.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>The transport sector Regulatory Impact Assessment Quality Assurance Panel reviewed both the 2017 and 2019 Regulatory Impact Statements.</p> <p>For the 2017 RIS, the assessment was: <i>“The transport sector Regulatory Impact Assessment Quality Assurance Panel has reviewed this RIS and considers that the information and analysis summarised in the RIS partially meet the quality assurance criteria. The nature of the problem is comprehensively described. However, the issues are complex and intertwined. Information is lacking on the actual extent and magnitude of gaps in financial assurance. The likely extra costs to industry are therefore not set out. Implementation costs are not fully known at this time.”</i></p> <p>For the 2019 RIS, the assessment was: <i>“The RIA has been updated since the 2017 version to reflect the discussion in this paper, the Transport Sector Regulatory Impact Assessment Quality Assurance Panel reviewed the updated RIA and consider that the information and analysis summarised partially meet the quality assurance criteria. The nature of the problem is comprehensively described. The analysis builds on the regulatory impact statement completed in 2017. The likely extra costs to industry associated with the proposals are not known. Implementation costs are still not known.”</i></p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>Navigatus consulting produced a report for the Ministry of Transport and the Ministry of Business, Innovation and Employment. This report outlines the costs to the Crown and third parties associated with a credible worst-case spill scenario, which is the foundation for this policy.</p> <p>The report can be found on the Ministry of Transport's website: https://www.transport.govt.nz/assets/Uploads/Sea/Documents/71965e2e5f/2015-11-30-Financial-Assurance-Review-Main-Report.pdf</p> <p>There is, however, no detailed equivalent of the costs to owners of obtaining the necessary insurance or financial security.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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Unlike the regime applying to the discharge of harmful substances from ships, there is no international convention applicable to offshore installations.

This legislative proposal is consistent with New Zealand's obligations as a party to the United Nations Convention on the Law of the Sea, which (in so far as an offshore installation subject to this regime is located beyond the territorial sea) include provisions giving New Zealand jurisdiction with regard to the protection and preservation of the marine environment (Articles 56 and 145 and Section 1 of Part VII), and the exclusive right to authorize and regulate drilling on the continental shelf for all purposes (Article 81).

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

No specific issues were identified in the policy process that may have implications for the rights and interests of Māori protected by the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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The Ministry of Justice provided advice to the Attorney-General that the Bill is consistent with the New Zealand Bill of Rights Act 1990

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
The Ministry of Transport, the Ministry of Business, Innovation and Employment and Maritime New Zealand have been engaging with stakeholders in the insurance, oil and gas and environmental sectors since November 2016 to ensure that the regime is insurable.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
Maritime New Zealand has been actively engaged during the development of the Bill as it is the regulatory agency that will implement the regime.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
The Bill alters the civil liability of insurers by amending section 385J to clarify the scope and quantum of the insurer's liability against third party claimants.	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill amends the Section 387 of the Maritime Transport Act 1994 to:</p> <ul style="list-style-type: none">• allow marine protection rules to provide for the types of liability and the level of insurance or other financial security required by section 385H (and may provide for different amounts for different types of liability);• 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.	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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