

Departmental Disclosure Statement

Maritime Transport (MARPOL Annex VI) Amendment Bill

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 identifies:

- 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;
- 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.

5 May 2021

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Part One: General Policy Statement

This Bill seeks to address the impacts of shipping emissions through the alignment of domestic legislation with Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL). New Zealand's international obligations under MARPOL are largely implemented through the Maritime Transport Act 1994 (the MTA), and maritime and marine protection rules made under the MTA. At the end of 2019, Cabinet agreed New Zealand would accede to Annex VI of MARPOL which specifically deals with emissions to air from ships. Before New Zealand can accede to MARPOL Annex VI, minor amendments to the MTA are needed to ensure that the provisions relating to rule-making powers and enforcement provide the authority to fully implement the legal obligations of MARPOL Annex VI. This Bill provides a power for the Minister to make marine protection rules in relation to Annex VI substances and for the Director of Maritime New Zealand to conduct inspections and audits in relation to MARPOL Annex VI requirements, and to detain ships that are in contravention of MARPOL Annex VI requirements.

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?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	YES
<p>The Bill seeks to give effect to Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL). The text of MARPOL Annex VI (Annex VI) can be found here: https://www.transport.govt.nz/assets/Uploads/Policy/OC05343-MARPOL-Annex-VI-treaty-text.pdf</p> <p>A summary of the different Annex VI requirements can be found on Maritime New Zealand's website here: https://www.maritimenz.govt.nz/rules/MARPOL-Annex-VI/default.asp</p>	

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	YES
<p>An extended national interest analysis has been prepared that takes the place of a regulatory impact assessment. The Ministry of Transport produced the national interest analysis on 3 October 2019 to help inform the main policy decisions taken by the Government relating to the contents of this Bill. The national interest analysis was presented to the House of Representatives on 5 March 2020, in accordance with Standing Order 397(2) (presentation of national interest analyses for international treaties) of the Standing Orders of the House of Representatives, effective August 2017. The National Interest Analysis has been published on the Ministry of Transport's website and the Parliament website at the following links: https://www.transport.govt.nz/assets/Uploads/Report/MARPOL-Annex-VI-National-Interest-Analysis.pdf</p> <p>https://www.parliament.nz/resource/en-NZ/PAP_93779/24e7a7cb0ec444886ebcb56799c9daaa77a429f6</p>	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	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?	NO
<p>The size of the potential costs and benefits for the policy to be given effect by this Bill is available in the relevant National Interest Analysis. The National Interest Analysis has been published on the Ministry of Transport's website in the following link: https://www.transport.govt.nz/assets/Uploads/Report/MARPOL-Annex-VI-National-Interest-Analysis.pdf</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?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>A decision not to accede to Annex VI would mean New Zealand would not see the environmental and health benefits outlined in the National Interest Analysis.</p> <p>The most up-to-date information on these matters can be accessed in the National Interest Analysis: https://www.transport.govt.nz/assets/Uploads/Report/MARPOL-Annex-VI-National-Interest-Analysis.pdf. It outlines the amendments to the marine protection rules which will be necessary to give effect to the regulatory content of Annex VI, and the amendments to the Marine Protection (Offences) Regulations 1998 which would be necessary to support enforcement of the Annex VI obligations implemented by the marine protection rules.</p> <p>Affected parties will be informed on compliance requirements through the statutory notification and consultation on the marine protection rule making. The marine protection rules will be complemented by guidance and technical support from Maritime New Zealand to assist affected parties in complying with the New Zealand requirements.</p>	

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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This Bill amends the Maritime Transport Act 1994 to enable New Zealand to sign up to Annex VI of MARPOL.

The National Interest Analysis, which has been subject to Parliamentary treaty examination, outlines the requirements under MARPOL Annex VI and the changes to primary and secondary legislation that are required in order for New Zealand to be consistent with these international obligations.

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. Please see Section 48 and 49 of the National Interest Analysis:

<https://www.transport.govt.nz/assets/Uploads/Report/MARPOL-Annex-VI-National-Interest-Analysis.pdf>.

Consultation with Maori/Iwi will be carried out as part of formal public consultation on the Marine Protection Rules and other associated regulations necessary to implement Annex VI once Select Committee submissions on the Bill have been completed.

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 Bill is consistent with the rights and freedoms affirmed in the Bill of Rights Act. The finalised advice will be published on the Ministry of Justice website here: <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>

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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Note: amendments to offences under the Marine Protection (Offences) Regulations 1998 will be necessary to support enforcement of the Annex VI obligations implemented by the marine protection rules.

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
<p><i>Formal public consultation:</i></p> <p>Formal public consultation from 8 November 2018 to 11 February 2019 focused on how acceding to the treaty would benefit New Zealand by protecting trade interests, promoting the interests of Pacific Island countries, improving both public health and New Zealand's influence on climate policy, and making it easier for New Zealand-flagged ships to travel to other countries already signed up to Annex VI. It also noted the potential costs.</p> <p>New Zealand relies on international shipping to move most of its imports and exports. Any New Zealand-flagged ship that enters the port of another country that is a party to Annex VI must meet Annex VI's requirements.</p> <p>The Ministry of Transport received 49 submissions in the consultation process — 44 were in favour of accession. Many agreed that alignment of domestic and Annex VI regulations would be beneficial. Overall, stakeholder engagement showed strong support for New Zealand becoming a party to Annex VI, even those that would be most affected by the new regulations. The main concern related to the timing of accession. Fuel companies and large ship operators stressed the importance of setting clear, reasonable and transparent timelines so they could prepare in a way that would minimise the impact on their businesses. A summary of the submissions can be found here: https://www.transport.govt.nz/assets/Uploads/Submission/MARPOL-Annex-VI-submissions-summary-2.pdf</p> <p><i>Informal stakeholder engagement:</i></p> <p>Since September 2020, the Ministry of Transport and Maritime New Zealand have held a number of roundtables with industry and stakeholders to build awareness of the forthcoming requirements and to develop an understanding of the impacts and how specific aspects of Annex VI can be implemented. The presentation and notes from the roundtables can be found on Maritime New Zealand's website here https://www.maritimenz.govt.nz/rules/MARPOL-Annex-VI/default.asp</p> <p>Officials will continue targeted engagement ahead of formal public consultation on the Marine Protection (Offences) Regulations 1998, Maritime (Charges) Regulations 2014, the Marine Protection Rules and other associated regulations once Select Committee submissions on the Bill have been completed.</p> <p><i>Environment Select Committee consultation:</i></p> <p>The Environment Select Committee also sought public submissions on whether New Zealand should accede to MARPOL Annex VI regulations in March 2020. The Committee received 16 submissions from organisations and individuals and heard oral evidence from one submitter. The Environment Select Committee noted that the Ministry's engagement with stakeholders has demonstrated a high level of support for New Zealand to accede.</p>	

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?	NO
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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?	NO
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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
This Bill provides a power for the Minister to make marine protection rules in relation to Annex VI substances.	

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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