



ANALYSIS

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1998, No. 53

An Act to amend the Maritime Transport Act 1994

[3 June 1998

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Maritime Transport Amendment Act 1998, and is part of the Maritime Transport Act 1994 (“the principal Act”).

(2) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.

2. Transitional provision relating to application of this Act—Despite the commencement of this Act, if any event giving rise to liability under Part XXV of the principal Act or to a claim for compensation under Part XXVI of the principal Act—

- (a) Began before the date on which this Act came into force and ended on or after the date on which this Act came into force; or
- (b) Consisted of a series of occurrences and the first of the occurrences took place before the date on which this Act came into force and the last of the occurrences took place on or after the date on which this Act came into force,—

the provisions of Parts XXV and XXVI of the principal Act apply to that event as if this Act had not come into force.

3. Interpretation—(1) Section 342 of the principal Act is amended by repealing the definition of the term “CLC ship”, and substituting the following definition:

“ ‘CLC ship’ means—

“(a) Any ship carrying oil in bulk as cargo; or

“(b) Any ship on a voyage immediately following a voyage where that ship was carrying oil in bulk as cargo (unless it is proved that it has no residues of the carriage of oil in bulk aboard),—

if the ship is registered in, or (if unregistered) flying the flag of, a CLC State.”.

(2) Section 342 of the principal Act is amended by inserting, after the definition of the term “CLC State”, the following definition:

“ ‘Harmful substance’ means—

“(a) Any substance specified as a harmful substance for the purposes of section 225 by the marine protection rules; and

“(b) Oil.”.

(3) Section 342 of the principal Act is amended by repealing the definition of the term “oil”, and substituting the following definition:

“ ‘Oil’ means any persistent hydrocarbon mineral oil.”.

(4) Section 342 of the principal Act is amended by repealing the definition of the term “pollution damage”, and substituting the following definition:

“ ‘Pollution damage’ means damage or loss of any kind and—

“(a) Includes the cost of any reasonable preventive measures taken to prevent or reduce pollution damage and any damage or loss occurring as a result of those measures; and

“(b) Includes the costs of reasonable measures of reinstatement of the environment that are undertaken or to be undertaken; and

“(c) Includes losses of profit from impairment of the environment; but

“(d) Does not include any costs in relation to the impairment of the environment other than the costs referred to in paragraphs (b) and (c):”.

(5) Section 342 of the principal Act is amended by repealing paragraph (b) of the definition of the term “tonnage”, and substituting the following paragraph:

“(b) Where the tonnage cannot be ascertained under paragraph (a), means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.”

4. Maximum amount of liability of shipowners for pollution damage—(1) Section 347 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections:

“(1) If—

“(a) A harmful substance is discharged or escapes, or any waste or other matter is dumped, from a ship; and

“(b) The discharge, escape, or dumping is not the result of the personal act or omission of the owner, committed with intent to cause pollution damage or recklessly as to whether pollution damage would probably occur,—

the maximum amount for which the owner is liable under section 345 or section 346 must be determined under this section; but, in the case of any other event, the owner’s liability under section 345 or section 346 is not limited by this section.

“(2) The maximum amount for which an owner of a ship is liable in the circumstances specified in subsection (1) may be fixed from time to time by the Governor-General by Order in Council and, until the time that the maximum amount is so fixed, is—

“(a) Three million units of account for a ship not exceeding 5000 units of tonnage; and

“(b) For a ship with a tonnage exceeding 5000 units, 3 million units of account plus 420 units of account for each additional unit of tonnage, up to a maximum aggregate amount of 59.7 million units of account.”

(2) Section 347 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:

“(5) If the maximum amount for which the owner of a ship may be liable under this section is paid into Court, no subsequent variation of the method of calculating the liability in New Zealand currency under any marine protection rules will effect the maximum amount of liability.”

5. Liability of shipowners for damages for pollution damage only under this Act—The principal Act is amended by repealing section 352, and substituting the following section:

“352. Where any pollution damage is caused in New Zealand, the internal waters of New Zealand, or New Zealand marine waters, or the seabed below such waters, by the discharge or escape of a harmful substance, or the dumping of waste or other matter, from a ship into the sea or the seabed,—

“(a) The only claim in damages that may be made against the owner of that ship in respect of pollution damage caused by that discharge or dumping is as provided in sections 344, 345, and 346; and

“(b) No claim in damages may be made under section 344 against the employees or agents of that owner, and any person performing salvage operations with the consent of the owner or the Director in respect of pollution damage caused by that discharge or dumping; and

“(c) No claim in damages may be made under section 345 or section 346 against—

“(i) The employees or agents of the owner or the members of the crew of the ship; or

“(ii) The pilot or any other person who, without being a member of the crew, performs services for the ship; or

“(iii) Despite paragraph (a) (iii) of the definition of the term ‘owner’ in section 222 (2), any charterer, manager, or operator of the ship; or

“(iv) Any person performing salvage operations with the consent of the owner or the Director; or

“(v) Any person taking measures to prevent pollution damage; or

“(vi) Any servant or agent of a person described in subparagraphs (iii) to (v),—

in respect of pollution damage caused by that discharge or dumping unless the pollution damage

resulted from that person's personal act or omission, committed with intent to cause pollution damage or recklessly as to whether pollution damage would probably occur."

6. Ships owned by CLC State—Section 354 of the principal Act is amended by omitting the words "section 344 or section 345 or section 346 of this Act", and substituting the words "section 345 or section 346 for damages for pollution damage caused by the discharge or escape of oil".

7. Application of admiralty jurisdiction—Section 368 (2) of the principal Act is amended by omitting the words "territory or territorial sea", and substituting the words "territory, territorial sea, or exclusive economic zone".

8. Interpretation—(1) Section 370 of the principal Act is amended by repealing the definition of the term "oil", and substituting the following definition:

"'Oil' means any persistent hydrocarbon mineral oil:"

(2) Section 370 of the principal Act is amended by inserting, after the definition of the term "oil" (as substituted by subsection (1)), the following definition:

"'Owner', in relation to a CLC ship, means the CLC owner of that ship as defined in section 342:"

(3) Section 370 of the principal Act is amended by inserting, after the definition that defines the term "owner" in relation to any convention ship, the following definition:

"'Pollution damage' has the meaning given to it by section 342:"

9. Compensation from International Oil Pollution Fund for certain pollution damage—Section 372 of the principal Act is amended by inserting, after the words "pollution damage" where they first appear, the words "in New Zealand, the internal waters of New Zealand, or New Zealand marine waters, or the seabed below such waters".

10. Maximum amount of liability of International Oil Pollution Fund—(1) Section 373 (1) of the principal Act is amended by omitting from paragraphs (a) and (b) the expression "60", and substituting in each case the expression "135".

(2) Section 373 (1) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:

“(c) Where liability has been incurred under section 345 by the owner of a CLC ship, 135 million units of account, less the amount of compensation actually paid by the owner, or the owner’s insurer, or by both pursuant to a direction of the Court under section 351.”

11. International Oil Pollution Fund no longer to indemnify certain shipowners—The principal Act is amended by repealing sections 376 and 377.

12. Time for bringing proceedings against International Oil Pollution Fund—(1) Section 378 (1) of the principal Act is amended by omitting the words “, or for indemnification under section 376 of this Act,”.

(2) Section 378 of the principal Act is amended by repealing subsection (2).

13. Jurisdiction of Court in respect of claims against International Oil Pollution Fund—(1) Section 379 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) Subject to this section, no action may be brought in a Court to enforce a claim against the International Oil Pollution Fund under section 372 in respect of pollution damage in or to the territory, territorial sea, or exclusive economic zone of a country other than New Zealand in respect of which the Civil Liability Convention is in force.”

(2) Section 379 (2) of the principal Act is amended by omitting the words “and for indemnification under section 376 of this Act”.

14. Notice of proceedings against International Oil Pollution Fund—Section 380 of the principal Act is amended by omitting the words “or section 376 of this Act”.

15. Notice to and joining of International Oil Pollution Fund in certain proceedings—Section 381 (1) of the principal Act is amended by omitting the words “or section 376 of this Act”.

16. Rights of subrogation of International Oil Pollution Fund—Section 383 (a) of the principal Act is

amended by omitting the words “Subject to sections 376 and 384 of this Act,”.

17. International Oil Pollution Fund no longer to act as insurer—The principal Act is amended by repealing section 384.

This Act is administered in the Ministry of Transport.
