

In Confidence

Office of the Minister of Transport
Chair, Cabinet Legislation Committee

Maritime Transport (MARPOL Annex VI) Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval to introduce the Maritime Transport (MARPOL Annex VI) Amendment Bill (the Bill).

Policy

- 2 The Bill seeks to address the impacts of shipping emissions to air through the alignment of domestic legislation with the International Convention for the Prevention of Pollution from Ships (MARPOL) Annex VI.
- 3 Annex VI is the primary international regulatory mechanism for addressing the climate change impacts from shipping, in line with the goals of the Paris Agreement on Climate Change. Climate change-related measures were introduced under Annex VI in 2013, but these are mainly focused on technical requirements that do not impact New Zealand, as it does not build large ships. However, in 2018, the International Maritime Organisation (IMO) adopted its *Strategy for the Reduction of Greenhouse Gas (GHG) Emissions from Ships* which sets out a vision to reduce GHG emissions from international shipping. New measures to meet the Strategy's targets are being negotiated in the IMO and are likely to be implemented under Annex VI from 2023.
- 4 New Zealand's accession to MARPOL Annex VI will strengthen our ability to play a credible role in these negotiations at the IMO, to both push for global ambition and improve New Zealand's ability to protect its trade and economic interests.
- 5 Once New Zealand accedes to Annex VI, we will be bound to any future measures adopted by the IMO under Annex VI.
- 6 Annex VI also imposes obligations on ships in relation to emissions of sulphur dioxide, particulate matter and nitrogen oxides. Accession will reduce adverse public health effects of marine air pollution on communities close to ports and harbours from domestic ships and enable New Zealand to enforce the requirements for both domestic and visiting foreign ships.
- 7 New Zealand's international obligations under MARPOL are largely implemented through the Maritime Transport Act 1994 (MTA) and the maritime and marine protection rules.

- 8 The Cabinet Economic Development Committee agreed to accede to MARPOL Annex VI, subject to the satisfactory completion of the parliamentary treaty examination process (refer paragraph 5 of DEV-19-MIN-0304, dated 13 November 2019, confirmed by CAB-19-MIN-0593, dated 18 November 2019).
- 9 The Environment Select Committee undertook an international treaty examination of MARPOL Annex VI between March and June 2020, and released its final report on 26 June 2020. The Environment Select Committee stated (at page 4 of its report) that given the environmental and public health benefits identified, it believed that the Government should implement legislation as soon as practicable.
- 10 Before New Zealand can accede to MARPOL Annex VI, minor amendments to the MTA are needed to ensure that the rule-making and enforcement provisions in the MTA provide the authority required to fully implement the legal obligations of MARPOL Annex VI.
- 11 This Bill seeks the authority to make the necessary changes to the MTA. New marine protection rules will then give effect to the regulatory content of MARPOL Annex VI.
- 12 No aspects of the Bill are likely to be contentious.

Further Policy Matters

- 13 The Ministry of Transport (The Ministry), Maritime New Zealand (Maritime NZ), and other relevant agencies have completed further policy analysis and multiple roundtable discussions with industry, and determined that no changes to primary legislation other than the MTA are required to implement MARPOL Annex VI.
- 14 In the Cabinet paper seeking approval to accede to MARPOL Annex VI it was noted that, as well as amendments to the MTA, amendments to secondary legislation, such as regulations under the Resource Management Act 1991 and the Energy (Fuels, Levies, and References) Act 1989, may be necessary or desirable in order to accede to Annex VI.
- 15 The Ministry and Maritime NZ, in consultation with the Ministry of Business, Innovation and Employment and Trade (MBIE), have identified that changes to secondary legislation under the Energy (Fuels, Levies, and References) Act 1989 will be required in order to bring the Bill into operation. The Engine Fuel Specifications Regulations 2011 under the Energy (Fuels, Levies, and References) Act 1989 will need to be amended to introduce fuel specification and testing requirements on suppliers of marine fuels. Testing and sampling requirements applying to owners/masters of ships will be imposed under the MTA and the marine protection rules.
- 16 MARPOL Annex VI allows Administrations to permit the use of alternative methods to meet sulphur and nitrogen oxide emission limits. This includes using specific equipment, other procedures, alternative fuel oil or compliance

methods as long as they are at least as effective in terms of emission reductions as that required by MARPOL Annex VI. The Ministry for the Environment (MfE) has undertaken preliminary work to assess risks to the marine environment from discharges associated with the use of exhaust gas cleaning systems (scrubbers), which are used by some ships to meet sulphur emissions limits. MfE will continue to monitor the use of scrubbers in New Zealand. Any consideration of options to manage their use in future does not affect how MARPOL Annex VI obligations are implemented in the Bill or marine protection rules.

Application to Tokelau

- 17 The MTA does not apply to Tokelau and the Bill does not propose to change this. Officials intend to consult with Tokelau mid this year regarding whether it would like New Zealand's ratification of MARPOL Annex VI to be extended to include Tokelau, however this consultation does not affect the timeframes associated with this Bill.

Impact analysis

- 18 The Regulatory Impact Analysis Team at the Treasury has determined that a separate Regulatory Impact Statement is not required for the regulatory proposals in this paper because it would substantively duplicate the existing National Interest Analysis.¹ This National Interest Analysis was prepared and accompanied the Cabinet paper seeking approval for New Zealand to accede to MARPOL Annex VI (CAB-19-MIN-0593).

Compliance

- 19 The Bill complies with each of the following:
- 19.1 the principles of the Treaty of Waitangi 1840;
 - 19.2 New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 19.3 the principles and guidelines set out in the Privacy Act 2020;
 - 19.4 relevant international standards and obligations; and
 - 19.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
- 20 A disclosure statement has been prepared and is attached to the paper.

¹ The National Interest Analysis can be found here: <https://www.transport.govt.nz/assets/Uploads/Report/MARPOL-Annex-VI-National-Interest-Analysis.pdf>.

Certification by Parliamentary Council

- 21 The Maritime Transport (MARPOL Annex VI) Amendment Bill has been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Consultation

- 22 The Ministry of Transport consulted on the Cabinet paper seeking approval to accede to MARPOL Annex VI and the NIA with the following agencies: the Department of Conservation (DOC), the Environment Protection Authority (EPA), Maritime NZ, MBIE, MfE, Ministry of Foreign Affairs and Trade (MFAT), Ministry of Health, the Ministry of Primary Industries (MPI), Te Puni Kōkiri and the Treasury.
- 23 The Ministry of Transport undertook public consultation between November 2018 and February 2019 on whether New Zealand should accede to MARPOL Annex VI. As a result of that consultation, 49 submissions were received.
- 24 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. Even some of the operators likely to be most affected, including fuel companies and some large fishing companies, have expressed strong support for accession, for environmental sustainability and reputational reasons, as well as to strengthen New Zealand's influence in International Maritime Organisation negotiations on issues affecting them.
- 25 Since September 2020, the Ministry of Transport and Maritime NZ 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 MARPOL Annex VI can be implemented. Officials will continue targeted engagement ahead of formal public consultation on the marine protection rules, and other associated regulations once Select Committee submissions on the Bill have been completed.
- 26 The following departments were consulted during the development of this paper: DOC, EPA, Maritime NZ, MBIE, MfE, MFAT, Ministry of Health, MPI, Te Puni Kōkiri, Department of the Prime Minister and Cabinet, the New Zealand Defence Force (NZDF) and the Treasury.
- 27 I have consulted with the Government caucus and other parties represented in Parliament. I have consulted with the Minister of Climate Change and the Associate Minister for the Environment (Biodiversity) under the Labour/Greens co-operation agreement.

Binding on New Zealand

- 28 MARPOL Annex VI will be binding on New Zealand, other than in respect of New Zealand warships and every other ship of the NZDF. Article 3 of the MARPOL Convention expressly excludes application to warships or other ships owned or operated by a State for governmental non-commercial purposes, but must ensure that these vessels act in a manner consistent with the MARPOL Convention. NZDF have taken measures to ensure substantial compliance with MARPOL Annex VI requirements, but for operational reasons it is inappropriate that all MARPOL Annex VI requirements apply to NZDF vessels.

Creating new agencies or amending law relating to existing agencies

- 29 The legislation will not create a new agency that is legally separate from the Crown.
- 30 The legislation will not amend the existing coverage of the Ombudsmen Act 1975, the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987.

Allocation of decision making powers

- 31 The draft legislation does not involve the allocation of decision making powers between the executive, the courts, and tribunals.

Associated regulations

- 32 Regulations and rules will be needed to bring the Bill into operation. In order for New Zealand to accede to MARPOL Annex VI by February/March 2022, as publicly signalled following Cabinet approval in December 2019, any associated rules and regulations would need to be in place before the end of the year.
- 33 Marine protection rules made under sections 386 and 388 of the MTA would implement a range of matters including:
- 33.1 survey and certification requirements for ships;
 - 33.2 controls over emissions to air from ships of sulphur oxides, nitrogen oxides, ozone-depleting substances and volatile organic compounds;
 - 33.3 approval of equivalent methods of compliance;
 - 33.4 technical requirements for shipboard incineration equipment;
 - 33.5 port reception facilities for Annex VI substances;
 - 33.6 port state control arrangements for foreign ships;
 - 33.7 sampling and testing of fuel from ships; and

33.8 energy efficiency requirements for ships.

- 34 The rules would supplement the existing suite of marine protection rules that implement obligations under other MARPOL Annexes to which New Zealand has already acceded.
- 35 Amendments to the Marine Protection (Offences) Regulations 1998 would be necessary to support enforcement of MARPOL Annex VI obligations implemented by the marine protection rules.
- 36 Amendments to the Maritime (Charges) Regulations 2014 are necessary to enable the Director of Maritime New Zealand to issue additional permits and certificates.
- 37 The Engine Fuel Specifications Regulations 2011 under the Energy (Fuels, Levies, and References) Act 1989, administered by MBIE, prescribe specifications for certain classes of engine fuel. The regulations will need to be amended to prescribe a specification for marine fuel supplied in New Zealand to reflect the quality requirements specified (including the sulphur content limit) for marine fuel under MARPOL Annex VI, and to introduce fuel testing requirements on suppliers of marine fuel.
- 38 Public consultation on the above regulations and rules will commence once Select Committee submissions on the Bill have been completed.

Other instruments

- 39 The Bill does not include any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments (or both).

Definition of Minister/department

- 40 The Bill does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position).

Commencement of legislation

- 41 DEV-19-MIN-0304 dated 13 November 2019 noted that the Ministry of Transport anticipated being in a position to deposit the Instrument of Accession by November 2021, which would mean MARPOL Annex VI entering into force in New Zealand in February/March 2022.
- 42 Once the Bill is enacted and the associated rules and regulations are in place, New Zealand will deposit the Instrument of Accession to the International Maritime Organization in accordance with article 15(5) of MARPOL Convention.
- 43 Pursuant to the Bill, MARPOL Annex VI will enter into force three months after the deposit of the Instrument of Accession.

Parliamentary stages

- 44 The Bill should be introduced to the House in May 2021 in order to ensure that it is passed by November 2021.
- 45 It is proposed that the Bill be referred to the Transport and Infrastructure Select Committee for a period of four months.

Proactive Release

- 46 I propose to release this paper proactively subject to appropriate redactions within 30 business days of final decisions being made.

Recommendations

The Minister of Transport recommends that the Cabinet Legislation Committee:

- 1 **note** that the Minister of Transport has sought that the Maritime Transport (MARPOL Annex VI) Amendment Bill hold a category 2 priority (must be passed in the year) on the 2021 Legislation Programme;
- 2 **note** that the Bill seeks to address the impact of shipping emissions through the alignment of domestic legislation with MARPOL Annex VI;
- 3 **approve** the Maritime Transport (MARPOL Annex VI) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 4 **agree** that the Bill be introduced to the House in May 2021;
- 5 **agree** that the Government propose that the Bill be:
 - 5.1 referred to the Transport and Infrastructure Select Committee for consideration;
 - 5.2 enacted by end of November 2021;
- 6 **note** that, once the Bill is enacted and the associated rules and regulations are in place, New Zealand will deposit the Instrument of Accession to the International Maritime Organization in accordance with article 15(5) of the MARPOL Convention;
- 7 **note** that, pursuant to the Bill, MARPOL Annex VI will enter into force three months after the deposit of the Instrument of Accession;
- 8 **agree** that the Minister of Transport may authorise Parliamentary Counsel Office to make any minor changes to the Bill following consideration by Cabinet Legislation Committee;
- 9 **agree** that the Maritime (Charges) Regulations 2014 be amended to enable Maritime New Zealand to charge fees for work and services related to

MARPOL Annex VI at levels similar to current charges for comparable services;

- 10 **note** officials will undertake public consultation, once Select Committee submissions on the Bill have been completed, on proposed amendments to the Marine Protection (Offences) Regulations 1998, Maritime (Charges) Regulations 2014, the Marine Protection Rules and other associated regulations that are needed to bring the Bill into operation;
- 11 **note** that the date on which the amendments to the Marine Protection (Offences) Regulations 1998, Maritime (Charges) Regulations 2014, and the amendments to the Engine Fuel Specifications Regulations 2011 come into force, will be the date on which MARPOL Annex VI enters into force pursuant to the Bill;
- 12 **authorise** the submission to the Executive Council of the amendments to the Marine Protection (Offences) Regulations 1998, Maritime (Charges) Regulations 2014, and amendments to the Engine Fuel Specifications Regulations 2011 when the date of entry into force of MARPOL Annex VI is known (as described in paragraph 11 above).

Authorised for lodgement

Hon Michael Wood
Minister of Transport

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OFFICIAL INFORMATION ACT