



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



Submission to Maritime Transport Amendment Bill

The New Zealand branch recently made submissions on the Maritime Transport Amendment Bill which was introduced into New Zealand Parliament on 10 November 2016. If passed, the Bill will make amendments to the Maritime Transport Act 1994 providing for, inter alia, New Zealand to accede to the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, (Supplementary Fund Protocol) increasing the level of compensation available to meet claims for oil pollution damage caused by a spill from an oil tanker in New Zealand waters. The Bill will also provide for the management of the risks associated with alcohol and drug use in the commercial maritime sector and will make other miscellaneous amendments to the Act.

In summary, the New Zealand branch's submission was supportive of the recent work being undertaken by the New Zealand government to ratify international conventions, specifically the amendments which would enable New Zealand's ratification of the Supplementary Fund Protocol, consistent with one of MLAANZ's objectives: to bring about the unification of maritime law and practices of different nations. However, the Bill proposes amending the Act to allow the exclusion of limitation of liability for certain categories of maritime claim including wreck removal and cargo removal. New Zealand is entitled to make exclusions under the LLMC. However, the Branch's submission did not support the amendment in its proposed form as it allowed for all wreck removal and cargo removal claims to be excluded from the liability limitation. The branch recommended that the wording of the Bill be changed to limit the exclusion only to claims involving public authorities exercising statutory powers — consistent with the common law position and the statutory position taken in other countries including the UK. The bill also proposed allowing for the exclusion of liability limitation for damage caused by hazardous and noxious substances. This exclusion is provided for in the LLMC but by reference to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 (HNS Convention). The HNS Convention establishes a separate fund for damage caused by hazardous and noxious substances but it is not yet in force internationally and New Zealand is not yet a party to it. Accordingly, the submission recommended that the hazardous and noxious substances damage exclusion be removed from the Bill until such time New Zealand becomes a party to the HNS Convention and it has force internationally. The submission also made some more general comments submitting that New Zealand's domestic maritime law, including the liability and compensation provisions of the Maritime Transport Act 1994, is in need of a more comprehensive review, noting, in particular, wreck removal (which the branch had written to the Minister about in October 2016) and the HNS Convention.

The time for submissions on the Bill has now closed and the submissions and draft Bill will be considered by the Transport and Industrial Relations Select Committee. The branch has requested the opportunity to address the committee orally. The Select Committee is due to report back in May this year. A copy of the Bill is available from the NZ Legislation website [here](#) and a full copy of the branch's submission is available [here](#). The branch may have the opportunity to make further submissions on the Bill either orally or after the Committee has reported back. If members wish to make comment on the proposed Bill or any other topic of New Zealand maritime law reform, please contact one of the New Zealand Branch Committee members listed on the New Zealand Branch page.

Kerryn Webster
Chairperson, MLAANZ New Zealand Branch Committee

February 2017