

29 August 2019

## PEPANZ Oral Submission: Marine Transport (Offshore Installations) Amendment Bill

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### **Introduction**

1. Mōrena koutou. My name is Cameron Madgwick and I am the Chief Executive of PEPANZ. With me today is Joshua O'Rourke, our Policy Manager.
2. PEPANZ is the industry association representing upstream oil and gas companies in New Zealand.
3. Thank you for the opportunity to speak to you this morning about an important matter for our sector.
4. Let me begin by saying that overall we support the general intent of this bill, but consider some important amendments are warranted.
5. I note in advance that the issues are complex to briefly convey and I am very happy to take questions to ensure that our points are understood.
6. The two issues I'd like to discuss this morning are:
  - a. The Bill should require the subsequent Rules to accept market standard insurance; and
  - b. The Bill should not amend the regime for direct claims ahead of a broader insurance law review.

### **Background on the issue**

7. Before getting into the submission, I would like to note that PEPANZ has engaged on many iterations of proposals to significantly increase the monetary levels of offshore financial assurance since 2014. In this context, financial assurance is a means to demonstrate that an owner or operator has financial capability to meet its liabilities in the case of an incident such as an oil spill. Under the Maritime Transport Act, that liability to third parties is strict and unlimited and not constrained by these financial assurance requirements.
8. We have supported higher limits on the critical proviso that 'market standard insurance' will be accepted by the regulator as a means of demonstrating financial assurance (as it is in other comparable jurisdictions). Under the Maritime Transport Act as it currently stands, standard market insurance is difficult for the regulator to accept and we support the intent to address this.

### **The bill in relation to market standard insurance**

9. The Bill goes some way to allowing the yet-to-be-established Marine Protection Rules, which are tertiary legislation, to "provide for the types of liability and the amount for which insurance or other financial security must be held". This enabling policy is a step in the right direction, but should be strengthened to *require* that Marine Protection Rules must accept market standard insurance. Our suggested amendment would provide certainty and eliminate the possibility that unworkable Rules may be promulgated which do not allow market standard insurance policies.
10. Deeming standard insurance as acceptable is crucial because the relevant insurance policies applying to the upstream petroleum sector are, like other types of insurance, subject to a set of standard terms and

conditions. These insurance policies are set internationally, such as out of London, and New Zealand is a simple 'taker' of these policies when needed at scale. [N.B. the well-established "EED 8/86" policy]

11. This is an important first step, as it means market standard insurance *may* be deemed acceptable in the yet-to-be-revised Marine Protection Rules.
12. We note that standard market insurance is acceptable to regulators in other jurisdictions in which our members operate. It is important to note that in assessing the risk that parties are insuring, underwriters rely on classification societies (e.g. Bureau Veritas), to confirm that the insured operations comply with relevant standards. This is effectively an independent third-party verification of the insured risks.

***The bill in relation to the direct right of claim and prejudging broader insurance law amendments***

13. We support that the bill addresses a current problem in the Act by limiting the liability of the insurer to the sum and scope that their insurance policy relates (i.e. insurers will no longer face the strict and unlimited liability of the petroleum operator that the Act currently imposes).
14. The bill, however, appears to go beyond the immediate solution of fixing the liability faced by insurers. It goes beyond this by amending the nature of how claimants can exercise a direct right of action (this relates to how claimants can make a claim directly to the insurer rather than only to the insured party). We understand it proposes to amend the direct right of action framework because it is misaligned with current insurance practice and law in New Zealand
15. We understand that this Bill intends to make changes to the direct claims framework *in anticipation* of where a broader insurance review, currently being led by MBIE, will land. We do *not* support this and consider prejudging the outcome of other ongoing policy work to be a risky approach to legislation and public policy. If insurance law is to be eventually amended, the eventual amendment legislation can update the MTA through an omnibus bill or through consequential amendments.
16. We recommend that the current 'direct right of action' in section 385J (which allows claimants to claim directly from the insurer) should be repealed given it is problematic. It could then be reinstated in a revised and improved form through omnibus legislation arising from the general review of insurance law.