



Rena compensation

Robert Makgill and Dr Jeremy Hayman look at the real issue facing those affected by the Rena grounding

In November 2011, the Government announced a support package for businesses affected by the *MV Rena* disaster. The support package has received mixed reviews from local Tauranga businesses. However, the real issue for many local businesses is the longer-term compensation they will receive for loss of income and damage to property, and how they will go about claiming for such losses.

Speaking with local Tauranga business people, who have been impacted by the *Rena* grounding, it is clear that the support package offered by the Government will help to pay some of their staff wages provided they meet the support criteria.

To be eligible, business owners must prove they: rely on the sea and coastline; operate within or near the maritime exclusion zone; have used any insurance cover; and were unable to relocate their operation.

The support package will give eligible business operators a bit of breathing room to pay some bills. However, there appears to be a real concern about how they will recover lost income and property damage, which in some cases may be significant.

Many business operators who incurred loss following the *Rena* incident want to know what avenues are available to seek compensation for their loss. Most want to know whether they can they seek compensation from the owners of the *Rena*.

Civil liability for oil pollution is addressed in New Zealand under the *Maritime Transport Act 1994* (MTA). The MTA provides that the owner of a ship is liable for all pollution damage caused by the ship within New Zealand waters. Importantly, pollution damage under the MTA includes “the cost ... of reinstatement of the environment” and “losses of profit from impairment of the environment”. However, the total liability of the owners in respect of all damage and loss resulting from the *Rena* is limited under the MTA. Limitation of liability is a standard feature of maritime law and consistent with New Zealand’s international commitments.

This means the owners of the *Rena* will probably be able to limit their liability in respect of environmental damage, property damage, and pure economic loss – in the form of revenue from local businesses – to NZ\$12.1 million.

Whether economic losses are recoverable under the MTA will likely depend on whether there is a clear causative link between the loss or damage claimed and the oil pollution incident.

It is clear that claims might be brought by a number of different parties who feel they have experienced loss as a result of the *Rena* incident. Early indications are that potential claims by the Crown and private parties will outstrip the NZ\$12.1 million potentially available to meet those claims. The MTA envisages this type of outcome, however, and the Court has the power to determine that successful claimants are paid a proportional amount of the compensation available.

In the meantime, the Government is coming under increasing pressure to commission an independent inquiry into the *Rena* disaster. The Environmental Defence Society (EDS) has recently released a letter from Prime Minister John Key in which he advises EDS that it is his “expectation that there would be some form of independent inquiry into the aftermath of the *Rena* grounding”. To date, there has been no Government announcement confirming whether an independent inquiry will be commissioned. ¹

For more information on the issues raised in this article see Makgill, Mossop, and Scott, “Liability and limits for the *Rena* pollution incident” (*NZLawyer*, issue 172, 4 November 2011). Robert Makgill is a director of North South Environmental Law and a doctoral researcher at the Department of Public International Law, University of Ghent, Belgium. Email: RMakgill@nseenvironmentallaw.com. Dr Jeremy Hayman is a senior lecturer in HRM in the Faculty of Business and Law at AUT University and a researcher on OHS in the New Zealand marine industry. Email: Jeremy.hayman@aut.ac.nz.



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