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Maritime Transport Act 1994

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Transport.

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[Repealed]

Duties of employers relating to health and safety of seafarers

[Repealed]

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[Repealed]

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An Act—

(a) to continue Maritime New Zealand; and

(b) to enable the implementation of New Zealand's obligations under international maritime agreements; and

(c) to ensure that participants in the maritime transport system are responsible for their actions; and

(d) to consolidate and amend maritime transport law; and

(e) *[Repealed]*

(f) to protect the marine environment; and

(g) to continue, or enable, the implementation of obligations on New Zealand under various international conventions relating to pollution of the marine environment; and

(h) to regulate maritime activities in New Zealand and New Zealand waters; and

(i) to regulate maritime activities and the marine environment in the exclusive economic zone and on the continental shelf as permitted under international law

Title paragraph (a): amended, on 23 October 2013, by section 4(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Title paragraph (e): repealed, on 5 May 2003, by section 35(1)(a) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Title paragraph (g): amended, on 23 October 2013, by section 4(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Title paragraph (h): inserted, on 23 October 2013, by section 4(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Title paragraph (i): inserted, on 23 October 2013, by section 4(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

1 Short Title and commencement

(1) This Act may be cited as the Maritime Transport Act 1994.

(2) Except as provided in subsection (3), this Act shall come into force on a date to be appointed by the Governor-General by Order in Council; and, except in the case of the provisions referred to in section 214, different dates may be so appointed by 1 or more Orders in Council for different provisions and different purposes.

(3) This section and sections 2, 214, and 221 shall come into force on the day on which this Act receives the Royal assent.

Section 1(2): Parts 1–16, section 222, Part 23, sections 329–332, Parts 27–30, sections 468, 471(1), 475(1), 479, 482–484, 485(1), (3), (5), and (6) brought into force, on 1 February 1995, by the Maritime Transport Act Commencement Order 1994 (SR 1994/272).

Section 1(2): Part 26 brought into force, on 20 February 1997, by the Maritime Transport Act Commencement Order 1996 (SR 1996/336).

Section 1(2): Part 22 brought into force, on 19 December 1997, by the Maritime Transport Act Commencement Order 1997 (SR 1997/300).

Section 1(2): sections 223, 224, Parts 19–21, sections 333–341, Part 25, sections 469, 470, 471(2), 472–474, 475(2), 476–478, 480, 481, 485(2), (4), and Schedule 7 brought into force, on 20 August 1998, by the Maritime Transport Act Commencement Order 1998 (SR 1998/206).

Section 1(2): sections 215–220 and Schedule 6 brought into force, on 16 October 2003, by the Maritime Transport Act Commencement Order 2003 (SR 2003/259).

Part 1
Preliminary provisions

2 Interpretation

(1) In this Act, unless the context otherwise requires,—

accident means an occurrence that involves a ship and in which—

(a) a person is seriously harmed as a result of—

(i) being on the ship; or

(ii) direct contact with any part of the ship, including any part that has become detached from the ship; or

(iii) direct exposure to the wash of the ship or interaction (other than direct contact) between 2 ships; or

(iv) being involved in the salvage of any ship—

except where the injuries are self-inflicted or inflicted by other persons, or when injuries are to stowaways hiding outside the areas normally available to passengers and crew; or

(b) the ship sustains damage or structural failure that—

(i) adversely affects the structural strength, performance, or seaworthiness of the ship; or

(ii) would normally require major repair or replacement of the affected component; or

(iii) poses a threat to the safety of people on board the ship; or

(c) there is a complete or partial failure of machinery or equipment that affects the seaworthiness of the ship; or

(d) there is a loss of, or damage to, or movement of, or change in the state of, the cargo of the ship which poses a risk to the ship or other ships; or

(e) there is a significant loss of, or significant damage to, property (not being the cargo carried by the ship) or the property of any person (whether or not on board the ship), whether or not the loss or damage arises from an interaction between 2 ships; or

(f) there is a loss or escape of any substance or thing that—

(i) may result, or has resulted, in serious harm to any person; or

(ii) may pose a risk, or has resulted in damage, to the ship or other ships; or

(iii) may pose a risk, or has resulted in damage, to any property (whether or not on board the ship); or

(g) a person is lost at sea (whether or not subsequently found) or is missing; or

(h) the ship is foundering, capsizing, being abandoned, stranding, missing, or has foundered, capsized, been abandoned, stranded, been in a collision, or has had a major fire on board

aircraft has the same meaning as in the Civil Aviation Act 1990

Articles of Agreement means an agreement between an employer and 1 or more seafarers setting out the terms and conditions of the seafarers' employment

Authority means the authority continued by section 429

ballast water has the meaning given to it in section 246A(1)

commercial ship means a ship that is not—

(a) a pleasure craft; or

(b) solely powered manually; or

(c) solely powered by sail

continental shelf or **continental shelf of New Zealand** has the same meaning as in the Continental Shelf Act 1964

conventions, in relation to this Part and Parts 2 to 15, means such conventions as may be declared for the purposes of any such Part by Order in Council pursuant to subsection (2); and includes the amendments to such conventions, being amendments to which New Zealand is a party that are declared in the same manner

crew means the persons employed or engaged in any capacity on board a ship (except a master, a pilot, or a person temporarily employed on the ship while it is in port)

demise charter has the same meaning as in section 2(1) of the Ship Registration Act 1992

Director means the person who is for the time being the Director of Maritime New Zealand under section 439

emergency rules means emergency maritime rules or emergency marine protection rules

employer means a person who employs or engages any other person (other than a person temporarily employed on the ship while it is in port or a pilot) to do any work for hire or reward on board a commercial ship or pleasure craft

fail includes refuse; and **failure** includes refusal

fishing ship means a ship used for catching fish, whales, seals, or other living resources of the sea for profit; and includes a ship that is recognised by the Director as being engaged in fisheries research

foreign ship means any ship that is not a New Zealand ship

gross tonnage or **gross tons**, in relation to a ship, means the gross tonnage of that ship determined or recognised in accordance with the provisions of this Act or any maritime rules

harbour—

(a) means any natural or artificial harbour; and

(b) includes any place in or at which ships can or do obtain shelter

harbourmaster, in relation to a port, a harbour, or other waters in a region, means any person appointed as a harbourmaster of that port or harbour, or those waters, under Part 3A

harm means illness, injury, or both; and **to harm** and **harmed** have corresponding meanings

hazard means an activity, arrangement, circumstance, event, occurrence, phenomenon, process, situation, or substance (whether or not arising or caused on board a ship) that is an actual or potential cause or source of harm; and **hazardous** has a corresponding meaning

incident means any occurrence, other than an accident, that is associated with the operation of a ship and affects or could affect the safety of operation

internal waters of New Zealand means the internal waters of New Zealand as defined by section 4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

load lines means the marks indicating several maximum depths to which a ship is permitted to be loaded in various circumstances prescribed by maritime rules or regulations made under this Act

marine protection rules means marine protection rules made by the Minister under Part 27; and includes emergency marine protection rules made by the Director under section 391

maritime document—

(a) means any licence, permit, certificate or other document issued under Part 5 to or in respect of any person, ship, cargo, maritime procedure, or maritime product; and

(b) includes any foreign licence, permit, certificate, or other document recognised by the Director under section 41 or accepted by the Director under section 42

maritime product means anything that comprises or is intended to comprise any part of a ship or that is or is intended to be installed in or fitted or supplied to a ship; and includes—

(a) safety equipment:

(b) nautical instruments and publications, whether or not computerised or electronic, used or intended to be used in the operation of a ship:

(c) electronic navigational aids used or intended to be used in the operation of a ship:

(d) radio and other communication equipment:

(e) fuel and other similar consumable items necessary for the operation of a ship

maritime rules means maritime rules made by the Minister under Part 4; and includes emergency maritime rules made by the Director under section 37

master means any person (except a pilot) having command or charge of any ship

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act or the relevant Part or provision of this Act

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

mishap means an event that—

(a) causes any person to be harmed; or

(b) in different circumstances, might have caused any person to be harmed

nautical instruments and publications means those instruments and publications (including computerised or electronic instruments and publications) used or intended to be used in the navigation of a ship

navigation bylaws means bylaws made (or deemed to have been made) under Part 3A

navigational aid includes—

(a) any lightship and any floating or other light exhibited for the guidance of ships:

(b) any description of a fog signal not carried on a ship:

(c) all marks and signs in aid of marine navigation:

(d) any electronic, radio, or other aid to marine navigation not carried on board any ship

New Zealand-based operator means—

(a) a New Zealand national who is ordinarily resident or carries on business in New Zealand; or

(b) a New Zealand national who is ordinarily resident in New Zealand and any other person where the New Zealand national is in a position to control the exercise of the rights and powers of the charterers under the charterparty

New Zealand Defence Force has the same meaning as the term Defence Force in section 2(1) of the Defence Act 1990

New Zealand national has the same meaning as in section 2(1) of the Ship Registration Act 1992

New Zealand ship means a ship that is registered under the Ship Registration Act 1992; and includes a ship that is not registered under that Act but is required or entitled to be registered under that Act

New Zealand waters means—

(a) the territorial sea of New Zealand; and

(b) the internal waters of New Zealand; and

(c) all rivers and other inland waters of New Zealand

operate, in relation to a ship, means to sail or use the ship, or cause or permit the ship to sail, be used, or be in any place, whether or not the person is present with the ship; and **operating**, **operation**, and **operator** have corresponding meanings

operating in New Zealand waters means any activity undertaken in New Zealand waters that involves calling in to a New Zealand port; but does not include the passage by a ship through New Zealand waters that does not involve calling in to a New Zealand port

owner,—

(a) in relation to a ship registered in New Zealand under the Ship Registration Act 1992, means the registered owner of the ship:

(b) in relation to a ship registered in any place outside New Zealand, means the registered owner of the ship:

(c) in relation to a fishing ship, other than one to which paragraph (a) or paragraph (b) applies, means the person registered as the owner in the Fishing Vessel Register kept under section 98 of the Fisheries Act 1996:

(d) in relation to a ship to which paragraph (a) or paragraph (b) or paragraph (c) applies, where, by virtue of any charter or demise or for any other reason, the registered owner is not responsible for the management of the ship, includes the charterer or other person who is for the time being so responsible:

(e) in relation to an unregistered ship or a registered ship that does not have a registered owner, means the person who is for the time being responsible for the management of the ship

passenger means any person carried on a ship, other than—

(a) the master and members of the crew, and any other person employed or engaged in any capacity on board the ship on the business of the ship:

(b) a person on board the ship either in pursuance of an obligation laid upon the master to carry shipwrecked, distressed, or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer (if any) could have prevented or forestalled:

(c) a child under the age of 1 year

pilot, in relation to any ship, means any person not being the master or a member of the crew of the ship who has the conduct of the ship

plant includes—

(a) appliance, equipment, fitting, furniture, implement, machine, machinery, tool, and vehicle:

(b) part of any plant, the controls of any plant, and anything connected to any plant

pleasure craft—

(a) means a ship that is not offered or used for hire or reward, and is used exclusively for—

(i) the owner's pleasure or as the owner's residence; or

(ii) recreational purposes by—

(A) the members of a club that owns the ship:

(B) the beneficiaries of a trust that owns the ship:

(C) the members of an incorporated society that owns the ship; but

(b) excludes a ship that is—

(i) provided for transport, sport, or recreation by, or on behalf of, an institution, hotel, motel, place of entertainment, or other establishment or business:

(ii) used on a voyage for pleasure if the ship is normally used, or intended to be normally used, as a fishing ship or for the carriage of passengers or cargo for hire or reward:

(iii) operated or provided by—

(A) a club, incorporated society, or trust for non-recreational purposes; or

(B) a business

port—

(a) means an area of land and water intended or designed to be used either wholly or partly for the berthing, departure, movement, and servicing of ships; and

(b) includes any place in or at which ships can or do—

(i) load or unload goods:

(ii) embark or disembark passengers; and

(c) also includes a harbour

prescribed means prescribed by this Act or by regulations or rules made under this Act

proper officer, in relation to any country other than New Zealand, means the person who is, by the law of that country, authorised or required—

(a) to do or perform the act or duty to which reference is made in the provisions of this Act in which the expression occurs; or

(b) to do or perform, in relation to ships registered in or belonging to that country, any act or duty of the same nature as the act or duty to which reference is made in the provisions of this Act in which the expression occurs;—

and includes a consular officer of New Zealand in any other country

reward,—

(a) in the definition of the term employer and in the definition of the term seafarer, and in section 125(1), means any remuneration, recompense, or other payment for service (whether of money or money's worth):

(b) in the definition of pleasure craft,—

(i) includes the payment (whether of money or money's worth and whether directly or indirectly) of a contribution towards the expenses of a voyage—

(A) to, or for the benefit of, the owner or master of a ship:

(B) by or on behalf of persons carried, or the owners of cargo carried, on board the ship during the voyage; but

(ii) does not include the payment of contributions for the use of a ship exclusively for recreational purposes by—

(A) an owner of the ship; or

(B) a member of a club, an incorporated society, or a trust that owns the ship

rules includes maritime rules and marine protection rules

safety equipment means any equipment carried on a ship for the health or safety of any person during the normal operation and working of the ship or for fire or the abandonment of the ship or other emergency; and includes anchors and chain cables

seafarer—

(a) means any person who—

(i) is employed or engaged on any ship in any capacity for hire or reward; or

(ii) works on any ship for gain or reward otherwise than under a contract of employment; but

(b) does not include a pilot or any person temporarily employed on a ship while it is in port

seaplane includes a flying boat and any other aircraft designed to manoeuvre on the water

Secretary means the chief executive of the Ministry

serious harm means—

(a) death; or

(b) a notifiable injury or illness as defined in section 23 of the Health and Safety at Work Act 2015

ship means every description of boat or craft used in navigation, whether or not it has any means of propulsion; and includes—

(a) a barge, lighter, or other like vessel:

(b) a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates:

(c) a submarine or other submersible

system, in relation to a ship, means any system incorporated in the ship which contributes to the safe navigation and working of the ship during normal operation or is required in the event of any emergency

territorial sea of New Zealand or **territorial sea** means the territorial sea of New Zealand as defined by section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

tonnage measurement means measurement of a ship in accordance with the requirements of maritime rules

unit of account means 1 special drawing right as defined by the International Monetary Fund, the calculation of which, in New Zealand currency, is in accordance with section 88

voyage means a journey by water from one port—

(a) to another port; or

(b) back to the same port without calling at any other port

warship—

(a) means a ship belonging to the armed forces of a State and bearing the external marks distinguishing the nationality of ships of that State, being a ship—

(i) under the command of an officer duly commissioned by the Government of that State whose name appears in the appropriate service list or its equivalent; and

(ii) crewed by crew subject to regular armed forces discipline; and

(b) includes any ship requisitioned under section 10 of the Defence Act 1990; but

(c) does not include any ship operated by the New Zealand Defence Force that operates, for the time being, for a commercial purpose.

(2) The Governor-General may from time to time, by Order in Council, declare—

(a) that any specified international convention relating to maritime transport, to which New Zealand is a party, shall be a convention for the purposes of this Part and Parts 2 to 15, or such of them (or their provisions) as may be specified in the order:

(b) that any specified amendment to any such convention shall form part of that convention for any such purposes.

Compare: 1952 No 49 s 2; 1987 No 184 s 2(1)

Section 2(1) **all practicable steps**: repealed, on 5 May 2003, by section 35(1)(b) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **Authority**: substituted, on 1 July 2005, by section 11(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 2(1) **ballast water**: inserted, on 8 September 2017, by section 86(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **demise charter**: inserted, on 15 December 2005, by section 3 of the Maritime Transport Amendment Act (No 2) 2005 (2005 No 108).

Section 2(1) **Director**: amended, on 1 July 2005, by section 11(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 2(1) **harbour**: inserted, on 23 October 2013, by section 5(5) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 2(1) **harbourmaster**: inserted, on 23 October 2013, by section 5(5) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 2(1) **internal waters of New Zealand**: amended, on 1 August 1996, pursuant to section 5(4) of the Territorial Sea and Exclusive Economic Zone Amendment Act 1996 (1996 No 74).

Section 2(1) **Minister**: substituted, on 1 December 2004, by section 3(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 2(1) **Ministry**: substituted, on 1 December 2004, by section 3(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 2(1) **navigation bylaws**: inserted, on 23 October 2013, by section 5(5) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 2(1) **New Zealand-based operator**: inserted, on 15 December 2005, by section 3 of the Maritime Transport Amendment Act (No 2) 2005 (2005 No 108).

Section 2(1) **New Zealand national**: inserted, on 15 December 2005, by section 3 of the Maritime Transport Amendment Act (No 2) 2005 (2005 No 108).

Section 2(1) **owner** paragraph (c): amended, on 23 October 2013, by section 5(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 2(1) **pleasure craft**: replaced, on 23 October 2013, by section 5(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 2(1) **port**: replaced, on 23 October 2013, by section 5(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 2(1) **reward** paragraph (b): replaced, on 23 October 2013, by section 5(4) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 2(1) **Secretary**: inserted, on 1 December 2004, by section 3(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 2(1) **serious harm**: replaced, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

Section 2(1) **significant hazard**: repealed, on 5 May 2003, by section 35(1)(b) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **territorial sea of New Zealand** or **territorial sea**: amended, on 1 August 1996, pursuant to section 5(4) of the Territorial Sea and Exclusive Economic Zone Amendment Act 1996 (1996 No 74).

2A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Section 2A: inserted, on 15 June 2018, by section 6 of the Maritime Transport Amendment Act 2017 (2017 No 48).

3 Act to bind the Crown

Except as provided in section 4, this Act shall bind the Crown.

Compare: 1952 No 49 s 3; 1987 No 184 s 3

4 Application of this Act

(1) Except as otherwise provided in this Act, or in any regulations or rules made under this Act, nothing in this Act, or any regulations or rules made under this Act, shall apply to—

(a) warships of the New Zealand Defence Force; or

(b) warships of any other State; or

(c) aircraft of the New Zealand Defence Force; or

(d) aircraft of the defence forces of any other State; or

(e) any ship owned or operated by a State other than New Zealand, if the ship is being used by that State for wholly governmental (but not including commercial) purposes; or

(f) the master or the crew of any ship referred to in paragraph (a) or paragraph (b) or paragraph (e); or

(g) defence areas as defined in section 2 of the Defence Act 1990.

(2) The provisions of sections 344 to 352, 361, and 368 shall apply to warships of the New Zealand Defence Force and, for the purposes of determining any liability under any of those provisions in respect of any act or omission involving such a warship, any provision of this Act, the Resource Management Act 1991, or any other enactment referred to in those provisions shall be deemed to apply to such warships.

(3) Where it is alleged that the Crown has contravened a provision of this Act, or any rules or regulations made under this Act, and such contravention constitutes an offence,—

(a) any person may apply to the High Court for a declaration that the Crown has contravened that provision; and

(b) if satisfied beyond reasonable doubt that the Crown has contravened that provision, the court may make a declaration to that effect.

(4) Except where the context otherwise requires, where this Act applies to ships, it applies to New Zealand ships wherever they may be.

Section 4(4): inserted, on 23 October 2013, by section 6 of the Maritime Transport Amendment Act 2013 (2013 No 84).

4A Application of Parts 3 and 5

Parts 3 and 5 apply, subject to section 42, with all necessary modifications, to each ship that carries coastal cargo under section 198(1)(b) as if that ship were a New Zealand ship.

Section 4A: inserted, on 15 December 2005, by section 4 of the Maritime Transport Amendment Act (No 2) 2005 (2005 No 108).

5 Objectives of Minister

The objectives of the Minister under this Act are—

(a) to undertake the Minister's functions in a way that contributes to an integrated, safe, responsive, and sustainable transport system; and

(b) to ensure that New Zealand's obligations under the conventions are implemented.

Section 5: substituted, on 1 December 2004, by section 4 of the Maritime Transport Amendment Act 2004 (2004 No 98).

5A Functions of Minister

The functions of the Minister under this Act are—

(a) to promote safety in maritime transport:

(b) to promote protection of the marine environment:

(c) to administer New Zealand's participation in the conventions and any other international maritime or marine protection convention, agreement, or understanding to which the Government of New Zealand is a party:

(d) to ensure New Zealand's preparedness for, and ability to respond to, marine oil pollution spills:

(e) to make maritime rules and marine protection rules under this Act.

Section 5A: inserted, on 1 December 2004, by section 4 of the Maritime Transport Amendment Act 2004 (2004 No 98).

Part 2
Duties relating to health and safety on ships

[Repealed]

Part 2: repealed, on 5 May 2003, by section 35(1)(c) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Duties of employers relating to health and safety of seafarers

[Repealed]

Heading: repealed, on 5 May 2003, by section 35(1)(c) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

6 Employers to ensure safety of seafarers

[Repealed]

Section 6: repealed, on 5 May 2003, by section 35(1)(c) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Duties of employers in relation to hazards

[Repealed]

Heading: repealed, on 5 May 2003, by section 35(1)(c) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

7 Identification of hazards to seafarers

[Repealed]

Section 7: repealed, on 5 May 2003, by section 35(1)(c) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

8 Significant hazards to seafarers to be eliminated where practicable

[Repealed]

Section 8: repealed, on 5 May 2003, by section 35(1)(c) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

9 Significant hazards to seafarers to be isolated where elimination impracticable

[Repealed]

Section 9: repealed, on 5 May 2003, by section 35(1)(c) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

10 Significant hazards to seafarers to be minimised, and seafarers to be protected, where elimination and isolation impracticable

[Repealed]

Section 10: repealed, on 5 May 2003, by section 35(1)(c) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Duties of employers in relation to information

[Repealed]

Heading: repealed, on 5 May 2003, by section 35(1)(c) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

11 Employees to be given results of monitoring

[Repealed]

Section 11: repealed, on 5 May 2003, by section 35(1)(c) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

12 Information for seafarers generally

[Repealed]

Section 12: repealed, on 5 May 2003, by section 35(1)(c) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Duties of employers in relation to training and supervision

[Repealed]

Heading: repealed, on 5 May 2003, by section 35(1)(c) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

13 Training and supervision

[Repealed]

Section 13: repealed, on 5 May 2003, by section 35(1)(c) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

14 Seafarers to be involved in development of health and safety procedures

[Repealed]

Section 14: repealed, on 5 May 2003, by section 35(1)(c) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Other duties

[Repealed]

Heading: repealed, on 5 May 2003, by section 35(1)(c) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

15 Duties of employers in respect of persons who are not seafarers

[Repealed]

Section 15: repealed, on 5 May 2003, by section 35(1)(c) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

16 Duties of seafarers

[Repealed]

Section 16: repealed, on 5 May 2003, by section 35(1)(c) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Part 3
Duties in relation to maritime activity

General duties

17 General requirements for participants in maritime system

(1) Every person who does anything for which a maritime document is required (in the succeeding provisions of this section called a **participant**) shall ensure that the appropriate maritime documents and all the necessary qualifications and other documents are held by that person.

(2) Every participant shall comply with this Act, regulations made under this Act, maritime rules, and the conditions attached to the relevant maritime documents.

(3) Every participant shall ensure that the activities or functions for which the maritime document has been granted are carried out by the participant, and by all persons for whom the participant is responsible, safely and in accordance with the relevant prescribed safety standards and practices.

(4) Every participant—

(a) shall, if so required by maritime rules, establish and follow a management system that will ensure compliance with the relevant prescribed safety standards and the conditions attached to the document; and

(b) shall provide training and supervision to all employees of the participant who are engaged in doing anything to which the document relates, so as to maintain compliance with the relevant prescribed safety standards and the conditions attached to the document and to promote safety; and

(c) shall provide sufficient resources to ensure compliance with the relevant prescribed safety standards and the conditions attached to the document.

Compare: 1990 No 98 s 12; 1991 No 116 s 3

18 General requirements for persons other than participants

Every person, other than a participant (within the meaning of section 17), who—

(a) operates any ship; or

(b) is responsible for any maritime product; or

(c) is otherwise engaged in any maritime activity—

shall comply with the relevant provisions of this Act and any relevant rules.

19 Duties of master

(1) The master of a ship shall—

(a) be responsible for the safe operation of the ship on a voyage, the safety and wellbeing of all passengers and crew, and the safety of cargo carried; and

(b) have final authority to control the ship while in command and for the maintenance of discipline by all persons on board; and

(c) be responsible for compliance with all relevant requirements of this Act and regulations and maritime rules made under this Act, except in an emergency when, in the interests of safety, immediate action in breach of this Act or of regulations or maritime rules made under this Act is necessary; and

(d) where an emergency requires that in the interests of safety an action is necessary that breaches this Act, or regulations or maritime rules made under this Act, as soon as practicable, notify the Director of the action and the circumstances which necessitated it and, if requested by the Director, provide to the Director a written report in respect of the action.

(2) For the purposes of subsection (1)(c), a breach of any prescribed requirement is permitted only if—

(a) the emergency involves a danger to life or property; and

(b) the extent of the breach of the prescribed requirement goes only as far as is necessary to deal with the emergency; and

(c) there is no other reasonable means of alleviating, avoiding, or assisting with the emergency; and

(d) the degree of danger involved in complying with the prescribed requirement is clearly greater than the degree of danger involved in deviating from it.

(3) Nothing in subsection (1)(c) permits—

(a) the breach of any prescribed requirement as to the seaworthiness of a ship; or

(b) the operation of a ship by a person who does not hold the appropriate maritime document; or

(c) the operation of a ship by a person who does not have authority to operate that ship.

(4) Every master commits an offence and is liable on conviction to a fine not exceeding $5,000 who, without reasonable excuse, fails to comply with subsection (1)(d).

Compare: 1990 No 98 s 13

Section 19(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

20 Duty to report dismissals

(1) The employer of any seafarer on a New Zealand ship shall report to the Director any dismissal from employment of a seafarer that is a dismissal related to violence, alcohol, the use, supply, or possession of controlled drugs (as defined in the Misuse of Drugs Act 1975), or the misuse of prescription medicines (as defined in the Medicines Act 1981).

(2) The Director shall not release the name of any person reported under subsection (1) unless the person's name appears on a list maintained under section 52(4); and any release of such a name shall be made only to the extent provided for in section 52(4).

21 Pleasure craft departing for overseas

(1) No master of a pleasure craft shall permit that pleasure craft to depart from any port in New Zealand for any place outside New Zealand unless—

(a) the Director has been notified in writing of the proposed voyage and the full name of the person who is in command of the pleasure craft; and

(b) the Director is satisfied that the pleasure craft and its safety equipment are adequate for the voyage; and

(c) the Director is satisfied that the pleasure craft is adequately crewed for the voyage; and

(d) the pleasure craft and the master comply with any relevant maritime rules.

(2) No pleasure craft shall be entitled to a certificate of clearance to depart from any port in New Zealand under the Customs and Excise Act 2018 unless subsection (1) has been satisfied.

Compare: 1952 No 49 s 308; 1987 No 184 s 14

Section 21(2): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Duties in relation to crewing

22 Employer's duties in relation to seafarers of New Zealand ships on overseas voyages

(1) Every employer of a seafarer on any New Zealand ship, other than a pleasure craft, going on an overseas voyage shall,—

(a) prior to the departure of the ship,—

(i) enter into articles of agreement, in a form approved by the Director as meeting the requirements of the relevant convention and subsection (2), with every seafarer (except the master), in relation to the voyage; and

(ii) post the articles of agreement up in a place on the ship easily accessible from the seafarer's quarters; and

(b) ensure that any termination of a period of employment of a seafarer is by notice in writing; and

(c) make provision on termination of the voyage, or where the seafarer has been left behind by the ship by reason of—

(i) injury sustained during his or her employment on the ship; or

(ii) shipwreck; or

(iii) illness, which is not due to the seafarer's own wilful act or default; or

(iv) discharge for any cause for which the seafarer cannot be held responsible,—

to return each seafarer to his or her own country, or to the port where that seafarer was employed, or to the port where the voyage commenced, or to such other place (if any) as may be agreed between the employer and the seafarer; and an employer of a seafarer shall be deemed to have made adequate provision under this paragraph if the seafarer has been provided with suitable employment on board a vessel proceeding to one of the foregoing destinations; and

(d) provide to the seafarer, if requested by the seafarer, a certificate as to the quality of the seafarer's work and whether the seafarer has fully discharged his or her obligations under any articles of agreement with the employer.

(2) The articles of agreement shall include a statement that the agreement shall be terminated by—

(a) mutual consent of the employer and the seafarer; or

(b) death of the seafarer; or

(c) loss or total unseaworthiness of the ship.

(3) A seafarer on a New Zealand ship may recover from the seafarer's employer, or any agent of the employer, the reasonable expenses incurred by the seafarer in returning to his or her own country, or to the port where the crew member was employed, if the employer of that seafarer does not comply with the employer's obligations under subsection (1)(c).

(4) For the purposes of this section,—

overseas voyage means a voyage to a port outside New Zealand

reasonable expenses means all reasonable transportation charges, accommodation, and food expenses, in respect of the period commencing when the seafarer was left behind and ending with the end of the return journey; and includes maintenance in respect of the period commencing when the seafarer was left behind and ending with the time fixed for the seafarer's return journey departure.

23 Employer's duties in relation to seafarers on New Zealand ships

(1) Every employer of seafarers on a New Zealand ship shall—

(a) provide food and water supplies which, having regard to the size of the crew and the duration and nature of the voyage, are suitable in respect of quantity, nutritive value, quality, and variety; and

(b) ensure that any seafarer requiring medical attention while overseas receives all necessary medical attention at the employer's expense; and

(c) in the event of the loss or foundering of the ship, pay to every seafarer wages at the normal rate until—

(i) the seafarer is otherwise employed; or

(ii) the expiry of 2 months from the date of the loss or foundering,—

whichever first occurs; and

(d) maintain a record (in a form prescribed or in a form approved by the Director) of the employment on board a New Zealand ship of every seafarer employed on that ship by that employer and provide to a seafarer, if requested by that seafarer, a copy of the record applying to that seafarer.

(2) Any wages payable under subsection (1) shall be recoverable in the same manner as wages earned by the seafarer during his or her normal employment.

24 Inspection of provisions

Without limiting section 54, the Director shall, upon receipt of a written complaint from not less than half the crew of a New Zealand ship, carry out such inspections and audits under that section as he or she considers appropriate to ascertain compliance with section 23(1)(a).

25 Body and effects of deceased seafarer

(1) Subject to subsection (2), every employer of seafarers on a New Zealand ship shall make suitable arrangements for the body and effects of any seafarer who dies in the course of a voyage, which may include the return of the body to the deceased's next of kin or the burial or cremation of that body.

(2) The employer shall endeavour to ascertain the reasonable wishes of the deceased's next of kin and shall, where practicable, comply with those wishes.

(3) For the purpose of this section, a person's **next of kin** may include that person's civil union partner or de facto partner.

Compare: 1952 No 49 s 106(2)

Section 25(3): added, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

26 Provisions relating to crewing of New Zealand ships and young persons

(1) Every employer of seafarers on a New Zealand ship shall keep a register of all persons under the age of 18 years who are employed on that ship and the register shall include the date of birth of each such person.

(2) No person shall employ on any New Zealand ship—

(a) any person of an age that requires that person to be enrolled at a school; or

(b) any person under the age of 18 years as a trimmer or stoker.

(3) Notwithstanding subsection (2), where an employer has not been able, after taking all reasonable steps, to obtain a person over 18 years of age as a trimmer or stoker in a port, the employer may employ on a New Zealand ship a person over the age of 16 years as a trimmer or stoker in that port, but in any such case 2 persons over the age of 16 years shall be employed to do the work which would otherwise have been performed by 1 person over the age of 18 years.

(4) Nothing in subsection (2) applies to the employment of a person to carry out work on a training ship if the carrying out of such work by a person of that age is approved by the Director.

Compare: 1952 No 49 s 49(1), (2), (4)

27 Prohibition on receiving remuneration for placing seafarers in employment

(1) No person shall carry on for pecuniary gain, directly or indirectly, any undertaking in relation to the finding of employment for seafarers (other than persons to be employed or engaged in fishing within the meaning of the Fisheries Act 1996 and masters) on any ship nor shall any person charge, directly or indirectly, any fees for finding employment for such seafarers on any ship.

(2) Every person commits an offence and is liable on conviction to a fine not exceeding $200 who acts in contravention of subsection (1).

Compare: 1952 No 49 s 48

Section 27(1): amended, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 27(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Liens on ships by crew and masters

28 Members of crew not to contract out of rights

(1) A member of the crew of a ship shall not by any agreement forfeit his or her lien on the ship, or be deprived of any remedy for the recovery of his or her wages, or abandon his or her right to wages in case of the loss of the ship, or abandon any right that he or she may have or obtain in the nature of salvage; and every stipulation in any agreement inconsistent with this subsection shall be void.

(2) Nothing in this section shall apply to a stipulation made by a member of the crew of any ship with respect to the remuneration to be paid to that member of the crew for salvage services to be rendered by that ship if, according to the terms of the agreement, the ship is to be employed on salvage service.

Compare: 1952 No 49 s 91

29 Master to have same rights as members of crew

(1) The master of a ship shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of his or her wages as a member of the crew of the ship has under this Act or by any law or custom.

(2) The master of a ship, and every person lawfully acting as master, shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of disbursements and liabilities properly made or incurred by the master on account of the ship as a master has for the recovery of his or her wages.

Compare: 1952 No 49 s 100(1), (2)

Duties in relation to accidents, incidents, etc

30 Recording and notification of accidents, incidents, and mishaps

Every employer of seafarers on a New Zealand ship shall maintain (in a form approved by the Director) a register of accidents, incidents, and mishaps; and shall record in the register particulars relating to—

(a) every accident or incident; and

(b) every mishap.

Compare: 1992 No 96 s 25(1)

31 Obligation to notify all accidents, incidents, etc

(1) The master of—

(a) any New Zealand ship; or

(b) any foreign ship in New Zealand waters—

that is involved in a mishap that results in serious harm to a person, an accident, or an incident, shall notify the mishap, accident, or incident to the Authority as soon as practicable.

(2) If, due to injuries or death or for other good reason, the master of a ship referred to in subsection (1) is unable to give the necessary notice under that subsection, the operator of the ship shall provide the necessary notice.

(3) Every person who—

(a) operates, maintains, or services, or does any other act in respect of any New Zealand ship, any foreign ship in New Zealand waters, or any maritime product; and

(b) is involved in an accident, incident, or mishap resulting in serious harm, involving a New Zealand ship, or a foreign ship in New Zealand waters—

shall, where required to do so under maritime rules, notify the accident, incident, or mishap to the Authority as soon as practicable.

(4) The co-ordinator of any search and rescue operation for any ship or person missing at sea shall notify the Authority of the operation as soon as practicable.

(5) The Authority may, on being notified under this section, request such additional information in such form as it considers appropriate in each specific case, and the master or operator or person of whom the request is made shall provide the additional information forthwith.

Compare: 1990 No 98 s 26

32 Duty to assist persons in danger and to respond to distress calls

(1) The master of a New Zealand ship and the master of a foreign ship in New Zealand waters shall, so far as the master can do so without serious danger to the ship and persons on board,—

(a) render assistance to any person found at sea in danger of being lost:

(b) after a collision, render assistance to the other ship, its crew, and its passengers:

(c) after a collision, inform the master of the other ship of the name of his or her own ship, its port of registry, and the nearest port at which it will call.

(2) On receiving a signal that a ship, aircraft, or survival craft is in distress, the master of a ship referred to in subsection (1) shall—

(a) proceed with all speed to the assistance of the persons in distress and, if possible, inform them of that fact; and

(b) comply with any requisition to the master's ship by the master of the ship in distress by continuing to proceed with all speed to the assistance of persons in distress.

(3) Subsection (2)(a) does not apply if—

(a) the master is unable, or, in the special circumstances of the case, considers it unreasonable or unnecessary, to proceed to the assistance of the persons in distress; or

(b) the master is informed that 1 or more ships have been requisitioned and are complying with the requisition.

(4) Neither paragraph (a) of subsection (2) nor, if the ship has been requisitioned, paragraph (b) of that subsection, shall apply if the master is informed by the persons in distress or by the master of another ship which has reached the persons that assistance is no longer necessary.

(5) The master of a New Zealand ship that is required to carry a logbook shall enter in the logbook a record of every distress signal received and any reason for failing to go to the assistance of persons in distress in accordance with subsection (3)(a).

(6) Every person commits an offence who fails to comply with this section and is liable on conviction to—

(a) imprisonment to a term not exceeding 12 months; or

(b) a fine not exceeding $100,000; or

(c) both.

Compare: 1952 No 49 ss 289(1)(a), (c), 297; 1987 No 184 s 14

Section 32(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

33 Reporting of dangers to navigation

(1) The master of a New Zealand ship and the master of a foreign ship in New Zealand waters shall report to ships in the vicinity, and the nearest radio communication station with which it is possible for the ship to communicate, any danger to navigation, including the failure or displacement of any navigational aid.

(2) Every person commits an offence and is liable on conviction to a fine not exceeding $10,000 who fails, without reasonable excuse, to comply with this section.

Compare: 1952 No 49 s 294; 1987 No 184 s 14

Section 33(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Part 3A
Local regulation of maritime activity

Part 3A: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33A Application of this Part

This Part applies to—

(a) New Zealand waters; and

(b) maritime-related activities anywhere in New Zealand.

Section 33A: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33B Interpretation

In this Part, unless the context otherwise requires,—

commercial port—

(a) means—

(i) a port operated by a port company; or

(ii) any other port that services commercial ships (whether or not it also services ships that are not commercial ships); and

(b) includes the buildings, installations, other structures, or equipment on or adjacent to a port and used in connection with the port's operation or administration

maritime-related activities means any activity (including the use of land, buildings, equipment, or other property) that affects or is likely to affect maritime safety

oil has the same meaning as in section 222(1)

owner, in relation to a wreck, includes a purchaser of the wreck, or the materials of which the wreck was composed, if the wreck remains derelict, in distress, sunk, separated, stranded, or abandoned

personal water craft means a power-driven ship that—

(a) has a fully enclosed hull; and

(b) does not take on water if capsized; and

(c) is designed to be operated by a person standing, sitting astride, or kneeling on it, but not seated within it

port company means a port company within the meaning of section 2(1) of the Port Companies Act 1988

port operator—

(a) means any person who operates a commercial port; and

(b) includes a port company

public authority means—

(a) a Minister of the Crown:

(b) a government department:

(c) a statutory body:

(d) a local authority:

(e) an iwi authority

region has the meaning given to it in section 5(1) of the Local Government Act 2002

regional council—

(a) means a regional council within the meaning of section 5(1) of the Local Government Act 2002; and

(b) includes any unitary authority within the meaning of section 5(1) of that Act

territorial authority has the meaning given to it in section 5(1) of the Local Government Act 2002

wreck includes—

(a) a ship or an aircraft that is abandoned, stranded, or in distress, or any equipment, cargo, or other articles belonging to or separated from such a ship or aircraft:

(b) shipping containers and property lost overboard or similarly separated from a ship other than cargo lost in the course of unloading or discharge from the ship while the ship is in a port:

(c) a derelict ship.

Section 33B: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33C Functions of regional councils

For the purpose of ensuring maritime safety in their regions, regional councils may regulate—

(a) the ports, harbours, and waters in their regions; and

(b) maritime-related activities in their regions.

Section 33C: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Harbourmasters

Heading: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33D Regional councils to appoint harbourmasters

(1) A regional council may appoint a harbourmaster for any port, harbour, or waters in its region.

(2) Despite subsection (1), a regional council must appoint a harbourmaster for any port, harbour, or waters in its region if the Minister directs it to do so.

(3) A direction under subsection (2) must be in writing.

(4) If maritime rules do not prescribe qualifications for harbourmasters, the regional council must satisfy itself that a person appointed as harbourmaster is suitably qualified to perform the functions of harbourmaster in respect of the relevant port, harbour, or waters.

Compare: 1974 No 66 s 650B

Section 33D: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33E Functions of harbourmasters

A harbourmaster may exercise the powers and perform the duties conferred by this Act or any other enactment for the purpose of ensuring maritime safety in relation to the ports, harbours, or waters for which he or she has been appointed as a harbourmaster by the regional council.

Section 33E: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33F Harbourmasters' general powers

(1) For the purposes of ensuring maritime safety, or enforcing navigation bylaws or regulations and rules made under this Act relating to maritime safety, a harbourmaster may, in relation to the areas for which he or she has been appointed as a harbourmaster by the regional council,—

(a) enter and remain on any ship in waters within the region:

(b) enter and remain on any maritime facility, or on any land or property of a port company or a port operator, within the region:

(c) give directions regarding—

(i) the time and manner in which ships may enter into, depart from, lie in, or navigate waters within the region:

(ii) the position, mooring, unmooring, placing, removing, securing, or unsecuring of ships:

(iii) the manner in which ships may take in or discharge cargo:

(iv) the manner in which cargo is secured or handled on a ship if there is a risk of cargo falling overboard or becoming a hazard to navigation:

(d) direct the master of any ship to—

(i) weigh anchor; or

(ii) moor, unmoor, anchor, secure, unsecure, place, or move the ship:

(e) cause a ship to be moored, unmoored, anchored, secured, unsecured, placed, or removed, or to weigh anchor:

(f) cause any floating, submerged, or stranded object that the harbourmaster considers to be a hazard to navigation to be moored, unmoored, anchored, secured, unsecured, placed, or removed:

(g) require any person appearing to be in charge of any ship or seaplane to stop, and to give his or her name and address:

(h) require any person found committing an offence against this Act (or any regulations, rules, or navigation bylaws made under this Act) to give his or her name and address:

(i) on informing the owner of a ship or seaplane of an alleged offence against this Act (or any regulations, rules, or navigation bylaws made under this Act) involving that ship or seaplane, require the owner to give all information in the owner's possession or obtainable by the owner that may lead to the identification of the person (not being the owner) who it is alleged committed the offence:

(j) regulate and control traffic and navigation on the occasion of unusual or extraordinary maritime traffic.

(2) A harbourmaster may exercise the powers under subsection (1) with the assistance of any persons and equipment the harbourmaster reasonably considers necessary in the circumstances.

(3) A harbourmaster exercising a power under subsection (1)(a) or (b) must—

(a) announce his or her intention to enter and search the ship or place; and

(b) identify himself or herself by name; and

(c) produce evidence of his or her identity.

(4) However, a harbourmaster is not required to comply with subsection (3) if he or she has reasonable grounds to believe that—

(a) no person is lawfully present in the ship or place to be entered; or

(b) compliance with subsection (3) would—

(i) endanger the safety of any person; or

(ii) prejudice the successful exercise of the power of entry.

(5) The expenses incurred by a harbourmaster under subsection (1)(e) or (f) are—

(a) payable by,—

(i) in the case of subsection (1)(e), the master and the owner of the ship:

(ii) in the case of subsection (1)(f), the owner of the object; and

(b) recoverable as a debt owed to the council.

(6) Every person who, without reasonable excuse, fails to comply with a direction or requirement given or imposed under subsection (1) commits an offence and is liable,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000:

(c) in any case, to an additional penalty under section 409.

(7) Any person affected by a direction given under subsection (1)(c) may appeal against that direction to the District Court under section 424.

Compare: 1974 No 66 ss 650C, 650D, 650E, 650G; 2012 No 24 s 131(1), (2)

Section 33F: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 33F(7): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Enforcement

Heading: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33G Enforcement officers, Police, and authorised regional council officials

For the purpose of ensuring maritime safety or enforcing navigation bylaws, and regulations and rules made under this Act relating to maritime safety,—

(a) the regional council may appoint enforcement officers and honorary enforcement officers:

(b) enforcement officers, and constables, may exercise the powers of a harbourmaster set out in section 33F(1)(a), (b), (g), (h), and (i):

(c) enforcement officers, and constables, may exercise the powers set out in section 33F(1)(c) if authorised to do so by the regional council:

(d) honorary enforcement officers may exercise the powers set out in section 33F(1)(g) and (h):

(e) other persons authorised by the regional council may exercise the powers set out in section 33F(1)(g), (h), and (i).

Compare: 1974 No 66 ss 650C, 650D, 650E

Section 33G: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33H Powers of entry

For the purposes of carrying out his or her duties under this Part, a harbourmaster or enforcement officer is to be taken in sections 453 to 456 to be a person duly authorised by the Director in relation to any ship, building, or place within the region.

Section 33H: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Councils may carry out harbour works

Heading: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33I Councils may carry out harbour works

(1) For the purpose of ensuring maritime safety,—

(a) a regional council may—

(i) erect, place, and maintain navigational aids in accordance with maritime rules (if any):

(ii) remove obstructions and impediments to navigation:

(iii) execute and maintain works that it considers likely to improve navigation:

(b) a territorial authority may—

(i) erect and maintain quays, docks, piers, wharves, jetties, and launching ramps:

(ii) carry out other works for improving, protecting, managing, or utilising the waters within its district:

(iii) carry out works to prevent the encroachment of waters within its district.

(2) Works constructed by a regional council or territorial authority under this section are the property of the council or authority.

(3) A regional council or territorial authority may not construct works, or levy tolls, on private land without the owner's consent.

(4) This section is subject to—

(a) the Resource Management Act 1991; and

(b) anything to the contrary in the Marine and Coastal Area (Takutai Moana) Act 2011.

Compare: 1974 No 66 s 650A; 1994 No 104 s 200

Section 33I: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Wrecks

Heading: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33J Removal of wrecks by regional council

(1) A regional council may take steps in accordance with this section to remove and deal with any wreck within its region that is a hazard to navigation.

(2) The regional council may—

(a) require the owner of the wreck, or an agent of the owner, to remove the wreck within a time and in a manner satisfactory to the regional council:

(b) destroy, dispose of, remove, take possession of, or sell a wreck (or any part of it) if—

(i) the regional council has made reasonable efforts to find the owner or agent; and

(ii) the owner or agent cannot be found or fails to remove the whole of the wreck within the time specified or in a manner satisfactory to the regional council.

(3) The regional council may reimburse itself from the proceeds of any sale of the wreck for any actual expenses incurred in removing the wreck (but must pay any balance owing to the owner of the wreck).

(4) The regional council may recover the expenses incurred in removing a wreck as a debt owed by the owner of the wreck in any court of competent jurisdiction.

Compare: 1974 No 66 s 650K

Section 33J: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33K Removal of wrecks by Director

(1) This section applies to any wreck in a regional council's region that is a hazard to navigation.

(2) The Director may require the regional council to—

(a) remove or deal with the wreck; or

(b) cause the owner (of the wreck), or an agent of the owner, to remove the wreck.

(3) If the regional council fails to remove or cause the owner, or an agent of the owner, to remove the wreck within 14 days of the Director requiring it to do so under subsection (2), the Director may take steps to remove the wreck, and for that purpose has all the powers of a regional council under section 33J.

Compare: 1974 No 66 s 650K(2)(f)

Section 33K: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33L Removal of abandoned ships

(1) This section applies where any ship (including a ship that is anchored or moored)—

(a) is in waters within the region of a regional council; and

(b) appears to have been abandoned by its owner.

(2) The regional council may remove, store, sell, or otherwise dispose of the ship in accordance with this section.

(3) The regional council may remove and store the ship (pending sale or other disposal) if—

(a) the council has notified the New Zealand Police of the proposal to remove the ship; and

(b) more than 1 month has elapsed since the council affixed a notice to the ship advising the owner that the ship may be removed, and sold or otherwise disposed of, in accordance with this section.

(4) The regional council must make reasonable efforts to—

(a) identify the owner and the ship's port of registry (if any) by reference to any of the following particulars if they are on or in the ship:

(i) the ship's name:

(ii) any distinctive number or letters:

(iii) the ship's IMO ship identification number:

(iv) the ship's port of registry:

(v) the ship's registration certificate:

(vi) any other certificate issued in respect of the ship in accordance with an international maritime convention:

(vii) if the ship is moored, any mooring or berthing contracts; and

(b) give notice to the owner of the ship of the council's intention to sell or otherwise dispose of the ship.

(5) The regional council must notify its intention to sell or otherwise dispose of the ship in 2 issues of a daily newspaper circulating in the region in which the ship is situated.

(6) Any notice under this section must contain—

(a) the name of the ship (if known); and

(b) a reasonable description of the ship, including its length and any distinctive numbers or letters; and

(c) the ship's IMO ship identification number (if known); and

(d) if applicable, the place from which the ship was removed under subsection (3); and

(e) if the ship is currently registered under the Ship Registration Act 1992, the name of the owner.

(7) If, after a search of the relevant ship register, the ship is found to be subject to a security interest, the regional council must, before selling or otherwise disposing of the ship, notify the holder of that interest of its intention to sell or otherwise dispose of the ship.

(8) The regional council may sell or otherwise dispose of a ship if—

(a) it has complied with subsections (4) to (7); and

(b) more than 1 month has elapsed since the date of the second notice under subsection (5).

(9) A person to whom a ship is sold or disposed of under subsection (8) becomes the lawful owner of the ship.

(10) The regional council may reimburse itself from the proceeds of any sale under subsection (8) for any actual expenses incurred in removing, storing, and selling the ship (but must pay any balance owing to the owner of the ship).

(11) If any ship is removed, sold, or otherwise disposed of, under this section, the owner must reimburse the regional council for any actual expenses incurred by the council in removing, storing, selling, or otherwise disposing of the ship, and, if the ship is claimed by the owner before it is sold or otherwise disposed of under this section, those expenses are payable before the owner takes delivery of the ship.

(12) The regional council may recover any actual expenses incurred in removing, storing, selling, or otherwise disposing of a ship under this section as a debt owed by the owner in any court of competent jurisdiction.

(13) This section is subject to sections 33J and 33K.

Compare: 1974 No 66 s 356

Section 33L: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Navigation bylaws

Heading: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33M Navigation bylaws

(1) For the purpose of ensuring maritime safety in its region, a regional council may, in consultation with the Director, make bylaws to—

(a) regulate and control the use or management of ships:

(b) regulate the placing and maintenance of moorings and maritime facilities:

(c) prevent nuisances arising from the use of ships and seaplanes:

(d) prevent nuisances arising from the actions of persons and things on or in the water:

(e) reserve the use of any waters for specified persons, ships, or seaplanes:

(f) in relation to boat races, swimming races, or similar events,—

(i) prohibit or regulate the use of ships:

(ii) regulate, or authorise the organisers of an event to regulate, the admission of persons to specified areas:

(g) regulate and control the use of anchorages:

(h) prescribe ship traffic separation and management schemes:

(i) specify requirements for the carriage and use of personal flotation devices and buoyancy aids on pleasure craft:

(j) require the marking and identification of personal water craft.

(1A) In relation to the launch of a vehicle or an object that a person has a licence or permit under New Zealand law to launch into outer space, a regional council may, in consultation with the Director, make bylaws—

(a) to prohibit or regulate the use of ships:

(b) to regulate, or authorise a person to regulate, the admission of persons to specified areas.

(1B) The agreement dated 16 September 2016 between Her Majesty the Queen in right of New Zealand acting by and through the Minister for Economic Development, Rocket Lab Limited (a company incorporated under the Companies Act 1993 under company number 1835428), and Rocket Lab USA (a corporation incorporated in the United States of America) is to be treated as a licence or permit under New Zealand law for the purposes of subsection (1A).

(2) Navigation bylaws made under subsection (1) or (1A) may not—

(a) limit or affect the ability of a port company or an operator of a commercial port to manage its operations within areas owned or controlled by it, except to the extent the regional council considers necessary in the interests of maritime safety:

(b) impose any charge in respect of the regional council's responsibilities in relation to oil pollution:

(c) impose licensing requirements in respect of any aspect of commercial shipping operations that is subject to any requirement contained in any maritime rule:

(d) be inconsistent with—

(i) regulations or rules made under this Act; or

(ii) the Resource Management Act 1991; or

(iii) the Lakes District Waterways Authority (Shotover River) Empowering Act 1985; or

(iv) the Northland Regional Council and Far North District Council Vesting and Empowering Act 1992.

(3) Navigation bylaws may specify the boundaries of any port, harbour, or waters to which the bylaws relate.

Compare: 1974 No 66 ss 684B, 684C, 684D, 684E, 684F

Section 33M: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 33M(1A): inserted, on 16 December 2017, by section 30(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 33M(1B): inserted, on 16 December 2017, by section 30(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 33M(2): amended, on 16 December 2017, by section 30(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

33N Offences relating to navigation bylaws

(1) Every person who breaches a navigation bylaw commits an offence against this Act punishable on conviction.

(2) The Governor-General may, by Order in Council, make regulations prescribing a fine not exceeding $2,500 for any offence under subsection (1).

(3) Every person who commits an offence under subsection (1) for which no penalty is provided for under subsection (2) is liable to a fine not exceeding $500.

(4) Despite section 25 of the Criminal Procedure Act 2011, a charging document for an offence against subsection (1) may be filed within 12 months of the time when the matter to which the charging document relates arose.

Compare: 1974 No 66 ss 683, 698, 699

Section 33N: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33O Infringement offences relating to navigation bylaws

(1) The Governor-General may, by Order in Council, make regulations—

(a) specifying which breaches of navigation bylaws are infringement offences:

(b) prescribing an infringement fee, not exceeding $1,000, for any infringement offence specified under paragraph (a):

(c) prescribing the form of infringement notices for infringement offences.

(2) A person who is alleged to have committed an infringement offence may be—

(a) proceeded against for the offence under the Summary Proceedings Act 1957; or

(b) served with an infringement notice.

Compare: 1974 No 66 ss 699A, 699B

Section 33O: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33P Infringement notices

(1) A harbourmaster, an enforcement officer, or a constable may serve an infringement notice on any person that he or she—

(a) observes committing an infringement offence; or

(b) has reasonable cause to believe—

(i) is committing an infringement offence; or

(ii) has committed an infringement offence.

(2) An infringement notice—

(a) is served if the notice or a copy of it is delivered personally to the person alleged to have committed the offence:

(b) is to be treated as served for the purposes of the Summary Proceedings Act 1957 if the notice or a copy of it has been posted to the last known place of residence or business of the person alleged to have committed the offence.

(3) Every infringement notice must be in the prescribed form and must contain the following:

(a) such details of the alleged infringement offence as are sufficient to fairly inform a person of the time, place, and nature of the alleged offence; and

(b) the amount of the infringement fee specified for that offence; and

(c) the address of the place at which the infringement fee may be paid; and

(d) the time within which the infringement fee must be paid; and

(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and

(f) a statement that the person served with the notice has a right to request a hearing; and

(g) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing; and

(h) any other prescribed particulars.

(4) If an infringement notice has been issued under this section, proceedings may be commenced in respect of the offence to which the notice relates in accordance with section 21 of the Summary Proceedings Act 1957, and the provisions of that section apply with all necessary modifications.

Compare: 1974 No 66 s 699C

Section 33P: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33Q Entitlement to infringement fees

A regional council is entitled to retain any infringement fee it receives in respect of an infringement offence—

(a) under section 33O if the infringement notice was issued by a harbourmaster or an enforcement officer of the council:

(b) under section 422 if—

(i) the infringement offence is a breach of a maritime rule or a navigation bylaw prescribed as an infringement offence by regulations made under section 201(1)(b); and

(ii) the infringement notice was issued under section 423 by a harbourmaster or an enforcement officer of the council.

Section 33Q: replaced, on 16 December 2017, by section 31 of the Maritime Transport Amendment Act 2017 (2017 No 48).

Fees and charges

Heading: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33R Fees and charges

(1) A regional council may, in accordance with section 150(3) to (6) of the Local Government Act 2002, prescribe fees and charges—

(a) in respect of any land, building, equipment, or other property that is owned by the council and operated for maritime-related purposes; or

(b) for any function, duty, power, or service performed, exercised, or provided by the council in respect of any ship, maritime facility, offshore installation, pipeline, oil transfer site, navigational aid, or marine farm; or

(c) for any maritime-related activities the council undertakes; or

(d) in respect of navigation generally.

(2) The regional council may fix such fees and charges on any differential basis (for example, on the size of a ship, or on the basis of the nature, the location, and use of a facility).

Compare: 1974 No 66 s 684B

Section 33R: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Port operations

Heading: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33S Responsibilities of port operators for maritime safety

Port operators must not operate, maintain, or service a port, or cause or permit a port to be operated, maintained, or serviced, in a manner that causes unnecessary danger or risk to—

(a) any ship; or

(b) any person or property that is on a ship or at sea.

Section 33S: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33T Inspections and audits of port operations

(1) The Director may require that any port company, port operator, or other person who operates, maintains, or services a commercial port, or who does any other act in respect of a commercial port, undergo or carry out inspections and audits that the Director considers necessary in the interests of ensuring maritime safety or preventing marine pollution.

(2) The Director may require that person to—

(a) provide any information the Director considers relevant to the inspection or audit:

(b) demonstrate his or her familiarity, or the familiarity of port personnel, with procedures essential for ensuring maritime safety or preventing marine pollution:

(c) demonstrate that any operational, maintenance, or servicing procedure that may affect maritime safety or the marine environment is capable of being carried out in a competent manner.

(3) Every person commits an offence who, without reasonable excuse, fails to comply with any requirement of the Director under this section.

(4) A person who commits an offence against subsection (3) is liable,—

(a) in the case of an individual, to a fine not exceeding $10,000 and, if the offence is a continuing one, to a further fine not exceeding $2,000 for every day or part of a day during which the offence is continued:

(b) in the case of a body corporate, to a fine not exceeding $100,000 and, if the offence is a continuing one, to a further fine not exceeding $20,000 for every day or part of a day during which the offence is continued:

(c) in any case, to an additional penalty under section 409.

Compare: 1994 No 104 ss 54, 70

Section 33T: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33U Prohibition or conditions on use or operation of port facilities

(1) The Director may prohibit or impose conditions on the use or operation of any commercial port if the Director reasonably believes that—

(a) the operation or use of that port, or any activity or operational, maintenance, or servicing procedure at that port, is likely to cause, has caused, or is likely to have caused an accident:

(b) port personnel are not familiar with procedures essential for ensuring maritime safety or preventing marine pollution:

(c) conditions previously imposed under this subsection are not being met.

(2) A prohibition or condition imposed under subsection (1) may be maintained only for so long as is necessary in the interests of—

(a) ensuring maritime safety:

(b) protecting the health or safety of any person on a ship or at sea:

(c) preventing marine pollution.

(3) Despite subsection (2), any document, information, or object that is required for evidence in any prosecution under this Act may be retained by the Director for any period that the Director considers necessary for that purpose.

(4) The Director must—

(a) notify the prohibitions or conditions made under this section to the persons he or she considers necessary in the manner the Director considers appropriate in the circumstances:

(b) provide the owner or the person for the time being in charge of the port with the reasons, in writing, for the prohibition or conditions.

(5) A person in respect of whom any decision is taken under this section may appeal against that decision to the District Court under section 424.

(6) Every person who, without reasonable excuse, acts in contravention of or fails to comply with any prohibition or condition imposed under this section commits an offence and is liable,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000.

Compare: 1994 No 104 s 55

Section 33U: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 33U(5): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

33V Dangerous activity at commercial port

(1) Every person commits an offence who operates, maintains, or services a commercial port, or who does any other act in respect of a commercial port, in a manner that causes unnecessary danger or risk to any ship, or any person or property on a ship or at sea, irrespective of whether any injury or damage occurs.

(2) Every person commits an offence who causes or permits a commercial port to be operated, maintained, or serviced, or who causes or permits any other act to be done in respect of a commercial port, in a manner that causes unnecessary danger or risk to any ship, or any person or property on a ship or at sea, irrespective of whether any injury or damage occurs.

(3) Every person commits an offence who fails to comply with a requirement of this Act in respect of a commercial port and that failure causes unnecessary danger or risk to any ship, or any person or property on a ship or at sea, irrespective of whether any injury or damage occurs.

(4) Every person commits an offence who omits to act, or who causes or permits another person to omit to act, in respect of a commercial port, knowing or being reckless as to whether danger or risk is caused to any ship or any person or property on a ship or at sea, and the omission causes unnecessary danger or risk to any ship, or any person or property on a ship or at sea.

(5) Every person who commits an offence against this section is liable,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000:

(c) in either case, to an additional penalty under section 409.

Compare: 1994 No 104 s 65

Section 33V: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Miscellaneous

Heading: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33W Crown harbours and facilities

(1) This section applies to waters (including inland waters), maritime facilities, and maritime works that are—

(a) owned or operated by the Crown; and

(b) not subject to the jurisdiction of a local authority.

(2) The Crown may—

(a) regulate, lease, and charge for the use of maritime facilities and maritime works:

(b) exercise maritime safety control over any area:

(c) do any other thing that a regional council or other local authority may do under this Part.

(3) For the purposes of this section, the responsible Minister is,—

(a) in the case of facilities or works under the control or management of the Department of Conservation, the Minister of Conservation:

(b) in the case of waters, facilities, or works under the control or management of the New Zealand Defence Force, the Minister of Defence:

(c) in any other case, the Minister of Local Government.

(4) The responsible Minister may, in consultation with the Director, make bylaws in accordance with section 33M.

(5) The Governor-General may, by Order in Council, make regulations relating to the use of the waters, maritime facilities, and maritime works to which this section applies that—

(a) provide for leasing, or charging for the use of, maritime facilities and maritime works:

(b) facilitate proof of any document or matter:

(c) extend periods of time and cure irregularities:

(d) prescribe forms and fees:

(e) prescribe fines not exceeding $500 for breaches of the regulations:

(f) in the case of continuing offences, prescribe further fines not exceeding $50 for every day that the offence continues:

(g) provide for such other matters as are contemplated by or necessary for giving full effect to the provisions of this section.

(6) In this section, **maritime facilities** includes—

(a) moorings, wharves, docks, quays, marinas, areas, or other places where ships are maintained; and

(b) launching ramps; and

(c) other launching facilities.

Compare: 1974 No 66 s 650I

Section 33W: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

33X Delegation or transfer of council's responsibilities

(1) A regional council or territorial authority may transfer to a council-controlled organisation or a port operator any of its responsibilities under this Part except—

(a) the power to transfer responsibilities under this section; and

(b) the power to appoint harbourmasters; and

(c) the power to make bylaws.

(2) A regional council may transfer any of its responsibilities under this Part to another public authority except the power to transfer responsibilities under this section.

(2A) A territorial authority may transfer its responsibilities under section 33I to another public authority.

(3) A public authority may delegate any of the responsibilities transferred to it under subsection (2) or (2A) to a port operator or a council-controlled organisation except any power to make bylaws.

(3A) The transfer of a responsibility described in section 33I does not have the effect of transferring ownership of any works constructed under that section.

(4) A transfer of a responsibility under this section may only be made if—

(a) the parties to the proposed transfer have agreed on the terms of the proposed transfer; and

(b) the parties to the proposed transfer have notified the Minister of the proposed transfer.

(4A) A local authority that is party to a proposed transfer must not agree to the transfer unless satisfied, after consultation in accordance with section 82 of the Local Government Act 2002, that the benefits of the proposed transfer to the authority's district or region will outweigh any negative impacts of the proposal.

(4B) From the time a transfer takes effect, the responsibilities and powers of the party receiving the transfer are extended as necessary to enable that party to undertake, exercise, and perform the transferred responsibilities.

(4C) A party to a transfer may, in accordance with this section, initiate—

(a) a variation of the terms of the transfer; or

(b) the reversal of the transfer.

(5) In this section, **council-controlled organisation** has the meaning given to it in section 6 of the Local Government Act 2002.

Compare: 1974 No 66 s 650J; 2002 No 84 s 161

Section 33X: inserted, on 23 October 2013, by section 7 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 33X(1): amended, on 16 December 2017, by section 32(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 33X(2A): inserted, on 16 December 2017, by section 32(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 33X(3): amended, on 16 December 2017, by section 32(3) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 33X(3A): inserted, on 16 December 2017, by section 32(4) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 33X(4): replaced, on 16 December 2017, by section 32(5) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 33X(4A): inserted, on 16 December 2017, by section 32(5) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 33X(4B): inserted, on 16 December 2017, by section 32(5) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 33X(4C): inserted, on 16 December 2017, by section 32(5) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Part 4
Further regulation of maritime activity

Maritime rules

34 Maritime rules relating to maritime documents

(1) Maritime rules made under this Part may require that a maritime document be held by or in respect of all or any of the following:

(a) New Zealand ships:

(b) all ships (including foreign ships) operating in New Zealand waters:

(c) the owners and operators of, and seafarers on, New Zealand ships or foreign ships operating in New Zealand waters:

(d) persons or organisations having a direct involvement in ship operations or ship or maritime product safety services:

(e) maritime products used on, by, or in relation to New Zealand ships or foreign ships operating in New Zealand waters:

(f) persons or organisations that provide—

(i) maritime training; or

(ii) the testing, inspecting, audit, or certification of ships or maritime products; or

(iii) the design, manufacture, or maintenance of ships or maritime products:

(g) shipping operations and management:

(h) shipping containers:

(i) navigational aid installations:

(j) such other persons, ships, maritime products, maritime-related services, facilities, and equipment as may be operated or engaged or used in New Zealand waters or in support of the maritime system.

(2) The requirements, standards, and application procedure for each maritime document, and the maximum period for which each document may be issued or recognised, as the case may be, shall be prescribed by maritime rules.

(3) Subject to any maritime rules, a maritime document may be issued or a document may be recognised as a maritime document, as the case may be, by the Director for such period and subject to such conditions as the Director considers appropriate in each particular case.

(4) Any person in respect of whom any decision is taken under this section may appeal against that decision to the District Court under section 424.

Compare: 1990 No 98 s 7

Section 34(1)(b): amended, on 9 June 1999, by section 3(a) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 34(1)(j): amended, on 23 October 2013, by section 8 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 34(1)(j): amended, on 9 June 1999, by section 3(b) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 34(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

35 Application for maritime document

(1) Every application for the grant or renewal of a maritime document or the recognition of a document as a maritime document shall be made to the Director in the prescribed form or, if there is no prescribed form, in such form as the Director may require.

(2) Every applicant for a maritime document shall include in his or her application his or her address for service in New Zealand including, where applicable, telephone and facsimile numbers.

(3) It shall be the duty of every holder of a maritime document to maintain the currency of the information provided under subsection (2) by promptly notifying the Director of any changes to the address, telephone number, or facsimile number.

(4) The Director shall ensure that a record of all information provided under this section is maintained at the Maritime Registry.

(5) Service of any notification under this Act on a holder of, or an applicant for, a maritime document shall be effective service if served at the address last provided by that holder or applicant under this section.

Compare: 1990 No 98 s 8; 1992 No 75 s 5

36 Maritime rules relating to other matters

(1) The Minister may from time to time make maritime rules that provide for all or any of the following:

(a) classifying ships as to type, nature of service, operating limits, or otherwise:

(b) the implementation of technical standards, codes of practice, performance standards, and other requirements of the conventions:

(c) standards and requirements for the design and construction of, or major alteration to, any ship:

(d) standards and requirements for the accommodation of seafarers or passengers on any commercial ship:

(e) the provision of medical supplies and facilities on any ship, their stowage, maintenance, and periodic inspection, and requiring medical officers on ships:

(ea) any matter that is contemplated by or necessary for giving full effect to Part 4B, including, without limitation—

(i) the prescribing of safety-sensitive activities; and

(ii) a scheme for carrying out drug and alcohol testing of safety-sensitive workers, including the prescribing of—

(A) testable drugs; and

(B) permissible levels of alcohol or testable drugs for testing purposes; and

(C) testing processes and procedures; and

(iii) the prescribing of matters to be stated in a document under section 40Z(5)(a)(iii); and

(iv) record keeping by operators and the Director:

(f) the requirements for the maintenance and periodic inspection or testing of the hull, machinery, and systems of any ship, safety equipment, or any maritime products of any ship:

(g) safe navigational and maritime operational and emergency procedures, including such procedures for any seaplane, and any training requirements in respect of such procedures:

(h) operational and emergency procedures for the assistance of persons in distress at sea and in respect of collisions:

(i) defining operating limits and pilotage limits:

(ia) requirements concerning pilotage, including when and where, and the classes of ships for which, pilotage is required or not required:

(j) standards and requirements for the safe management of commercial shipping operations:

(k) the recording and retention of operational information and the details of any reporting that is required by this Act:

(l) criteria for determining the maximum number of passengers or persons that may be carried on any ship and for assigning and marking load lines on any ship:

(m) standards and requirements for the carriage on a ship of any cargo, container, or personal property (including any item brought on to the ship by a passenger or other person, or carried in or on a vehicle on the ship); and standards and requirements concerning containers carried on a ship:

(n) the minimum number of seafarers to be employed on any commercial ship, their qualifications, and experience:

(o) standards, specifications, qualifications, restrictions, and licensing requirements for persons engaged in maritime activities, including any

medical requirements and requirements relating to the keeping of records of qualifications, restrictions, and licences:

(p) technical standards or requirements relating to the health and safety of seafarers:

(q) the format of maritime documents, forms, and applications:

(r) the requirements and criteria for determining the tonnage measurement, length, and size of any ship:

(s) the criteria and conditions under which foreign licences, permits, certificates, or other documents will be recognised by the Director under section 41:

(t) standards and requirements for maritime products (including safety equipment), and the maritime products to be carried on any ship:

(ta) standards and requirements for navigational aids:

(tb) regulating the conduct of ships in New Zealand waters or the conduct of ships in any defined part of New Zealand waters, for the purpose of securing safe navigation in those waters:

(tc) standards and requirements for port and harbour safety:

(td) ship traffic separation and management schemes:

(u) such matters as may be necessary—

(i) to enable New Zealand to become a party to any international convention, protocol, or agreement relating to maritime transport:

(ii) to implement such international practices or standards relating to maritime transport as may, from time to time, be recommended by the International Maritime Organisation:

(v) assisting maritime safety and security, including (but not limited to) personal security:

(w) assisting economic development:

(x) improving access and mobility:

(y) protecting and promoting public health:

(z) ensuring environmental sustainability:

(za) any matter related, or reasonably incidental, to any of the following:

(i) the Minister's objectives under section 5:

(ii) the Minister's functions under section 5A:

(iii) the Authority's objective under section 430:

(iv) the Authority's functions under section 431:

(v) the Director's functions under section 439:

(zb) any other matter contemplated by a provision of this Act.

(2) Without limiting anything in subsection (1), rules made under this section may apply to—

(a) river rafts:

(b) other manually powered water craft:

(c) water craft solely powered by sail:

(d) the operators, crew, and passengers of river rafts, other manually powered water craft, and water craft solely powered by sail.

Compare: 1990 No 98 s 28

Section 36(1): amended, on 16 December 2017, by section 33(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(c): amended, on 16 December 2017, by section 33(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(d): amended, on 16 December 2017, by section 33(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(e): amended, on 16 December 2017, by section 33(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(ea): inserted, on 16 December 2017, by section 4 of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(f): amended, on 16 December 2017, by section 33(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(g): amended, on 16 December 2017, by section 33(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(h): amended, on 16 December 2017, by section 33(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(i): replaced, on 16 December 2017, by section 33(3) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(ia): inserted, on 16 December 2017, by section 33(3) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(j): amended, on 16 December 2017, by section 33(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(k): amended, on 16 December 2017, by section 33(4)(a) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(k): amended, on 16 December 2017, by section 33(4)(b) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(l): amended, on 16 December 2017, by section 33(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(m): substituted, on 9 June 1999, by section 4(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 36(1)(m): amended, on 16 December 2017, by section 33(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(n): amended, on 16 December 2017, by section 33(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(o): amended, on 16 December 2017, by section 33(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(p): amended, on 16 December 2017, by section 33(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(q): amended, on 16 December 2017, by section 33(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(r): amended, on 16 December 2017, by section 33(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(s): amended, on 16 December 2017, by section 33(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(t): substituted, on 9 June 1999, by section 4(3) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 36(1)(t): amended, on 16 December 2017, by section 33(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(ta): inserted, on 9 June 1999, by section 4(3) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 36(1)(ta): amended, on 16 December 2017, by section 33(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(tb): inserted, on 9 June 1999, by section 4(3) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 36(1)(tc): inserted, on 23 October 2013, by section 9(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 36(1)(tc): amended, on 16 December 2017, by section 33(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(td): inserted, on 23 October 2013, by section 9(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 36(1)(td): amended, on 16 December 2017, by section 33(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(u): amended, on 16 December 2017, by section 33(5) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 36(1)(v): substituted, on 1 December 2004, by section 5 of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 36(1)(w): added, on 1 December 2004, by section 5 of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 36(1)(x): added, on 1 December 2004, by section 5 of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 36(1)(y): added, on 1 December 2004, by section 5 of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 36(1)(z): added, on 1 December 2004, by section 5 of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 36(1)(za): added, on 1 December 2004, by section 5 of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 36(1)(zb): added, on 1 December 2004, by section 5 of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 36(2): replaced, on 23 October 2013, by section 9(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

36A Power of Governor-General to make maritime rules

(1) The Governor-General may, by Order in Council, on the recommendation of the Minister, make maritime rules for any purpose for which the Minister may make maritime rules under this Part.

(2) An Order in Council made under subsection (1)—

(a) is a regulation or an instrument for the purposes of the Regulations (Disallowance) Act 1989; but

(b) is not a regulation or an instrument for the purposes of the Acts and Regulations Publication Act 1989.

(3) To avoid doubt,—

(a) the Governor-General may amend or revoke any maritime rule made by the Minister (as if the Governor-General had made the rule):

(b) the Minister may amend or revoke any maritime rule made by the Governor-General (as if the Minister had made the rule).

Section 36A: inserted, on 23 October 2013, by section 10 of the Maritime Transport Amendment Act 2013 (2013 No 84).

37 Power of Director to make emergency maritime rules

(1) The Director may from time to time make emergency maritime rules for any purpose for which the Minister may make maritime rules under this Part, if the Director considers that—

(a) such rules are necessary to alleviate or minimise any risk of the death of or a serious injury to any person, or of damage to any property; and

(b) it is not practicable in the circumstances of the particular case for the Minister to make maritime rules to effectively alleviate or minimise the risk concerned.

(2) The Minister may revoke any emergency maritime rule and the revocation shall be notified as if it were an emergency rule.

Compare: 1990 No 98 s 31

38 Contravention of emergency maritime rule

(1) Every person commits an offence who, without reasonable excuse, acts in contravention of or fails to comply with any emergency maritime rule made under section 37.

(2) Every person who commits an offence against subsection (1) is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $5,000:

(b) in the case of a body corporate, to a fine not exceeding $30,000.

Compare: 1990 No 98 s 53

Section 38(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Requirements in relation to maritime rules

39 Matters to be taken into account in making maritime rules

(1) Maritime rules and emergency maritime rules shall not be inconsistent with international standards relating to maritime safety, and the health and welfare of seafarers, to the extent adopted by New Zealand.

(2) In making any maritime rule, the Minister, the Governor-General, or the Director, as the case may be, shall have regard to, and shall give such weight as he or she considers appropriate in each case to, the following:

(a) the recommended international practices relating to maritime safety and to the health and welfare of seafarers:

(b) the level of risk existing to maritime safety in each proposed activity or service:

(c) the nature of the particular activity or service for which the rule is being established:

(d) the level of risk existing to maritime safety in New Zealand in general:

(e) the need to maintain and improve maritime safety and security, including (but not limited to) personal security:

(f) whether the proposed rule—

(i) assists economic development:

(ii) improves access and mobility:

(iii) promotes and protects public health:

(iv) ensures environmental sustainability:

(fa) the costs of implementing measures for which the rule is being proposed:

(g) the international circumstances in respect of maritime safety:

(h) such other matters as the Minister, the Governor-General, or the Director, as the case may be, considers appropriate in the circumstances.

Compare: 1990 No 98 s 33

Section 39(1): amended, on 23 October 2013, by section 11(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 39(2): amended, on 23 October 2013, by section 11(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 39(2)(e): substituted, on 1 December 2004, by section 6 of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 39(2)(f): substituted, on 1 December 2004, by section 6 of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 39(2)(fa): inserted, on 1 December 2004, by section 6 of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 39(2)(h): amended, on 23 October 2013, by section 11(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

40 Further provisions relating to rules

The provisions of sections 446 to 452 apply in relation to rules made under this Part.

Part 4A
Regulation of alcohol consumption by seafarers

Part 4A: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40A Interpretation

In this Part, unless the context otherwise requires,—

accompany, in relation to the accompanying of an enforcement officer to a place, includes remaining with an enforcement officer at a place, whether or not a journey is involved

approved analyst means—

(a) a person who is designated by the Science Minister, by notice in the *Gazette*, as the analyst in charge of an approved laboratory; or

(b) a person who works in an approved laboratory and who is authorised, by the analyst in charge of that laboratory, to act as an approved analyst, either generally or in a particular case

approved laboratory means a laboratory approved by the Science Minister, by notice in the *Gazette*, for the purposes of analysing blood specimens taken for the purposes of this Part or Part 6 of the Land Transport Act 1998

blood specimen has the same meaning as in section 2(1) of the Land Transport Act 1998

blood specimen collecting instrument has the same meaning as in section 2(1) of the Land Transport Act 1998

blood specimen collecting kit has the same meaning as in section 2(1) of the Land Transport Act 1998

blood specimen collecting procedure has the same meaning as in section 2(1) of the Land Transport Act 1998

blood test means the analysis of a blood specimen

blood test fee has the same meaning as in section 2(1) of the Land Transport Act 1998

breath screening device has the same meaning as in section 2(1) of the Land Transport Act 1998

breath screening test has the same meaning as in section 2(1) of the Land Transport Act 1998

Commissioner means the Commissioner of Police

court means the District Court

designated safety, security, or marine environmental duties means, in relation to a ship, the duties identified as safety, security, or marine environmental duties in any of the following documents:

(a) a document outlining the safety management system of the ship:

(b) a document outlining the shipboard procedures for the ship:

(c) the employment contract for an individual seafarer

doctor's surgery means a medical practitioner's surgery or any other place where a medical examination or medical care or treatment is carried out or given, including (but not limited to) a place on board a ship

enforcement officer means—

(a) a constable:

(b) a Police employee (other than a constable) who is authorised for the purpose by the Commissioner

evidential breath test has the same meaning as in section 2(1) of the Land Transport Act 1998

evidential breath-testing device has the same meaning as in section 2(1) of the Land Transport Act 1998

hospital means a hospital care institution within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001

lawyer has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006

medical expenses means the expenses incurred by a medical practitioner or medical officer in taking a blood specimen

medical officer means—

(a) a person acting in a hospital and who, in the normal course of the person's duties, takes blood specimens; or

(b) a nurse; or

(c) a medical laboratory technologist

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

passive breath-testing device has the same meaning as in section 2(1) of the Land Transport Act 1998

positive, in relation to an evidential breath test, means an evidential breath test that indicates that the proportion of alcohol in the breath of the seafarer who underwent the test exceeds 250 micrograms of alcohol per litre of breath

private analyst has the same meaning as in section 2(1) of the Land Transport Act 1998

Science Minister has the same meaning as in section 2(1) of the Land Transport Act 1998

seafarer means a master, an officer, a member of the watch personnel, or a crew member of a vessel, who is subject to the STCW Convention

STCW Convention means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers done at London on 7 July 1978 (as amended on 7 July 1995 and 25 June 2010).

Section 40A: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 40A **court**: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

40B Seafarers not to exceed specified alcohol limits

A seafarer may not perform, or attempt to perform, designated safety, security, or marine environmental duties on a ship while—

(a) the proportion of alcohol in the seafarer's breath, as ascertained by an evidential breath test subsequently undergone by the seafarer under section 40I, exceeds 250 micrograms of alcohol per litre of breath; or

(b) the proportion of alcohol in the seafarer's blood, as ascertained from an analysis of a blood specimen subsequently taken from the seafarer under section 40L or 40M, exceeds 50 milligrams of alcohol per 100 millilitres of blood.

Compare: 1998 No 110 s 11

Section 40B: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40C Contravention of specified breath or blood-alcohol limit

(1) A seafarer commits an offence if the seafarer performs, or attempts to perform, designated safety, security, or marine environmental duties while the proportion of alcohol in the seafarer's breath, as ascertained by an evidential breath test subsequently undergone by the seafarer under section 40I, exceeds 250 micrograms of alcohol per litre of breath.

(2) A seafarer commits an offence if the seafarer performs, or attempts to perform, designated safety, security, or marine environmental duties while the proportion of alcohol in the seafarer's blood, as ascertained from an analysis of a blood specimen subsequently taken from the seafarer under section 40L or 40M, exceeds 50 milligrams of alcohol per 100 millilitres of blood.

(3) If a seafarer is convicted of an offence against subsection (1) or (2), the maximum penalty is imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000.

Compare: 1998 No 110 s 56

Section 40C: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40D Failure or refusal to remain at specified place or to accompany enforcement officer

(1) A seafarer commits an offence if the seafarer—

(a) fails or refuses to remain at the place where the seafarer underwent a breath screening test under section 40H until after the result of the test is ascertained; or

(b) fails or refuses to accompany without delay an enforcement officer to a place when required to do so under section 40I or 40L; or

(c) having accompanied an enforcement officer to a place under a requirement under section 40I or 40L,—

(i) fails or refuses to remain at that place until the seafarer is required to undergo an evidential breath test or a blood test; or

(ii) fails or refuses to accompany an enforcement officer to another place under any of those sections; or

(d) having undergone an evidential breath test under a requirement under section 40I, fails or refuses to remain at the place where the seafarer underwent the test until after the result of the test is ascertained.

(2) If a seafarer is convicted of an offence against subsection (1), the maximum penalty is a term of imprisonment not exceeding 12 months or a fine not exceeding $10,000.

Compare: 1998 No 110 s 59

Section 40D: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40E Failure or refusal to permit blood specimen to be taken

(1) A seafarer commits an offence if the seafarer—

(a) fails or refuses to permit a blood specimen to be taken after having been required to do so under section 40L by an enforcement officer; or

(b) fails or refuses to permit a blood specimen to be taken without delay after having been requested to do so under section 40L by a medical practitioner or medical officer; or

(c) is a person from whom a medical practitioner or medical officer may take a blood specimen under section 40M and refuses or fails to permit a medical practitioner or medical officer to take a blood specimen.

(2) If a seafarer is convicted of an offence against subsection (1), the maximum penalty is imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000.

Compare: 1998 No 110 s 60

Section 40E: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40F Defences

(1) It is a defence to proceedings for an offence against section 40E if the court is satisfied, on the evidence of a medical practitioner, that the taking of a blood specimen from the defendant would have been prejudicial to the defendant's health.

(2) It is no defence to proceedings for an offence against this Part that a provision forming part of sections 40H to 40P and 40R has not been strictly complied with or has not been complied with at all, provided there has been reasonable compliance with such of those provisions as apply.

(3) It is no defence to proceedings for an offence against section 40E that—

(a) there was or may have been an error in the result of the breath screening test or evidential breath test; or

(b) the occurrence or likely occurrence of any such error did not entitle or empower a person to request or require an evidential breath test or a blood test.

(4) It is no defence to proceedings for an offence against this Part in respect of the proportion of alcohol in a defendant's breath that—

(a) there was or may have been an error in the result of the breath screening test or evidential breath test; or

(b) the occurrence or likely occurrence of any such error did not entitle or empower a person to request or require an evidential breath test.

(5) It is no defence to proceedings for an offence against this Part in respect of the proportion of alcohol in a defendant's blood that—

(a) there was or may have been an error in the result of the breath screening test or evidential breath test; or

(b) the occurrence or likely occurrence of any such error did not entitle or empower a person to request or require an evidential breath test or a blood test.

Compare: 1998 No 110 s 64

Section 40F: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40G Blood test fee

(1) A seafarer who, having undergone a blood test, is convicted of an offence against section 40C(2) is liable to pay the blood test fee that applied on the day on which the offence was committed and any associated medical expenses; and the blood test fee and any associated medical expenses are deemed to be a fine imposed on the conviction of the seafarer for the offence.

(2) The medical expenses referred to in subsection (1) may not exceed the actual and reasonable medical expenses associated with the taking of a blood specimen.

Compare: 1998 No 110 s 67

Section 40G: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40H Who must undergo breath screening test

(1) An enforcement officer may require a seafarer to undergo a breath screening test without delay if—

(a) the officer has good cause to suspect that the seafarer has recently committed an offence against section 40C; or

(b) a safety, security, or marine environmental incident involving the use of the ship has occurred while the seafarer was performing designated safety, security, or marine environmental duties and the officer has good cause to suspect that alcohol was a contributing factor.

(2) An enforcement officer may not require a seafarer who is in a hospital or doctor's surgery as a result of a safety, security, or marine environmental incident involving the use of a ship to undergo a breath screening test.

(3) A seafarer who has undergone a breath screening test under this section must remain at the place where the seafarer underwent the test until after the result of the test is ascertained, and an enforcement officer may arrest the seafarer without warrant if the seafarer refuses or fails to remain at that place.

(4) If an enforcement officer may require a seafarer to undergo a breath screening test, the enforcement officer may also require that seafarer to undergo a test using a passive breath-testing device by holding a passive breath-testing device near the seafarer's mouth for the purpose of ascertaining whether or not there is any alcohol in the seafarer's breath.

(5) The use or non-use of a passive breath-testing device does not of itself affect the validity of a breath screening test.

Compare: 1998 No 110 s 68

Section 40H: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40I Who must undergo evidential breath test

(1) An enforcement officer may require a seafarer to accompany an enforcement officer to a place where it is likely that the seafarer can undergo an evidential breath test or a blood test (or both) when required to do so by the officer if—

(a) the seafarer has undergone a breath screening test under section 40H and it appears to the officer that the proportion of alcohol in the breath of the seafarer who underwent the test exceeds 250 micrograms of alcohol per litre of breath; or

(b) the seafarer fails or refuses to undergo a breath screening test without delay after having been required to do so by the officer under section 40H; or

(c) the officer has good cause to suspect that the seafarer has consumed alcohol and the seafarer could be required to undergo a breath screening test without delay under section 40H but the seafarer cannot be tested because—

(i) a breath screening device is not readily available; or

(ii) a breath screening test cannot, for any reason, be carried out then.

(2) If it is not practicable for a seafarer to undergo an evidential breath test at a place to which the seafarer has accompanied an enforcement officer under subsection (1), an enforcement officer may require the seafarer to accompany the officer to any other place where it is likely that the seafarer can undergo an evidential breath test or a blood test (or both).

(3) An enforcement officer may require a seafarer to accompany the officer to a place under subsection (1) if—

(a) it is likely that the seafarer can undergo an evidential breath test at that place, whether or not it is likely that the seafarer can undergo a blood test at that place; or

(b) it is likely that the seafarer can undergo a blood test at that place, whether or not it is likely that the seafarer can undergo an evidential breath test at that place.

(4) An enforcement officer may require a seafarer to undergo without delay at that place an evidential breath test (whether or not the seafarer has already undergone a breath screening test) if the seafarer—

(a) has accompanied the enforcement officer; or

(b) has been arrested under subsection (6) and taken to or detained at a place.

(5) A seafarer must—

(a) accompany the officer to a place when required to do so under this section:

(b) if the seafarer has accompanied an enforcement officer to a place under this section, remain at that place until the seafarer is required either to undergo an evidential breath test or a blood test under this Part, or to accompany an enforcement officer to another place under this section:

(c) if the seafarer has undergone an evidential breath test under this section, remain at the place where the seafarer underwent the test until after the result of the test is ascertained.

(6) An enforcement officer may arrest without warrant a seafarer who contravenes subsection (5).

(7) An enforcement officer may not require a seafarer who is in a hospital or doctor's surgery as a result of a safety, security, or marine environmental incident involving the use of a ship to undergo an evidential breath test.

Compare: 1998 No 110 s 69

Section 40I: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40J Seafarer may be required to undergo further evidential breath test if initial test fails to produce result

(1) If for any reason an evidential breath test carried out under section 40I fails to produce a result, the enforcement officer may, at his or her discretion, either require the seafarer to undergo without delay a further evidential breath test or proceed as if section 40L(1)(c) applies.

(2) A requirement made under subsection (1) is deemed to be a requirement under section 40I(4).

Compare: 1998 No 110 s 70

Section 40J: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40K Right to elect blood test

If the result of a seafarer's evidential breath test appears to be positive, the seafarer has the right, within 10 minutes of being advised by an enforcement officer of the matters specified in section 40R(3)(a), to elect to have a blood test to assess the proportion of alcohol in his or her blood.

Compare: 1998 No 110 s 70A

Section 40K: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40L Who must give blood specimen at places other than hospital or surgery

(1) A seafarer must permit a medical practitioner or medical officer to take a blood specimen from the seafarer when required to do so by an enforcement officer if—

(a) the seafarer fails or refuses to undergo without delay an evidential breath test after having been required to do so by an enforcement officer under section 40I; or

(b) the seafarer has undergone an evidential breath test under section 40I(4), and—

(i) it appears to the officer that the test is positive; and

(ii) within 10 minutes of being advised by an enforcement officer of the matters specified in section 40R(3)(a), the seafarer advises the officer that the seafarer wishes to undergo a blood test; or

(c) an evidential breath testing device is not readily available at the place to which the seafarer has accompanied an enforcement officer under sec-

tion 40I (whether or not at the time the requirement was made it was likely that the seafarer could undergo an evidential breath test at that place) or to which the seafarer has been taken under arrest (as the case may be), or for any reason an evidential breath test cannot then be carried out at that place; or

(d) the officer has arrested the seafarer under section 40U and has good cause to suspect that the seafarer has committed an offence against any of sections 40C to 40E, and—

(i) a medical practitioner has examined the seafarer and believes that the seafarer may be under the influence of alcohol; or

(ii) the seafarer has refused to be examined by a medical practitioner for the purposes of this paragraph.

(2) An enforcement officer may exercise the powers in subsection (1) in addition to any breath screening tests under section 40H or evidential breath tests under section 40I.

(3) A seafarer who has been required by an enforcement officer under subsection (1) to permit the taking of a blood specimen must, without delay after being requested to do so by a medical practitioner or medical officer, permit that medical practitioner or medical officer to take a blood specimen from the seafarer.

(4) If it is not practicable for a blood specimen to be taken from a seafarer by a medical practitioner or medical officer at a place where the seafarer has been required under this section to permit the taking of a blood specimen, the seafarer must accompany an enforcement officer to any other place where it is likely that a blood specimen can be taken from the seafarer by a medical practitioner or medical officer if the officer requires the seafarer to do so.

(5) If a blood specimen taken under this section is insufficient for the purposes of the relevant blood specimen collecting procedure,—

(a) the seafarer from whom the specimen was taken must permit a medical practitioner or medical officer to take a further blood specimen immediately after being requested to do so by the medical practitioner or medical officer; and

(b) a further blood specimen so taken is to be treated as part of the original blood specimen taken from the seafarer.

(6) An enforcement officer may arrest a seafarer without warrant if the seafarer—

(a) fails or refuses to accompany an enforcement officer to a place when required to do so under this section; or

(b) having accompanied an enforcement officer to a place under this section, fails or refuses to remain at that place until requested by a medical prac-

titioner or medical officer to permit a blood specimen to be taken under this section.

Compare: 1998 No 110 s 72

Section 40L: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40M Who must give blood specimen in hospital or surgery

(1) A person who is under examination, care, or treatment in a hospital or doctor's surgery must permit a blood specimen to be taken from the person by—

(a) the medical practitioner who is in immediate charge of the examination, care, or treatment of the person; or

(b) another medical practitioner or a medical officer.

(2) If a person under examination, care, or treatment in a hospital or doctor's surgery is unconscious, a blood specimen may be taken from the person under this section by—

(a) the medical practitioner who is in immediate charge of the examination, care, or treatment of the person; or

(b) another medical practitioner or a medical officer.

(3) Whether or not a person has consented to the taking of the specimen and whether or not the person is capable of giving consent, the medical practitioner who is in immediate charge of the examination, care, or treatment of the person in a hospital or doctor's surgery—

(a) may take a blood specimen or cause a blood specimen to be taken by another medical practitioner or a medical officer; and

(b) must either take a blood specimen or cause a blood specimen to be taken by another medical practitioner or a medical officer, if an enforcement officer requests him or her to do so.

(4) If the specimen originally taken is insufficient for the purposes of the relevant blood specimen collecting procedure, the medical practitioner who is in immediate charge of the examination, care, or treatment of the person may take or cause to be taken by another medical practitioner or a medical officer a further blood specimen (which further specimen is for the purposes of this Part to be treated as a part of the original blood specimen taken from the person), whether or not the person has consented to the taking of the specimen and whether or not the person is capable of giving consent.

(5) Despite subsections (1) to (4), a blood specimen may be taken from a person under any provision of this section only if the medical practitioner or medical officer—

(a) has reasonable grounds to suspect that the person—

(i) is a seafarer; and

(ii) is in the hospital or doctor's surgery as a result of—

(A) an accident or incident involving the use of a ship:

(B) an injury or a medical condition arising subsequent to an accident or incident involving the use of a ship; and

(b) has examined the person and is satisfied that the taking of the blood specimen would not be prejudicial to the person's proper care or treatment; and

(c) tells the person (unless the person is unconscious) that the blood specimen is being or was taken under this section for evidential purposes.

(6) If a blood specimen is taken under this section from a person who is unconscious, the medical practitioner or medical officer who took the specimen must notify the person in writing as soon as practicable that the specimen was taken under this section for evidential purposes.

(7) No civil or criminal proceedings may be taken against the Crown, a district health board, or any other person in respect of the taking of a blood specimen under this section, or in respect of the sending of a blood specimen to an approved laboratory, on the ground of lack of consent of a person whose consent to the taking of the blood specimen would have been otherwise required by law if this section had not been enacted.

(8) Nothing in subsection (7) applies to any proceeding on the ground of any negligent act or omission in the taking of a blood specimen.

Compare: 1998 No 110 s 73

Section 40M: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40N Procedure for dealing with blood specimens

(1) A blood specimen taken under section 40L or 40M must be dealt with in accordance with the relevant blood specimen collecting procedure.

(2) In the case of a blood specimen taken under section 40L, an enforcement officer must, within 7 days after the date on which the specimen was taken, deliver or cause to be delivered (whether by courier or otherwise), or post by registered post or cause to be posted by registered post, the blood specimen to an approved laboratory for its analysis and custody in accordance with the relevant blood specimen collecting procedure.

(3) In the case of a blood specimen taken under section 40M, the medical practitioner or medical officer by whom the specimen was taken must,—

(a) within 7 days after the date on which the specimen was taken, deliver or cause to be delivered (whether by courier or otherwise), or post or cause to be posted by registered post, the blood specimen to an approved laboratory for its analysis and custody in accordance with the relevant blood specimen collecting procedure; and

(b) if, at the time the blood specimen is taken, there is more than 1 approved laboratory, give the Commissioner written notification of—

(i) the approved laboratory to which the blood specimen was (or is being) delivered or posted; and

(ii) the seafarer from whom the blood specimen was taken.

(4) If a seafarer from whom a blood specimen was taken wishes to have the specimen analysed by a private analyst,—

(a) the seafarer (or the seafarer's lawyer) may apply to the Commissioner in accordance with subsection (6); and

(b) if the application complies with subsection (6),—

(i) the Commissioner, or a person authorised for the purpose by the Commissioner, must forward a copy of the application to the approved laboratory to which the blood specimen taken from the seafarer was delivered or posted under subsection (2) or (3); and

(ii) that laboratory must send by registered post, personal delivery, or delivery by courier the blood specimen, held for the purpose, to the private analyst specified in the application.

(5) If an application under subsection (4) does not comply with subsection (6), the Commissioner or authorised person may refuse to forward a copy of the application to the approved laboratory.

(6) An application under subsection (4)(a) must—

(a) be made in writing to the Commissioner not later than 28 days after—

(i) the date on which a summons in respect of an offence against this Part (which offence is an offence arising out of the circumstances in respect of which the blood specimen was taken) is served on the defendant; or

(ii) if the defendant is arrested under a warrant under section 34 of the Criminal Procedure Act 2011 in respect of any such offence, the date on which the defendant is arrested; or

(iii) in any case to which subparagraph (i) or (ii) does not apply, the date on which the defendant is first charged in court with any such offence; and

(b) state the full name, address, and occupation of the defendant and the date of the alleged offence; and

(c) identify the private analyst to whom the part of the blood specimen is to be sent and the address of the private analyst.

(7) A blood specimen sent to an approved laboratory under subsection (2) or (3) may be destroyed at any time later than 1 year after the date the specimen was so sent.

Compare: 1998 No 110 s 74

Section 40N: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40O Certificates in proceedings

(1) Except as provided in section 40S, production of a certificate to which this section applies in proceedings for an offence against this Part is sufficient evidence, in the absence of proof to the contrary, of the matters that are stated in the certificate and of the sufficiency of the authority and qualifications of the person by whom the certificate is made and, in the case of a certificate referred to in subsection (5), of the person who carried out the analysis.

(2) This section applies to a certificate purporting to be signed by a medical practitioner or medical officer and certifying that—

(a) a specimen of venous blood was taken by the medical practitioner or medical officer in accordance with the blood specimen collecting procedure specified in the certificate from a person named in the certificate; and

(b) for the purposes of the specified blood specimen collecting procedure,—

(i) the specimen was sufficient; or

(ii) the specimen was insufficient and the medical practitioner or medical officer took a further specimen; and

(c) in accordance with the specified blood specimen collecting procedure, the medical practitioner or medical officer kept the specimen in the appropriate container or containers (as applicable); and

(d) each container was received by the medical practitioner or medical officer in a sealed blood specimen collecting kit; and

(e) the medical practitioner or medical officer handed each container to an enforcement officer named in the certificate.

(3) This section also applies to a certificate purporting to be signed by a medical practitioner and certifying that—

(a) the person named in the certificate was in a hospital or doctor's surgery; and

(b) the medical practitioner, being a medical practitioner in immediate charge of the examination, care, or treatment of that person, took a blood specimen or caused a blood specimen to be taken by any other medical practitioner or any medical officer from the person under section 40M; and

(c) the medical practitioner has reasonable grounds to suspect that the person—

(i) is a seafarer; and

(ii) was in the hospital or doctor's surgery as a result of—

(A) an accident or incident involving a ship:

(B) an injury or a medical condition arising subsequent to an accident or incident involving the use of a ship; and

(d) before taking the blood specimen or causing the blood specimen to be taken from the person, the medical practitioner examined the person and was satisfied that the taking of the blood specimen would not be prejudicial to the person's proper care or treatment; and

(e) the medical practitioner—

(i) told the person that the blood specimen was being or had been taken under section 40M for evidential purposes; or

(ii) if the person was unconscious when the specimen was taken, notified the person in writing as soon as practicable that the blood specimen was taken under section 40M for evidential purposes.

(4) This section also applies to a certificate purporting to be signed by a medical practitioner or medical officer and certifying—

(a) all the matters referred to in subsection (2)(a) to (d); and

(b) that the medical practitioner or medical officer sent or caused to be sent by registered post, personal delivery, or delivery by courier, on a specified date, the specimen to a specified approved laboratory in accordance with section 40N; and

(c) that, if at the time the blood specimen was taken more than 1 approved laboratory existed, the medical practitioner or medical officer had notified the Commissioner in writing of the approved laboratory to which the specimen was delivered or posted.

(5) This section also applies to a certificate purporting to be signed by an approved analyst and certifying that—

(a) a blood specimen in a sealed container was, on a specified date, delivered to an approved analyst (or a person employed by an approved laboratory and approved for the purpose by an approved analyst) for analysis, and was delivered by registered post or personal delivery or delivery by courier; and

(b) on analysis of the blood specimen by an analyst specified in the certificate, the presence or a specified proportion of alcohol was found in the specimen; and

(c) no such deterioration or congealing of the specimen was found as would prevent a proper analysis.

(6) This section also applies to a certificate purporting to be signed by an approved analyst and certifying that, following an application under section 40N, a blood specimen was posted to a specified private analyst by registered post, personal delivery, or delivery by courier, and addressed to the private analyst at the address given in the application.

(7) For the purposes of this section, it is not necessary for the person making a certificate to specify his or her entitlement to give the certificate if the certificate

indicates that the person belongs to the general category of persons who may make the certificate.

Compare: 1998 No 110 s 75

Section 40O: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40P Certificates of compliance for evidential breath-testing devices

(1) An evidential breath-testing device must be supported by a certificate of compliance given under this section or section 75A of the Land Transport Act 1998 by a person authorised for the purpose by the Science Minister.

(2) At any trial or defended hearing for an offence involving excess breath alcohol recorded by the device (being an offence committed on or after the commencement of this section), the prosecution must produce to the court a certified copy of the certificate of compliance, and the certificate must be provided by a person authorised for the purpose by the Commissioner and must state that the copy is a true copy of the original certificate.

(3) Subject to subsection (4), a certificate of compliance or a certified copy of it that is produced under subsection (2) is for all purposes conclusive evidence of the matters stated in the certificate, and neither the matters stated in the certificate nor the manufacturer's specifications for the device concerned may be challenged, called into question, or put in issue in any proceedings in respect of an offence involving excess breath alcohol recorded by the device.

(4) In the absence of proof to the contrary, a document purporting to be a certificate of compliance or a certified copy of a certificate of compliance—

(a) must be treated as such a certificate or certified copy; and

(b) is conclusive evidence of the sufficiency of the authority of the person who signed the document.

(5) After consultation with the Minister and the Minister of Justice, the Minister of Police must, by notice in the *Gazette*, specify for each kind of evidential breath-testing device the matters that are required to be stated in a certificate of compliance.

(6) Without limiting subsection (5), the notice given under subsection (5) must—

(a) be, in the case of any kind of evidential breath-testing device approved after the commencement of this section, given in conjunction with the notice approving that kind of device:

(b) specify the maximum period of service for the relevant kind of device, and must require a certificate of compliance to specify the date on which that period began or begins:

(c) specify the maximum period permitted between the date on which a certificate of compliance is issued and the date by which a test result must be obtained, and must require a certificate of compliance to specify the date on which the certificate of compliance was issued:

(d) require a certificate of compliance to include a statement to the effect that the device is being maintained in accordance with the manufacturer's specifications.

Compare: 1998 No 110 s 75A

Section 40P: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40Q Presumptions relating to blood specimens

(1) In proceedings for an offence against this Part, it is to be presumed, in the absence of proof to the contrary, that,—

(a) if a certificate referred to in section 40P names a person having the same name, address, and occupation as the defendant as the person from whom the specimen of blood was taken, the specimen was taken from the defendant:

(b) every approved analyst who signed a certificate referred to in section 40O(5) was duly authorised to sign it:

(c) if the container in which a blood specimen (or part of a blood specimen) was placed was received by a medical practitioner or medical officer in a sealed blood specimen collecting kit, the container contained a substance (whether or not a combination or mixture of 2 or more substances) and that substance was a preservative and anti-coagulant.

(2) On the request of a person from whom a blood specimen has been taken under section 40L or 40M, or of the person's lawyer, copies of any certificates referred to in subsection (1) that relate to that blood specimen must be supplied by the prosecutor to the person making the request.

Compare: 1998 No 110 s 76

Section 40Q: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40R Presumptions relating to alcohol-testing

(1) For the purposes of proceedings for an offence against this Part arising out of the circumstances in which an evidential breath test was undergone by the defendant, it is to be conclusively presumed that the proportion of alcohol in the defendant's breath at the time of the alleged offence was the same as the proportion of alcohol in the defendant's breath indicated by the test.

(2) For the purposes of proceedings for an offence against this Part arising out of the circumstances in which a blood specimen was taken from the defendant under section 40L or 40M, it is to be conclusively presumed that the proportion of alcohol in the defendant's blood at the time of the alleged offence was the same as the proportion of alcohol in the blood specimen taken from the defendant.

(3) Except as provided in subsection (4), the result of a positive evidential breath test is not admissible in evidence in proceedings for an offence against any of sections 40C to 40E if—

(a) the seafarer who underwent the test is not advised by an enforcement officer, without delay after the result of the test is ascertained, that the test was positive and that, if the seafarer does not request a blood test within 10 minutes, in the case of a positive test that indicates that the proportion of alcohol in the seafarer's breath exceeds 250 micrograms of alcohol per litre of breath, the test could of itself be conclusive evidence to lead to that seafarer's conviction for an offence against this Part; or

(b) the seafarer who underwent the test—

(i) advises an enforcement officer, within 10 minutes of being advised of the matters specified in paragraph (a), that the seafarer wishes to undergo a blood test; and

(ii) complies with section 40L(3).

(4) Subsection (3)(a) does not apply if the seafarer who underwent the test fails or refuses to remain at the place where the seafarer underwent the test until the seafarer can be advised of the result of the test.

(5) If it is proved in proceedings for an offence against section 40E that the defendant failed or refused, without reasonable cause, to comply with section 40H, 40I, 40J, 40L, or 40M, or any lawful requirement, direction, or request made by an enforcement officer under any of those sections, or any lawful requirement or request made by a medical practitioner or medical officer under section 40L or 40M, the failure or refusal may be treated as supporting any evidence given on behalf of the prosecution, or as rebutting any evidence given on behalf of the defendant, concerning the defendant's condition at the time of the alleged offence.

Compare: 1998 No 110 s 77

Section 40R: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40S Circumstances in which certificate not admissible in proceedings

(1) A certificate referred to in section 40O(2), (3), or (4) is not admissible in evidence in proceedings for an offence against this Part if the court, on application made by the defendant not less than 14 days before the hearing, orders that the medical practitioner or medical officer who gave the certificate must appear as a witness at the hearing.

(2) No certificate referred to in section 40O(5) is admissible in evidence in proceedings for an offence against this Part if—

(a) an application has been made in accordance with section 40N for the blood specimen to be sent to a private analyst; and

(b) the specimen has not been sent to the private analyst in compliance with the application.

(3) However, subsection (2) does not apply in respect of a specimen destroyed under the authority of section 40N(7) before the date of the application.

(4) No certificate referred to in section 40O(5) or (6) is admissible in evidence in proceedings for an offence against this Part if the court, on application made by the defendant not less than 14 days before the hearing, orders that,—

(a) in the case of a certificate referred to in section 40O(5), the person who made the analysis or the approved analyst who gave the certificate ought to appear as a witness at the hearing; or

(b) in the case of a certificate referred to in section 40O(6), the person who posted or delivered the specimen, or the person who gave the specimen to the courier, or the approved analyst who gave the certificate ought to appear as a witness at the hearing.

(5) The court may not make an order under subsection (4) unless the application made by the defendant under that subsection is accompanied by an affidavit, sworn by the private analyst who is specified in the defendant's application under section 40N, to the effect that,—

(a) since the date given to the private analyst as the date on which application was made under section 40N for the sending to the analyst of a blood specimen relating to the defendant, the analyst has not received any such specimen; or

(b) the blood specimen received by the private analyst relating to the defendant—

(i) was not suitable for analysis; or

(ii) was suitable for analysis but, for specified reasons, that analysis was not carried out; or

(iii) was suitable for analysis and that analysis was carried out but, for specified reasons, the results of the analysis are not available; or

(c) the blood specimen received by the private analyst relating to the defendant has been analysed and found to contain not more than 50 milligrams of alcohol per 100 millilitres of blood; or

(d) the blood specimen received by the private analyst relating to the defendant has been analysed and found to contain 20 milligrams or more of alcohol per 100 millilitres of blood more or less than the proportion of alcohol per 100 millilitres of blood specified in the certificate referred to in section 40O(5).

(6) If a blood specimen is destroyed in accordance with section 40N(7), that act does not affect the admissibility in proceedings of a certificate given in respect of the specimen by an approved analyst for the purposes of this Part.

Compare: 1998 No 110 s 79

Section 40S: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40T Power to stop and board ships

(1) An enforcement officer who is in uniform, or wearing a distinctive cap, hat, or helmet with a badge of authority affixed to it, may signal or request the master or an officer of a ship to stop and bring the ship to for boarding as soon as is reasonably practicable if—

(a) the enforcement officer has good cause to suspect that a seafarer on board the ship has recently committed an offence against section 40C; or

(b) a safety, security, or environmental incident has occurred involving the use of the ship while the seafarer was performing designated safety, security, or marine environmental duties and the enforcement officer has good cause to suspect that alcohol was a contributing factor.

(2) A ship that is stopped by an enforcement officer under subsection (1) must remain stopped for as long as is reasonably necessary for the enforcement officer to complete the exercise of any powers conferred, or duties imposed, on an enforcement officer by this Part.

Compare: 1998 No 110 s 114

Section 40T: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40U Arrest of seafarers for alcohol-related offences

An enforcement officer may arrest a seafarer without warrant if the officer has good cause to suspect that the seafarer has committed an offence against section 40D or 40E.

Compare: 1998 No 110 s 120

Section 40U: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40V Enforcement officer may prevent seafarers from returning to duty

(1) An enforcement officer may exercise all or any of the powers conferred by subsection (2) if he or she believes on reasonable grounds that—

(a) a seafarer, because of his or her physical or mental condition (however arising), is incapable of carrying out his or her duties properly; and

(b) in all the circumstances, the direction or prohibition or action is necessary in the interests of the seafarer or of any other person or of the public.

(2) The enforcement officer may—

(a) forbid the seafarer to carry out his or her duties for such period as the enforcement officer specifies:

(b) direct the seafarer to a specified place where the seafarer may rest:

(c) take any steps that may be necessary to detain the ship or to remove it to a place where it does not constitute a hazard.

(3) An enforcement officer may arrest without warrant any person who fails to comply with a direction given under this section or does or attempts to do any act that is for the time being forbidden under this section.

Compare: 1998 No 110 s 121

Section 40V: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

40W Evidential status of certain muster lists, or other official records, from ships

(1) For the purposes of this Part, a muster list, or other official record, from a ship, that is certified by the ship's master or operator and that indicates that a seafarer was performing designated safety, security, or marine environmental duties at the time of an alleged offence against section 40C is sufficient evidence, in the absence of proof to the contrary, of those matters.

(2) No muster list or other official record referred to in subsection (1) is admissible as evidence in proceedings for an offence against this Part if the court, on application made by the defendant not less than 14 days before the hearing, orders that the master or operator appear as a witness at the hearing.

Section 40W: inserted, on 23 October 2013, by section 12 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Part 4B
Drug and alcohol testing by Director

Part 4B: inserted, on 16 December 2017, by section 5 of the Maritime Transport Amendment Act 2017 (2017 No 48).

40X Health and Safety at Work Act 2015 not limited by this Part

This Part does not limit the Health and Safety at Work Act 2015.

Section 40X: inserted, on 16 December 2017, by section 5 of the Maritime Transport Amendment Act 2017 (2017 No 48).

40Y Interpretation

In this Part, unless the context otherwise requires,—

bodily sample means any of the following:

(a) biological fluid:

(b) biological tissue (whether living or not):

(c) breath

Director testing means drug or alcohol testing carried out by the Director under section 40Z

drug or alcohol test means—

(a) a test of a person's bodily sample to determine the presence, but not the level, of alcohol or a testable drug (or both) in the sample; or

(b) a test of a person's bodily sample to determine the presence and the level of alcohol or a testable drug (or both) in the sample

negative result, in relation to a drug or alcohol test, means that the test reveals—

(a) that alcohol or a testable drug (or both) is not present in the bodily sample; or

(b) if the Director, in carrying out Director testing, applies the permissible level of alcohol or a testable drug prescribed by the maritime rules, that alcohol or a testable drug is not present in the body at that specified level; or

(c) if the Director, in carrying out Director testing, applies the permissible level of alcohol or a testable drug specified in the operator's safety system, that alcohol or a testable drug is not present in the body at that specified level

operator means an operator who—

(a) operates a ship other than a pleasure craft; and

(b) holds a maritime document for operating that ship; and

(c) is required by maritime rules to establish and follow a management system for the purposes of section 17(4)(a)

safety-sensitive activity—

(a) means an activity that could significantly affect the health or safety of any person on board a ship, including the person performing the activity; and

(b) includes an activity prescribed by the maritime rules

safety-sensitive worker—

(a) means an individual who carries out work in any capacity for an operator in a role that involves the worker performing a safety-sensitive activity; and

(b) includes the operator, if the operator is an individual

safety system means the management system referred to in paragraph (c) of the definition of operator in this section

testable drug—

(a) means a drug that could impair a safety-sensitive worker's performance of a safety-sensitive activity; and

(b) includes a drug prescribed by the maritime rules; and

(c) may include, for the purposes of section 40Z(4)(a), a drug specified in the operator's safety system as a drug for which testing may be carried out.

Section 40Y: inserted, on 16 December 2017, by section 5 of the Maritime Transport Amendment Act 2017 (2017 No 48).

40Z Director testing

(1) The Director may carry out drug or alcohol testing of 1 or more safety-sensitive workers of an operator.

(2) Director testing—

(a) must be carried out in relation to alcohol and testable drugs; and

(b) may be carried out without giving advance notification to the operator or to the workers selected for testing; and

(c) may be carried out at any reasonable time and in any reasonable circumstances the Director considers appropriate; and

(d) may be carried out only if the worker consents to be tested; and

(e) must be carried out by a person who is competent to carry out the testing, including by having any necessary experience or qualifications.

(3) Subject to this section, Director testing must be carried out in accordance with the maritime rules.

(4) If the operator's safety system includes a scheme for carrying out drug and alcohol testing of safety-sensitive workers, Director testing may, at the Director's discretion, be carried out in relation to the testable drugs and the permissible levels of alcohol and testable drugs—

(a) specified in the safety system; or

(b) prescribed by the maritime rules.

(5) When carrying out Director testing, the Director must—

(a) carry a document that states—

(i) the name and contact details of the person carrying out the test; and

(ii) an explanation of the statutory power to carry out the test; and

(iii) any other matter prescribed by the maritime rules; and

(b) show the document to the worker on first approaching the worker and at any later time on request; and

(c) take reasonable steps to establish the identity of a worker who is to be tested; and

(d) ask for the worker's consent before testing the worker; and

(e) give the worker a written statement that contains the information and other matters set out in subsection (6).

(6) The statement required under subsection (5)(e) must contain the following:

(a) the matters set out in the document referred to in subsection (5)(b):

(b) the purpose of the test:

(c) a general description of how the test will be carried out, including how the bodily sample will be taken and how it will be analysed:

(d) an explanation of the consequences of refusing to consent or of the worker's test returning a result other than a negative result:

(e) advice that the worker will be informed of the result of the test (and approximately when this will happen):

(f) advice about the worker's right to appeal to the District Court under section 424 against the decision to test the worker:

(g) advice about the worker's right to request a second test under section 40ZA and any charge for carrying out a second test.

(7) As soon as practicable after the Director becomes aware of the result of a test, the Director must give the test result to the worker tested and the operator.

(8) A safety-sensitive worker who has been tested or selected for testing under this section may appeal against the decision to test that worker to the District Court under section 424.

Section 40Z: inserted, on 16 December 2017, by section 5 of the Maritime Transport Amendment Act 2017 (2017 No 48).

40ZA Worker may request second Director test

(1) A worker who has undergone Director testing may, immediately after the test is carried out, ask the Director to carry out a second test for the same substance by the same method.

(2) The Director must carry out a second test requested under this section.

(3) If a second test is carried out under subsection (2),—

(a) that second test and its results replace the first test and its results for the purposes of this Part; but

(b) subsections (1) and (2) do not apply so as to require a further test.

Section 40ZA: inserted, on 16 December 2017, by section 5 of the Maritime Transport Amendment Act 2017 (2017 No 48).

40ZB What happens if worker refuses consent or test result is not negative

(1) A safety-sensitive worker who has been selected for Director testing may refuse to consent to the testing.

(2) If a worker refuses to consent to Director testing or is tested and returns a result other than a negative result, the Director must notify the operator for whom the worker carries out work of that fact as soon as practicable.

(3) If the Director notifies the operator under subsection (2), the operator must prohibit the worker from performing safety-sensitive activities until the operator reasonably believes that the worker is able to safely perform those activities.

(4) Subsection (3)—

(a) applies regardless of any scheme for carrying out drug and alcohol testing of safety-sensitive workers in the operator's safety system; but

(b) does not in any other way limit the operation of that scheme.

Section 40ZB: inserted, on 16 December 2017, by section 5 of the Maritime Transport Amendment Act 2017 (2017 No 48).

40ZC Use of test results in criminal proceedings

Test results obtained from Director testing are not admissible in any criminal proceedings other than the prosecution of an offence against any of the following:

(a) this Act:

(b) the Health and Safety at Work Act 2015:

(c) the Hazardous Substances and New Organisms Act 1996.

Section 40ZC: inserted, on 16 December 2017, by section 5 of the Maritime Transport Amendment Act 2017 (2017 No 48).

Part 5
Powers and duties of Director of Maritime New Zealand in relation to maritime activity

Part 5 heading: amended, on 1 July 2005, by section 11(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Powers in relation to maritime documents

41 Issue of maritime documents and recognition of documents

(1) After considering any application under section 35, the Director shall, as soon as practicable, grant the application if he or she is satisfied that—

(a) all things in respect of which the document is sought or, in the case of an application for recognition of a document as a maritime document, all things to which the document relates, meet any relevant prescribed requirements; and

(b) the applicant and any person who is to have or is likely to have control over the exercise of the privileges under the document—

(i) either hold the relevant prescribed qualifications and experience or hold such qualifications as are acceptable to the Director under subsection (2); and

(ii) are fit and proper persons to have such control or hold the document; and

(iii) meet all other relevant prescribed requirements; and

(c) it is not contrary to the interests of maritime safety for the document to be granted, renewed, or recognised.

(2) For the purpose of granting or renewing a maritime document, or recognising a document as a maritime document, the Director may, subject to any provisions in the maritime rules, recognise such qualifications or certifications as he or she considers appropriate in each case.

(3) In no case shall the Director recognise foreign qualifications or foreign certificates where—

(a) the requirements to gain such qualifications or to obtain such certificates are less than the requirements to gain similar qualifications or to obtain similar certificates in New Zealand; and

(b) the Director believes that to recognise such qualifications or certificates might pose a risk or danger to the safety of any person, to property, or to the marine environment.

(4) Where a licence, permit, certificate, or other document is recognised by the Director under this section, the Director shall either—

(a) issue an equivalent maritime document under this section; or

(b) notify in writing such recognition.

(5) It shall be a condition of every current maritime document issued or recognised by the Director that the holder shall continue to satisfy the fit and proper person criteria specified in subsection (1)(b)(ii).

(6) Where the Director declines to grant an application under section 35, the applicant may appeal against that decision to the District Court under section 424.

(7) Nothing in this section applies in respect of any ship, crew, or maritime product in respect of which section 42 applies.

Compare: 1990 No 98 s 9; 1992 No 75 s 6

Section 41(6): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

42 Acceptance of convention documents

(1) Subject to subsection (2), the Director shall accept every valid licence, permit, certificate, or other document issued or approved by a State, other than New Zealand, under a convention to which that State and New Zealand are both parties; and, for the purposes of this Act, such documents shall be deemed to be maritime documents.

(2) The Director shall not accept, or shall suspend acceptance of, any documents referred to in subsection (1) where he or she has clear grounds for believing that—

(a) the condition of the ship or maritime product does not correspond substantially with the particulars of any document relating to the ship or maritime product; or

(b) the condition of the ship or maritime product has not been maintained in accordance with the provisions of any requirements leading to the issue of that document; or

(c) the ship is not in all respects fit to proceed to sea without danger to the ship or the persons on board or without presenting an unreasonable threat of harm to the marine environment; or

(d) the ship or maritime product has been materially altered without the sanction of the State that issued or approved the document; or

(e) the document has been fraudulently obtained or the holder of the document is not the person to whom the document was originally issued.

(3) Sections 35, 41, 43 to 51, 68, 69, 73 to 78, 406(b), and 406(c) shall not apply to any document referred to in subsection (1).

(4) This section applies in respect of—

(a) every ship, other than a New Zealand ship, registered in a country that is a party to any convention to which New Zealand is also a party:

(b) the crew of every ship referred to in paragraph (a):

(c) the maritime products of every ship referred to in paragraph (a).

43 Suspension of maritime documents or imposition of conditions

(1) The Director may from time to time—

(a) suspend any maritime document issued by the Director under this Act or under any maritime rules, or impose conditions in respect of any such maritime document; or

(b) suspend the Director's recognition as a maritime document of any document issued by another person or any organisation, or impose conditions in respect of such recognition,—

if he or she considers such action necessary in the interests of maritime safety, and if he or she—

(c) is satisfied that the holder has failed to comply with any conditions of the relevant maritime document or with the requirements of section 17; or

(d) is satisfied the holder has contravened or failed to comply with section 406; or

(e) is satisfied such action is necessary to ensure compliance with any provisions of Parts 1 to 15 or any regulations or maritime rules made under this Act; or

(f) considers that the privileges or duties for which the document has been granted, or the relevant document has been recognised as a maritime document, are being carried out by the holder in a careless or incompetent manner.

(2) Without limiting the general provisions of subsection (1), the Director may suspend any maritime document, or the recognition of any document as a maritime document, relating to the use of any ship, or maritime product, or impose conditions in respect of any such document, if he or she considers that there is reasonable doubt as to the seaworthiness of the ship or as to the quality or safety of the maritime product to which the document relates.

(3) A suspension, or imposition of conditions, under subsection (1) or (2) remains in force until the earliest of the following:

(a) the Director makes an adverse decision under section 51:

(b) in the case of the imposition of conditions, the conditions no longer apply:

(c) in the case of the absence of conditions, the close of the 14th day after the date of the suspension.

(4) On the grounds set out in subsection (1), the Director may,—

(a) despite subsection (3)(b) and before the period for a condition expires,—

(i) impose, vary, or lift the condition; or

(ii) extend the period during which the condition applies for a further specified period:

(b) despite subsection (3)(c) and before the 14-day period expires, extend the period of the suspension for a further specified period.

(5) When a maritime document or recognition of a document as a maritime document is suspended or a maritime document is made subject to conditions under this section, the holder of the document or recognition must immediately produce the maritime document or the document of recognition to the Director, and—

(a) the Director must endorse the document to indicate the action taken under this section; and

(b) the Director may retain a document while it is suspended.

(5A) If notice of a proposed revocation of a maritime document or recognition of a document as a maritime document is given in accordance with section 51 either at the same time as the suspension of the document or recognition under this section is imposed or while the suspension is in force, the document or recognition to which the notice relates remains suspended until the Director finally decides whether to revoke the document or recognition under section 44.

(6) The whole or any part of a maritime document, or the recognition of the whole or any part of a document recognised as a maritime document, may be suspended under this section.

(7) Any person in respect of whom any decision is taken under this section may appeal against that decision to the District Court under section 424.

Compare: 1990 No 98 s 17; 1992 No 75 s 11

Section 43(3): replaced, on 23 October 2013, by section 13 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 43(4): replaced, on 23 October 2013, by section 13 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 43(5): substituted, on 9 June 1999, by section 5 of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 43(5A): inserted, on 9 June 1999, by section 5 of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 43(7): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

44 Revocation of maritime documents

(1) If, at any time after an investigation carried out to decide whether any action should be taken under section 43, the Director believes that any relevant maritime document or the recognition of a document as a maritime document should be revoked, the Director may revoke that document or the recognition of that document.

(2) Where the Director proposes to revoke a maritime document or the recognition of a document as a maritime document, the Director shall give notice in accordance with section 51, which shall apply as if the proposed revocation were a proposed adverse decision under this Act.

(3) Where a maritime document or recognition of a document as a maritime document has been revoked under this section, the holder shall forthwith surrender that document or notification of recognition of that document to the Director.

(4) Any person in respect of whom any decision is taken under this section may appeal against that decision to the District Court under section 424.

Compare: 1990 No 98 s 18; 1992 No 75 s 12

Section 44(1): amended, on 9 June 1999, by section 6 of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 44(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

45 Amendment or revocation in other cases

(1) The Director may,—

(a) if so requested in writing by the holder of any maritime document issued by the Director, amend or revoke the document as requested:

(b) amend any maritime document issued by the Director to correct any clerical error or obvious mistake on the face of the document.

(2) Subject to subsection (3), the Director may do any of the following:

(a) amend any maritime document issued by the Director to reflect the fact that any privilege or duty for which the document has been granted is no longer being carried out, or is no longer able to be carried out, by the holder:

(b) revoke any maritime document issued by the Director, or revoke the recognition of any document as a maritime document, if none of the privileges or duties for which the document has been granted are being carried out, or are able to be carried out, by the holder.

(3) Before taking any action under subsection (2), the Director shall notify the holder in writing of the proposed action and give the holder a reasonable opportunity to comment or make submissions on the proposed action.

(4) The power to amend a maritime document under this section includes—

(a) power to revoke the document and issue a new document in its place; and

(b) power to impose reasonable conditions.

(5) When the holder of a maritime document is notified that specified action is proposed under this section, the holder shall forthwith produce the document to the Director.

Compare: 1990 No 98 s 20

46 Suspension or revocation of maritime document where prescribed fees or charges unpaid

(1) Where any fee or charge payable under this Act or any regulations made under this Act is not paid by the date prescribed or fixed for payment of that fee or charge, the Director may suspend the maritime document, or suspend recognition of the document as a maritime document, to which the unpaid fee or charge relates.

(2) Where any fee or charge payable under this Act or any regulations made under this Act is not paid within 6 months after the date prescribed or fixed for payment of that fee or charge, the Director may revoke the maritime document, or revoke recognition of the document as a maritime document, to which the fee or charge relates.

(3) Before undertaking any action under subsection (1) or subsection (2), the Director shall notify the holder of that document of—

(a) the Director's intention to act under subsection (1) or subsection (2); and

(b) the right of appeal available to the holder of that document in the event of the Director taking such action.

(4) Where a maritime document or recognition of a document as a maritime document has been revoked under this section, the holder shall forthwith surrender that document or notification of recognition of that document to the Director.

(5) Where a fee or charge is payable to the Authority or the Director in respect of an application or the provision of a service, the Authority or the Director, as the case may be, may, unless the safety of any person would be put at risk, decline to process that application or provide that service until the appropriate fee or charge has been paid, or arrangements acceptable to the Authority or the Director, as the case may be, for payment of the fee or charge have been made.

(6) Any person in respect of whom any decision is taken under this section may appeal against that decision to the District Court under section 424.

Compare: 1990 No 98 s 41; 1992 No 75 s 22

Section 46(6): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

47 Exemption

(1) The Director may, if he or she considers it appropriate and upon such conditions as he or she considers appropriate, exempt any person, ship, or maritime product from any specified requirement in any maritime rule.

(2) The Director shall not grant an exemption under subsection (1) unless he or she is satisfied in the circumstances of each case that—

(a) the granting of the exemption will not breach New Zealand's obligations under any convention; and

(b) either—

(i) the requirement has been substantially complied with and that further compliance is unnecessary; or

(ii) the action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement; or

(iii) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or

(iv) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case; and

(ba) the risk of harm to the marine environment will not be significantly increased by the granting of the exemption; and

(c) the risk to safety will not be significantly increased by the granting of the exemption.

(3) The number and nature of any exemptions granted under subsection (1) shall be notified as soon as practicable in the *Gazette*.

(4) Nothing in this section shall apply in any case where any maritime rule specifically provides that no exemptions are to be granted.

Compare: 1990 No 98 s 37

Section 47(2)(ba): inserted, on 23 October 2013, by section 14 of the Maritime Transport Amendment Act 2013 (2013 No 84).

48 Powers of Director in relation to examinations, etc

For the purposes of granting or renewing maritime documents in respect of personnel under this Act, the Director may set, conduct, and administer examinations and tests, and carry out such other functions in relation to such examinations and tests as may be necessary.

Compare: 1990 No 98 s 72K; 1992 No 75 s 31

49 Criteria for action under section 43 or section 44

(1) The provisions of this section shall apply for the purpose of determining whether a maritime document, or recognition of a document as a maritime document, should be suspended or made subject to conditions under section 43 or revoked under section 44.

(2) Where this section applies, the Director may have regard to, and give such weight as the Director considers appropriate to, the following matters:

(a) the person's compliance history with transport safety regulatory requirements:

(b) any conviction for any transport safety offence, whether or not—

(i) the conviction was in a New Zealand court; or

(ii) the offence was committed before the commencement of this Act:

(c) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any maritime rule made under this Act.

(3) The Director shall not be confined to consideration of the matters specified in subsection (2) and may take into account such other matters and evidence as may be relevant.

(4) The Director may—

(a) seek and receive such information as the Director thinks fit; or

(b) consider information obtained from any source.

(5) If the Director proposes to take into account any information that is or may be prejudicial to a person, the Director shall, subject to subsection (6), as soon as is practicable, disclose that information to that person and give that person a reasonable opportunity to refute or comment on it.

(6) Nothing in subsection (5) shall require the Director to—

(a) disclose any information the disclosure of which would be likely to endanger the safety of any person; or

(b) disclose any information before—

(i) suspending a maritime document or suspending the recognition of a document as a maritime document; or

(ii) imposing conditions in respect of a maritime document under section 43.

(7) If the Director determines not to disclose any information in reliance on subsection (6), the Director must inform the person of the fact of non-disclosure and the following provisions apply:

(a) in the case of non-disclosure to an individual of information about the individual,—

(i) the Director must inform the individual that he or she may, under the Privacy Act 1993, complain to the Privacy Commissioner about that non-disclosure; and

(ii) the provisions of that Act apply to that non-disclosure as if, following a request under that Act for the information withheld, the information had been withheld under section 27(1)(d) of that Act; and

(b) in any other case,—

(i) the Director must inform the person that the person may seek a review by an Ombudsman of that non-disclosure under the Official Information Act 1982; and

(ii) the provisions of that Act apply to that non-disclosure as if, following a request under that Act for the information withheld, the information had been withheld under section 6(d) of that Act.

Compare: 1990 No 98 s 19

Section 49(7): substituted, on 15 December 2005, by section 5 of the Maritime Transport Amendment Act (No 2) 2005 (2005 No 108).

50 Criteria for fit and proper person

(1) For the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act, or under the maritime rules, the Director shall, having regard to the degree and nature of the person's proposed involvement in maritime activities, have regard to, and give such weight as the Director considers appropriate to, the following matters:

(a) the person's compliance history with transport safety regulatory requirements:

(b) the person's related experience (if any) within the transport industry:

(c) the person's knowledge of the applicable maritime regulatory requirements:

(d) any history of physical or mental health problems or serious behavioural problems:

(e) any conviction for any transport safety offence or for any offence relating to controlled drugs (as defined in the Misuse of Drugs Act 1975) or

relating to any prescription medicine (as defined in the Medicines Act 1981), whether or not—

(i) the conviction was in a New Zealand court; or

(ii) the offence was committed before the commencement of this Act:

(f) any conviction for any offence involving violence, or causing danger to any person, or criminal damage, whether or not—

(i) the conviction was in a New Zealand court; or

(ii) the offence was committed before the commencement of this Act:

(g) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any maritime rule.

(2) The Director shall not be confined to consideration of the matters specified in subsection (1) and may take into account such other matters and evidence as may be relevant.

(3) The Director may, for the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act,—

(a) seek and receive such information (including medical reports) as the Director thinks fit; and

(b) consider information obtained from any source.

(4) Subsection (1) applies to a body corporate with the following modifications:

(a) paragraphs (a), (b), (c), (e), (f), and (g) of that subsection shall be read as if they refer to the body corporate and its officers:

(b) paragraph (d) of that subsection shall be read as if it refers only to the officers of the body corporate.

(5) If the Director proposes to take into account any information that is or may be prejudicial to a person, the Director shall, subject to subsection (6), disclose that information to that person and, in accordance with section 51, give that person a reasonable opportunity to refute or comment on it.

(6) Nothing in subsection (5) shall require the Director to disclose any information the disclosure of which would be likely to endanger the safety of any person.

(7) If the Director determines not to disclose any information in reliance on subsection (6), the Director must inform the person of the fact of non-disclosure and the following provisions apply:

(a) in the case of non-disclosure to an individual of information about the individual,—

(i) the Director must inform the individual that he or she may, under the Privacy Act 1993, complain to the Privacy Commissioner about that non-disclosure; and

(ii) the provisions of that Act apply to that non-disclosure as if, following a request under that Act for the information withheld, the

information had been withheld under section 27(1)(d) of that Act; and

(b) in any other case,—

(i) the Director must inform the person that the person may seek a review by an Ombudsman of that non-disclosure under the Official Information Act 1982; and

(ii) the provisions of that Act apply to that non-disclosure as if, following a request under that Act for the information withheld, the information had been withheld under section 6(d) of that Act.

Compare: 1990 No 98 s 10

Section 50(7): substituted, on 15 December 2005, by section 6 of the Maritime Transport Amendment Act (No 2) 2005 (2005 No 108).

51 Notice to persons affected by proposed adverse decisions

(1) In this section, unless the context otherwise requires,—

adverse decision means a decision of the Director to the effect that a person is not a fit and proper person for any purpose under this Act or under the maritime rules

affected document holder, in relation to a person directly affected by an adverse decision, means the holder of or the applicant for the maritime document

person directly affected, in relation to any adverse decision, means the person who would be entitled under section 424 to appeal against that adverse decision

person on the basis of whose character the adverse decision arises, in relation to any adverse decision made or proposed to be made on the grounds referred to in section 50, means the person whom the Director assesses as not being a fit and proper person.

(2) Where the Director proposes to make an adverse decision under this Act in respect of any person, the Director, by notice in writing, shall—

(a) notify the person directly affected by the proposed decision of the proposed decision; and

(b) subject to subsection (4), inform that person of the grounds for the proposed decision; and

(c) specify a date by which submissions may be made to the Director in respect of the proposed decision, which date shall not be less than 21 days after the date on which the notice is given; and

(d) where appropriate, specify the date on which the proposed decision will, unless the Director otherwise determines, take effect, being a date not less than 28 days after the date on which the notice is given; and

(e) notify the person of the person's right of appeal under section 424, in the event of the Director proceeding with the proposed decision; and

(f) specify such other matters as in any particular case may be required by any provision of this or any other Act.

(3) Where the Director gives a notice under subsection (2), the Director—

(a) shall also supply a copy of the notice to—

(i) any person on the basis of whose character the adverse decision arises, where that person is not the person directly affected by the proposed decision; and

(ii) any affected document holder, where the Director considers that the proposed decision is likely to have a significant impact on the operations of the document holder; and

(b) may supply a copy of the notice to any other affected document holder.

(4) No notice or copy of a notice given under this section shall include or be accompanied by any information referred to in section 50(1), except to the extent that—

(a) the notice or copy is supplied to the person to whom the information relates; or

(b) that person consents to the supply of that information to any other person.

(5) Where any notice or copy of a notice is given to any person under this section, the following provisions shall apply:

(a) it shall be the responsibility of that person to ensure that all information that that person wishes to have considered by the Director in relation to the proposed decision is received by the Director within the period specified in the notice under subsection (2)(c), or within such further period as the Director may allow:

(b) the Director may consider any information supplied by that person after the expiry of the period referred to in paragraph (a), other than information requested by the Director and supplied by that person within such reasonable time as the Director may specify:

(c) the Director shall consider any submissions made in accordance with paragraph (a), other than information requested by the Director and supplied pursuant to a request referred to in paragraph (b).

(6) After considering the matters referred to in subsection (5), the Director shall—

(a) finally determine whether or not to make the proposed adverse decision; and

(b) as soon as practicable thereafter, notify in writing the person directly affected, and any other person of a kind referred to in subsection (3)(a), of—

(i) the Director's decision and the grounds for the decision; and

(ii) the date on which the decision will take effect; and

(iii) in the case of an adverse decision, the consequences of that decision and any applicable right of appeal (being a right of appeal specified in section 41(6) or section 43(7) or section 44(4)).

Compare: 1990 No 98 s 11; 1992 No 75 s 8

Suspension of persons from work

Heading: replaced, on 23 October 2013, by section 15 of the Maritime Transport Amendment Act 2013 (2013 No 84).

52 Suspension from work

(1) The Director may suspend from work on a New Zealand ship any person who is not required by this Act or regulations or rules made under this Act to be in possession of a maritime document, where—

(a) the Director considers such action necessary in the interests of maritime safety; and

(b) either—

(i) the person is convicted for any offence relating to—

(A) controlled drugs (as defined in the Misuse of Drugs Act 1975) or any prescription medicine (as defined in the Medicines Act 1981); or

(B) violence, or causing danger to any person, or criminal damage,—

whether or not the conviction was in a New Zealand court or the offence was committed before the commencement of this Act; or

(ii) the person has been dismissed from employment, which dismissal is related to violence, alcohol, or the use, supply, or possession of controlled drugs (as defined in the Misuse of Drugs Act 1975) or the misuse of any prescription medicine (as defined in the Medicines Act 1981).

(2) If the Director suspends any person under subsection (1), the suspension remains in force until the earlier of—

(a) the close of the 14th day after the date of the imposition of the suspension; and

(b) the date the Director notifies the person in accordance with subsection (2A) or section 51(2).

(2A) Before the expiry of the 14-day period referred to in subsection (2), the Director may—

(a) lift the suspension, with or without conditions, or extend the period of the suspension by a specified further period:

(b) allow the person to return to work, subject to any conditions imposed by the Director, during the suspension or specified further period of suspension.

(2B) If the Director proposes to suspend any person under subsection (1), the Director must give the person notice in accordance with section 51, which applies as if—

(a) the proposed suspension were a proposed adverse decision under this Act; and

(b) the reference to the person's right of appeal under section 424 were a reference to the person's right of appeal to the Maritime Appeal Authority continued by section 82.

(3) The Director may suspend a person under this section for any period the Director thinks fit and may impose such conditions on that person's return to work as the Director thinks fit.

(4) The Director shall maintain a list of persons suspended under this section, and employers of seafarers or potential employers of seafarers may ask the Director to ascertain whether a particular person is a suspended person and the Director shall advise that employer or potential employer accordingly.

(5) Any person in respect of whom any decision is taken under this section may appeal against that decision to the Maritime Appeal Authority continued by section 82.

Section 52 heading: amended, on 23 October 2013, by section 16(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 52(1): amended, on 23 October 2013, by section 16(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 52(2): replaced, on 23 October 2013, by section 16(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 52(2A): inserted, on 23 October 2013, by section 16(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 52(2B): inserted, on 23 October 2013, by section 16(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 52(3): amended, on 23 October 2013, by section 16(4) of the Maritime Transport Amendment Act 2013 (2013 No 84).

53 Suspended persons not to work or be employed

(1) No person shall employ or engage on board a New Zealand ship, or any ship involved in coastal shipping under section 198, a person who has been suspended under section 52.

(2) No person who has been suspended under section 52 shall offer himself or herself for work or employment on board a New Zealand ship, or any ship involved in coastal shipping under section 198.

(3) Every person commits an offence who, without reasonable excuse, contravenes this section.

(4) Every person who commits an offence against subsection (3) is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $5,000:

(b) in the case of a body corporate, to a fine not exceeding $50,000.

Section 53 heading: amended, on 23 October 2013, by section 17(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 53(1): amended, on 23 October 2013, by section 17(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 53(2): amended, on 23 October 2013, by section 17(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 53(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Inspection, investigation, detention, and rectification

Heading: amended, on 23 October 2013, by section 18 of the Maritime Transport Amendment Act 2013 (2013 No 84).

54 Inspections and audits

(1) The Director may in writing require any person who—

(a) holds a maritime document; or

(b) operates, maintains, or services, or does any other act in respect of any ship or maritime product,—

to undergo or carry out such inspections and such audits as the Director considers necessary in the interests of maritime safety or the health or safety of seafarers or for the purposes of any provision of any of Parts 1 to 15.

(2) The Director may, in respect of any person described in subsection (1), carry out such inspections and audits as the Director considers necessary in the interests of maritime safety or the health or safety of seafarers.

(3) For the purposes of any inspection or audit carried out in respect of any person under subsection (2), the Director may, in writing,—

(a) require from that person such information as the Director considers relevant to the inspection or audit:

(b) require that person to demonstrate to the Director the familiarity of the master or crew with essential shipboard procedures for the safe operation of the ship:

(c) require that person to demonstrate to the Director that any operational, maintenance, or servicing procedure in respect of a ship or a maritime product is capable of being carried out in a competent manner.

Compare: 1990 No 98 s 15; 1992 No 75 s 10

54A Power of Director to investigate holder of maritime document

(1) The Director may, in writing, require any holder of a maritime document to undergo an investigation if the Director—

(a) has reasonable grounds to believe that an investigation is necessary in the interests of maritime safety; and

(b) either—

(i) believes that the maritime document holder has failed to comply with any conditions of a maritime document; or

(ii) considers that the privileges or duties for which the maritime document has been granted are being carried out by the maritime document holder in a careless or incompetent manner.

(2) If the Director requires a maritime document holder to undergo an investigation under subsection (1), the Director must—

(a) conclude the investigation as soon as practicable; and

(b) inform the maritime document holder, in writing, of—

(i) the date on which the investigation will begin; and

(ii) the results of the investigation, including—

(A) any recommendations arising out of the investigation; and

(B) the grounds for those recommendations.

Compare: 1990 No 98 s 15A

Section 54A: inserted, on 23 October 2013, by section 19 of the Maritime Transport Amendment Act 2013 (2013 No 84).

55 Detention, etc, of ships and maritime products

(1) The Director may from time to time do all or any of the following:

(a) detain any ship or any ship of a particular class:

(b) seize any maritime product or any maritime product of a particular class:

(c) prohibit or impose conditions on the use or operation of any ship or any ship of a particular class, or the use of any maritime product or any maritime product of a particular class:

(d) impose conditions on the release from detention or seizure of the ship or maritime product.

(2) The powers under subsection (1) may be exercised where the Director believes on clear grounds that—

(a) the operation or use of any ship or maritime product or class of ship or maritime product, as the case may be, endangers or is likely to endanger any person or property, or is hazardous to the health or safety of any person; or

(b) the appropriate prescribed maritime document is not for the time being in force in respect of the ship, or the master or any member of the crew of that ship, or the maritime product, as the case may be; or

(c) any maritime document required by maritime rules in respect of the ship or maritime product, as the case may be, has expired; or

(d) the conditions under which a maritime document in respect of a ship or maritime product was issued or recognised, or the requirements of that document, are not being met; or

(e) the watchkeeping requirements specified for a ship by the State in which the ship is registered are not being met; or

(f) the conditions imposed under paragraph (c) or paragraph (d) of that subsection are not being met.

(3) The powers under subsection (1) may also be exercised where the Director is satisfied, on clear grounds, that the master is not, or crew are not, familiar with essential shipboard procedures for the safe operation of the ship.

(4) Nothing in this section shall permit the Director to detain a ship where that detention would constitute a breach of any convention.

(5) Any detention or seizure under subsection (1) shall be maintained for only such time as is necessary in the interests of maritime safety or the health or safety of any person; but, if ships, maritime products, or parts thereof are required for the purpose of evidence in any prosecution under this Act, those ships, products, or parts thereof may be retained by the Director for such period as the Director considers necessary for that purpose.

(6) The Director shall, if requested by the owner or the person for the time being in charge of a ship detained or a maritime product seized under subsection (1), provide in writing to the owner or that person the reasons for the detention or seizure.

(7) Any person in respect of whom any decision is taken under this section may appeal against that decision to the District Court under section 424.

(8) For the purpose of subsection (1), the Director shall notify any prohibitions or conditions to such persons as he or she considers necessary by such means of communication, whether or not of a permanent nature, as the Director considers appropriate in the circumstances.

(9) Every person commits an offence who, without reasonable excuse, acts in contravention of or fails to comply with any prohibition or condition notified under this section.

(10) Every person who commits an offence against subsection (9) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000.

Compare: 1990 No 98 s 21

Section 55(7): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 55(10): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

56 Costs of detention, etc

(1) Where the Director acts under section 55 to detain a ship, the provisions of section 462 shall apply to the costs of and incidental to the detention.

(2) Where the Director acts under section 55 to seize a maritime product, the Authority may recover from the owner of such maritime product all reasonable costs of and incidental to such seizure.

(3) The Authority is liable to pay to the owner of a ship or a maritime product compensation for any loss resulting from the Director unduly detaining the ship or maintaining the seizure of a maritime product.

(4) The Authority is liable to pay to the owner of a ship or maritime product compensation for any loss resulting from the Director unduly delaying the ship or the use of the maritime product.

(5) Where the Director has taken action under section 55 on the information of a complainant and the information is subsequently found to be frivolous or vexatious, the complainant is liable to indemnify the Authority for all costs for which the Authority is liable under this section.

Compare: 1952 No 49 s 306; 1987 No 184 s 14

Investigation of accidents, incidents, and mishaps

57 Investigation of accidents, incidents, and mishaps by Director

(1) Where an accident, incident, or mishap occurs that is required to be notified to the Authority under section 31, the Director may investigate the accident, incident, or mishap.

(2) When an accident, incident, or mishap is under investigation by the Director, the Director shall be in charge of that investigation.

(3) The Director shall permit the participation or representation of foreign States in any investigation in which they have an interest.

(4) Except with the consent of the Director, which consent shall not be unreasonably withheld, no person (other than the New Zealand Police) shall—

(a) participate in any investigation if the Director is in charge of the investigation; or

(b) undertake any independent investigation at the site of any accident, incident, or mishap that the Director is in charge of investigating; or

(c) examine or cause to be examined any material removed from the site of any accident, incident, or mishap that the Director is in charge of investigating.

(5) Where the Director refuses consent under subsection (4), he or she shall give the applicant a statement in writing of the reasons for his or her refusal.

(6) Where an accident, incident, or mishap is being investigated by—

(a) the Director; and

(b) any 1 or more of the following, namely,—

(i) the Transport Accident Investigation Commission:

(ii) the New Zealand Defence Force:

(iii) a visiting force:

(iv) the regulator, an inspector, or any other person under the Health and Safety at Work Act 2015,—

the Director and the other persons investigating the accident, incident, or mishap shall take all reasonable measures to ensure that the investigations are coordinated.

(7) This section is subject to section 14 of the Transport Accident Investigation Commission Act 1990.

Compare: 1990 No 99 s 14

Section 57(6)(b)(iv): replaced, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

58 Powers of investigation of Director

(1) For the purposes of investigating under section 57 an accident, incident, or mishap, the Director (or a person authorised for the purpose by the Director), may—

(a) make inquiries from any person who he or she has reason to believe is in possession of information that may lead to discovery of the cause of the accident, incident, or mishap:

(b) issue in writing a summons requiring any person to attend at the time and place specified in the summons and to give evidence, and to produce any documents or things in that person's possession or under that person's control that are relevant to the subject of the investigation:

(c) take possession of and remove any such document from the place where it is kept for such period of time as is reasonable in the circumstances:

(d) require a person to reproduce, or to allow the Director (or authorised person) to reproduce, in usable form any information recorded or stored on a document electronically or by other means.

(2) A person who is required by the Director (or an authorised person) to do anything under subsection (1) has the same privileges and immunities as a person

giving evidence before a commission of inquiry has under section 6 of the Commissions of Inquiry Act 1908.

(3) A summons under this section may be served in the same manner as a summons served under section 5 of the Commissions of Inquiry Act 1908, and that section 5 applies accordingly with any necessary modifications.

(4) For the purposes of this section, **document** means a document in any form; and includes—

(a) any writing on or in any material; and

(b) information recorded or stored by means of a tape recorder, computer, or other device; and material subsequently derived from information so recorded or stored; and

(c) a record, book, graph, or drawing; and

(d) a photograph, film, negative, tape, disk, or other device in which 1 or more visual images are embodied or stored so as to be capable (with or without the aid of equipment) of being reproduced.

(5) A person who fails without reasonable cause to comply with a requirement made under subsection (1) commits an offence and is liable on conviction to a fine not exceeding $1,000.

Section 58: substituted, on 9 June 1999, by section 7 of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 58(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

59 Additional powers of investigation

Without limiting the powers conferred by section 58, for the purpose of exercising any of the functions, duties, or powers of the Director under this Act, the Director and any person authorised in writing for the purpose by the Director shall, in addition to any other powers conferred by this Act, have power to do the following:

(a) where the Director believes on reasonable grounds that it is necessary to preserve or record evidence, or to prevent the tampering with or alteration, mutilation, or destruction of any ship, place, maritime product, or any other thing involved in any manner in an accident, incident, or mishap, to prohibit or restrict access of persons or classes of persons to the site of any accident, incident, or mishap:

(b) to seize, detain, remove, preserve, protect, or test any ship, maritime product, or any thing that the Director believes on reasonable grounds will assist in establishing the cause of an accident, incident, or mishap.

60 Duty of Director to notify accidents and incidents to Transport Accident Investigation Commission

(1) As soon as practicable after any accident or incident is notified to the Authority under section 31, the Director shall notify the Transport Accident Investigation Commission that he or she has been notified of the accident or incident, if it is of any of the following kinds:

(a) an accident or incident involving—

(i) a New Zealand commercial ship; or

(ii) a foreign commercial ship that was in New Zealand waters at the time of the accident or incident:

(b) an accident involving a New Zealand ship where a person is seriously harmed:

(c) an incident involving more than 1 ship, where at least 1 ship is a commercial ship and, in the opinion of the Authority, it is likely that the occurrence would have, or will, become an accident:

(d) an accident at the interface of the civil and military maritime systems.

(2) Where the Authority has been notified of a search and rescue operation under section 31(4), the Director shall, if he or she has reasonable cause to believe that the ship involved is included in any of the categories specified in subsection (1), forthwith notify the Transport Accident Investigation Commission accordingly.

Compare: 1990 No 98 s 27

Powers and provisions relating to pilots

Heading: inserted, on 9 June 1999, by section 8 of the Maritime Transport Amendment Act 1999 (1999 No 68).

60A Master to ensure rules relating to pilotage are complied with

(1) The master of a ship must ensure that a pilot is taken on board the ship in accordance with and whenever required by maritime rules.

(2) Despite anything in maritime rules, the Director may direct that a pilot be taken on board a ship in New Zealand waters if the Director is satisfied that, in the circumstances (such as the weather conditions, damage to the ship, or incapacity of the master), the interests of navigation safety or marine environmental protection require that a pilot be taken on board.

(3) A direction under subsection (2) must, whenever practicable, be in writing and must be given to the owner or master of the ship to which it applies.

(4) Once a direction is given under subsection (2), the ship may not proceed from or enter a port in New Zealand without a pilot on board if to do so is contrary to that direction or to a provision of the maritime rules.

Section 60A: inserted, on 9 June 1999, by section 8 of the Maritime Transport Amendment Act 1999 (1999 No 68).

60B Limitation of liability where pilot engaged

(1) A port company, or other body corporate or person, who provides a pilot is not liable for any neglect or want of skill of the pilot.

(2) The owner or master of a ship navigating under circumstances in which pilotage is required is answerable for any loss or damage caused by the ship or by any fault of the navigation of the ship in the same manner and to the same extent as that person would be if pilotage were not required.

(3) A pilot is not liable for neglect or want of skill when acting as a pilot,—

(a) on board a ship being provided with pilotage; or

(b) in accordance with the maritime rules, on land or on board another ship.

Section 60B: inserted, on 9 June 1999, by section 8 of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 60B(3): replaced, on 16 December 2017, by section 34 of the Maritime Transport Amendment Act 2017 (2017 No 48).

Part 6
Offences in relation to maritime activity

Offences against health and safety on ships

[Repealed]

Heading: repealed, on 5 May 2003, pursuant to section 35(1)(d) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

61 Offences likely to cause serious harm

[Repealed]

Section 61: repealed, on 5 May 2003, by section 35(1)(d) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

62 Other offences

[Repealed]

Section 62: repealed, on 5 May 2003, by section 35(1)(d) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

63 Actions taken to prevent harm

[Repealed]

Section 63: repealed, on 5 May 2003, by section 35(1)(d) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Safety offences

64 Unnecessary danger caused by holder of maritime document

(1) Every holder of a maritime document commits an offence who, in respect of any activity or service to which the document relates, does or omits to do any

act, or causes or permits any act or omission, if the act or omission causes unnecessary danger or risk to any other person or to any property, irrespective of whether or not in fact any injury or damage occurs.

(2) Every person who commits an offence against subsection (1) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000:

(c) in any case, to an additional penalty under section 409.

Compare: 1990 No 98 s 43

Section 64(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

65 Dangerous activity involving ships or maritime products

(1) Every person commits an offence who—

(a) operates, maintains, or services; or

(b) does any other act in respect of—

any ship or maritime product in a manner which causes unnecessary danger or risk to any other person or to any property, irrespective of whether or not in fact any injury or damage occurs.

(2) Every person commits an offence who—

(a) causes or permits any ship or maritime product to be operated, maintained, or serviced; or

(b) causes or permits any other act to be done in respect of any ship or maritime product,—

in a manner which causes unnecessary danger or risk to any other person or to any property, irrespective of whether or not in fact any injury or damage occurs.

(3) Every person who commits an offence against subsection (1) or subsection (2) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000:

(c) in any case, to an additional penalty under section 409.

Compare: 1990 No 98 s 44

Section 65(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

65A Proceeding without pilot contrary to maritime rules or direction given under section 60A

(1) If a ship proceeds without a pilot in contravention of section 60A, the owner and master of the ship each commits an offence and is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000:

(c) in any case, to an additional penalty under section 409.

(2) Despite section 451(5), a contravention of a maritime rule in circumstances to which section 60A(1) applies is an offence against this section.

Section 65A: inserted, on 9 June 1999, by section 9 of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 65A(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

66 Effect of breach of maritime rule

(1) Where any person is charged with any offence against section 64 or section 65 and the court is satisfied that any act or omission of that person, or caused or permitted by that person, constitutes a breach of a relevant maritime rule, then, in the absence of proof to the contrary, it shall be presumed that the act or omission caused unnecessary danger or risk to another person or to property, irrespective of whether or not in fact any injury or damage occurred.

(2) Nothing in this section shall be construed so as to require the proof of a breach of a maritime rule as an element of any offence described in section 64 or section 65.

67 Communicating false information affecting safety

(1) Every person commits an offence who by any means provides to another person information relating to the safety of a ship, maritime product, or any other facility or product used in or connected with maritime activities, or any person associated therewith, knowing the information to be false or in a manner reckless as to whether it is false.

(2) Every person who commits an offence against subsection (1) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000.

(3) Where the commission of an offence against subsection (1) causes financial loss to any person and the court imposes a fine under subsection (2) in respect of that offence, the court may order that such part of the fine as it thinks fit, but in any event not more than one-half of the fine, be awarded to that person.

Compare: 1990 No 98 s 56

Section 67(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

67A Offence for submerged load lines

(1) Every person commits an offence who allows a ship's load lines to be submerged—

(a) when the ship proceeds to sea; or

(b) during a voyage; or

(c) on the ship's arrival into port.

(2) A ship's load lines are **submerged** if—

(a) the ship is in salt water and has no list and the appropriate load line on each side of the ship, as prescribed by the maritime rules, is submerged:

(b) the appropriate load line on each side of the ship, as prescribed by maritime rules, would be submerged if the ship were in salt water and had no list.

(3) Every person who commits an offence against subsection (1) is liable,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000:

(c) in either case, to an additional penalty under section 409.

Section 67A: inserted, on 23 October 2013, by section 20 of the Maritime Transport Amendment Act 2013 (2013 No 84).

67B Other offences

(1) Subject to an exemption given under section 47, every person commits an offence who—

(a) operates a ship without the prescribed number of seafarers or qualified personnel:

(b) operates a ship outside its prescribed operating limits:

(c) knowingly breaches any requirement specified in this Act or in regulations or rules made under this Act for the carriage of dangerous goods.

(2) Every person who commits an offence against subsection (1)(a), (b), or (c) is liable,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000:

(c) in either case, to an additional penalty under section 409.

Section 67B: inserted, on 23 October 2013, by section 20 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Offences in relation to maritime document

68 Acting without necessary maritime document

(1) Every person commits an offence who—

(a) operates, maintains, or services; or

(b) does any other act in respect of—

any ship or maritime product, without holding the appropriate current maritime document.

(2) Every person commits an offence who—

(a) operates, maintains, or services; or

(b) does any other act in respect of—

any ship or maritime product knowing that a current maritime document is required to be held in respect of that ship or product before that act may lawfully be done and knowing that the appropriate document is not held.

(3) Every person who commits an offence against subsection (1) or subsection (2) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000:

(c) in any case, to an additional penalty under section 409.

(4) For the purposes of this section,—

(a) a maritime document is not a current maritime document if it is for the time being suspended under this Act:

(b) a maritime document is not a current maritime document in relation to an act if the endorsement that is required to authorise that act is for the time being suspended under this Act.

Compare: 1990 No 98 s 46

Section 68(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 68(4): added, on 9 June 1999, by section 10 of the Maritime Transport Amendment Act 1999 (1999 No 68).

69 Applying for maritime document while disqualified

(1) Every person commits an offence who applies for or obtains a maritime document while disqualified by an order of a court from obtaining such a document and any such document so obtained shall be of no effect.

(2) Every person who commits an offence against subsection (1) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding $2,000:

(b) in the case of a body corporate, to a fine not exceeding $20,000;—

and the court may order the person to be disqualified from holding or obtaining a maritime document for such period not exceeding 12 months as the court thinks fit.

Compare: 1990 No 98 s 48

Section 69(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

69A Acting in breach of maritime documents

(1) Every person who operates, maintains, or services a ship, or does any other act in respect of a ship commits an offence if the provisions and conditions of the appropriate maritime document are not complied with.

(2) Every person who commits an offence against subsection (1) is liable,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000:

(c) in either case, to an additional penalty under section 409.

Section 69A: inserted, on 23 October 2013, by section 21 of the Maritime Transport Amendment Act 2013 (2013 No 84).

69B Knowingly employing seafarers without maritime documents

(1) Every person commits an offence who knowingly employs a seafarer who does not hold the appropriate maritime document.

(2) Every person who commits an offence against subsection (1) is liable,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000:

(c) in either case, to an additional penalty under section 409.

Section 69B: inserted, on 23 October 2013, by section 21 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Other offences

70 Failure to comply with inspection or audit request

(1) Every person commits an offence who, without reasonable excuse, fails to comply with any requirement of the Director under subsection (1) or subsection (3) of section 54.

(2) Every person who commits an offence against subsection (1) is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $10,000 and, if the offence is a continuing one, to a further fine not exceeding $2,000 for every day or part of a day during which the offence is continued:

(b) in the case of a body corporate, to a fine not exceeding $100,000 and, if the offence is a continuing one, to a further fine not exceeding $20,000 for every day or part of a day during which the offence is continued:

(c) in any case, to an additional penalty under section 409.

Compare: 1990 No 98 s 44A; 1992 No 75 s 23

Section 70(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

71 Failure to comply with Part 3

(1) Every person commits an offence who, without reasonable excuse, contravenes or fails to comply with any provision of any of sections 20, 21, 22, 23, 25, 30, and 31.

(2) Every person who commits an offence against subsection (1) is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $5,000:

(b) in the case of a body corporate, to a fine not exceeding $30,000.

(3) Every person commits an offence and is liable on conviction to a fine not exceeding $1,000 who, without reasonable excuse, contravenes or fails to comply with any provision of section 26.

Section 71(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 71(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Penalties

[Repealed]

Heading: repealed, on 5 May 2003, pursuant to section 35(1)(e) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

72 Failure to comply with sections 7 to 10

[Repealed]

Section 72: repealed, on 5 May 2003, by section 35(1)(e) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Disqualification

73 Court may disqualify holder of maritime document or impose conditions on holding of document

(1) In addition to any penalty a court may impose under section 64 or section 65 or section 70, the court, on convicting any person of an offence against any of those sections, may by order do all or any of the following, namely,—

(a) disqualify the person convicted from holding or obtaining a maritime document, or a particular maritime document, issued by the Director:

(b) impose on any maritime document held by or issued to the person convicted such restrictions or conditions or both as the court, having regard to the circumstances of the offence, thinks fit,—

for such period not exceeding 12 months as the court thinks fit.

(2) Nothing in subsection (1) shall affect or prevent the exercise by the Director of his or her powers under Part 5.

Compare: 1990 No 98 s 45

74 Effect of disqualification

(1) Where the holder of a maritime document is disqualified by an order of a court from holding or obtaining a maritime document, the document shall be deemed to be suspended while the disqualification continues in force, and during the period of suspension shall be of no effect.

(2) Where the holder of a maritime document is disqualified by an order of a court from holding or obtaining such a document, and the disqualification will expire before the expiration of the term of the document, the document shall, on the expiration of the disqualification, continue to be of no effect until the holder of it undergoes and passes such tests and fulfils such requirements as the Director may from time to time specify.

Compare: 1990 No 98 s 59

75 Commencement of period of disqualification

Where an order is made by a court disqualifying any person for a period from holding or obtaining a maritime document, the period of disqualification shall commence on the date of the making of the order unless the court making the order directs that the period of disqualification shall commence on a later date.

Compare: 1990 No 98 s 60

76 Retention and custody of documents

(1) Where, by an order of a court, the holder of a maritime document is disqualified from holding or obtaining a document, the person in respect of whom the order is made shall forthwith, and whether or not demand is made, surrender the document to—

(a) the court where the order was made; or

(b) the Authority.

(2) Where a maritime document is so surrendered, it shall forthwith be forwarded to the Director who shall endorse the terms of the disqualification on the document and retain it until the disqualification has expired or been removed and the person entitled to the document has made a request in writing for its return.

(3) If the person entitled to the document is a person to whom section 74(2) applies, the document shall not be returned to that person until that person has passed the tests and fulfilled the requirements referred to in that provision.

Compare: 1990 No 98 s 61

77 Removal of disqualification

(1) Subject to this section, any person who by order of a court is disqualified for a period exceeding 6 months from holding or obtaining a maritime document, or is disqualified from being recognised as the holder of a maritime document, may, after the expiration of 6 months after the date on which the order of disqualification became effective, apply to the court by which that order was made to remove the disqualification.

(2) On an application under this section, the court may, having regard to the character of the applicant and the applicant's conduct subsequent to the order, the nature of the offence, and any other circumstances of the case, remove the disqualification as from such date as may be specified in the order or refuse the application.

(3) In the case of a disqualification ordered by the District Court, every application under this section shall be made to a District Court Judge exercising jurisdiction in the court by which the order was made.

(4) Notice of every application under this section shall be served on the Director who shall have a right to appear and be heard in respect of the matter.

Compare: 1990 No 98 s 62

Section 77(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

78 Particulars of disqualification orders, etc, to be sent to Director

Where a court makes an order under section 73 or section 77, the Registrar of the court shall send to the Director particulars of the order.

Compare: 1990 No 98 s 63

79 Appeals

(1) For the purposes of Part 6 of the Criminal Procedure Act 2011, an order of the District Court by which any person is disqualified from holding or obtaining a maritime document shall be deemed to be a sentence or part of a sentence, as the case may be. If a notice of appeal against any such order is filed, the court may, if it thinks fit, defer the operation of the order pending the appeal, but otherwise the order shall have immediate effect.

(2) Any person whose application under section 77 to the District Court is refused may appeal against the refusal to the High Court in accordance with Part 6 of the Criminal Procedure Act 2011 and that Part applies with the necessary modifications as if the refusal were a sentence.

(3) Any person whose application under section 77 to the High Court is refused may appeal to the Court of Appeal against the refusal in accordance with Part 6 of the Criminal Procedure Act 2011 and that Part applies with the necessary modifications as if the refusal were a sentence.

(4) Where application is made to the Court of Appeal for leave to appeal to that court against a sentence of the High Court that is or includes an order of disqualification, the High Court may, if it thinks fit, defer the operation of the order pending the application for leave to appeal and, if leave is granted, pending the appeal.

(5) Where an appeal to the High Court or Court of Appeal is allowed under this section, whether in whole or in part, the Registrar of the High Court shall send notice thereof to the Director who shall have a right to appear and be heard in respect of the matter.

(6) In determining the expiration of the period for which a person is disqualified from holding or obtaining a maritime document, any time during which the operation of the relevant order is deferred under this section shall be disregarded.

Compare: 1990 No 98 s 64

Section 79(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 79(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 79(2): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 79(3): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Further provisions relating to offences

[Repealed]

Heading: repealed, on 5 May 2003, pursuant to section 35(1)(f) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

80 Amendment of indictment or information

[Repealed]

Section 80: repealed, on 5 May 2003, by section 35(1)(f) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

81 Strict liability and defences

[Repealed]

Section 81: repealed, on 5 May 2003, by section 35(1)(f) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Maritime Appeal Authority

82 Continuation of Maritime Appeal Authority

(1) There shall continue to be an authority called the Maritime Appeal Authority.

(2) The person appointed as the Maritime Appeal Authority under the Shipping and Seamen Act 1952 is hereby appointed as the first Maritime Appeal Authority under this Act.

(3) Every subsequent Maritime Appeal Authority shall be appointed by the Minister after consultation with the Minister of Justice.

(4) The functions of the Maritime Appeal Authority shall be to consider and determine applications made to the Authority pursuant to section 52.

(5) In making its determinations the Maritime Appeal Authority shall have regard to the potential effect on the risk to maritime safety of the suspended person being employed as a seafarer.

(6) The provisions of Schedule 2 shall apply in relation to the office of the Maritime Appeal Authority.

Part 7
Limitation of liability for maritime claims

Part 7 heading: replaced, on 23 October 2013, by section 22 of the Maritime Transport Amendment Act 2013 (2013 No 84).

83 Application of this Part

This Part applies to every ship (whether registered or not and whether a New Zealand ship or not) in any circumstances in which the High Court has jurisdiction under section 4 of the Admiralty Act 1973.

Compare: 1952 No 49 s 458; 1987 No 184 s 22(1)

84 Interpretation

(1) In this Part,—

LLMC Convention means the Convention on the Limitation of Liability for Maritime Claims done at London on 19 November 1976, a copy of the English text of which is set out in Schedule 8

LLMC Protocol means the Protocol of 1996 to amend the LLMC Convention done at London on 2 May 1996, a copy of the English text of which is set out in Schedule 9.

(2) In the LLMC Convention and LLMC Protocol, **ship** or **seagoing ship**—

(a) means every description of vessel (including barges, lighters, and like vessels) used or intended to be used in navigation, however propelled; and

(b) includes any structure (whether completed or not) launched and intended for use as a ship or part of a ship; and

(c) includes any ship used by or set aside for the New Zealand Defence Force.

Section 84: replaced, on 23 October 2013, by section 23 of the Maritime Transport Amendment Act 2013 (2013 No 84).

84A LLMC Convention as amended by LLMC Protocol to have force of law

The provisions of the LLMC Convention as amended by the LLMC Protocol have the force of law in New Zealand.

Section 84A: inserted, on 23 October 2013, by section 24 of the Maritime Transport Amendment Act 2013 (2013 No 84).

85 Persons entitled to limitation of liability under this Part

[Repealed]

Section 85: repealed, on 23 October 2013, by section 25 of the Maritime Transport Amendment Act 2013 (2013 No 84).

86 Claims subject to limitation of liability

(1) *[Repealed]*

(2) *[Repealed]*

(3) The limitation of liability under the LLMC Convention (as amended by the LLMC Protocol)—

(a) *[Repealed]*

(b) *[Repealed]*

(c) applies in respect of each distinct occasion, without regard to any liability arising on any other distinct occasion; and

(d) applies, subject to subsection (4), whether the liability arises at common law or under any other enactment, and notwithstanding anything in any other enactment.

(4) This Part and Articles 2, 3, and 9 of the LLMC Convention do not limit or affect—

(a) section 33J, 33K, or 110 of this Act; or

(b) anything in the Accident Compensation Act 2001, Parts 18 to 26A of this Act, or subpart 1 of Part 5 of the Contract and Commercial Law Act 2017.

Compare: 1952 No 49 s 461; 1987 No 184 s 22(1)

Section 86(1): repealed, on 23 October 2013, by section 26(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 86(2): repealed, on 23 October 2013, by section 26(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 86(3): amended, on 15 June 2018, by section 7 of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 86(3): amended, on 23 October 2013, by section 26(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 86(3)(a): repealed, on 23 October 2013, by section 26(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 86(3)(b): repealed, on 23 October 2013, by section 26(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 86(4): replaced, on 23 October 2013, by section 26(4) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 86(4)(b): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

87 Calculation of limits of liability

(1) *[Repealed]*

(2) *[Repealed]*

(3) *[Repealed]*

(4) *[Repealed]*

(5) For the purposes of Articles 6 and 7 of the LLMC Convention (as amended by the LLMC Protocol),—

(a) *[Repealed]*

(b) *[Repealed]*

(c) where the gross tonnage of a ship is unable to be ascertained,—

(i) the Director, on receiving from or by the direction of the court hearing the case in which the tonnage of the ship is in question such evidence of the dimensions of the ship as is available, shall estimate what the gross tonnage of the ship would have been if the ship had been duly measured in accordance with the relevant tonnage measurement rules, and give a certificate of the tonnage as estimated by the Director; and

(ii) the tonnage so estimated shall be taken to be the gross tonnage of the ship.

(d) *[Repealed]*

Compare: 1952 No 49 s 462; 1987 No 184 s 22(1)

Section 87(1): repealed, on 23 October 2013, by section 27(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 87(2): repealed, on 23 October 2013, by section 27(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 87(3): repealed, on 23 October 2013, by section 27(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 87(4): repealed, on 23 October 2013, by section 27(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 87(5): amended, on 15 June 2018, by section 8 of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 87(5): amended, on 23 October 2013, by section 27(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 87(5)(a): repealed, on 23 October 2013, by section 27(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 87(5)(b): repealed, on 23 October 2013, by section 27(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 87(5)(d): repealed, on 23 October 2013, by section 27(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

87A Governor-General may notify amended limits

(1) If the limits of liability specified in Article 6, 7, or 8 of the LLMC Convention (as amended by the LLMC Protocol) are amended in accordance with Article 8 of the LLMC Protocol, the Governor-General, may, by Order in Council, notify—

(a) the new limits; and

(b) the date from which those limits take effect in accordance with Article 8 of the LLMC Protocol.

(2) The limits notified in accordance with subsection (1), may, in the absence of proof to the contrary, be taken in any proceedings to be the current limits.

Section 87A: inserted, on 23 October 2013, by section 28 of the Maritime Transport Amendment Act 2013 (2013 No 84).

88 Units of account

(1) *[Repealed]*

(2) For the purposes of paragraph 1 of Article 8 of the LLMC Convention (as amended by the LLMC Protocol), a certificate given by or on behalf of the Secretary to the Treasury stating—

(a) that a particular sum in New Zealand currency has been fixed as the equivalent of 1 special drawing right for a particular date; or

(b) that no sum has been fixed for that date, and that a particular sum has been so fixed for the date most recently preceding a particular date,—

shall, in any proceedings, be received in evidence and, in the absence of proof to the contrary, be sufficient evidence of the value of the New Zealand currency for the purposes of paragraph 1 of Article 8 of the LLMC Convention (as amended by the LLMC Protocol).

Compare: 1952 No 49 s 463; 1987 No 184 s 22(1)

Section 88(1): repealed, on 23 October 2013, by section 29(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 88(2): amended, on 15 June 2018, by section 9 of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 88(2): amended, on 23 October 2013, by section 29(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

89 Court may consolidate claims

[Repealed]

Section 89: repealed, on 23 October 2013, by section 30 of the Maritime Transport Amendment Act 2013 (2013 No 84).

90 Part owners to account in respect of damages

[Repealed]

Section 90: repealed, on 23 October 2013, by section 30 of the Maritime Transport Amendment Act 2013 (2013 No 84).

91 Release of ship where security given

[Repealed]

Section 91: repealed, on 23 October 2013, by section 30 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Part 8
Liability where 2 or more ships involved

92 Application of this Part

This Part applies to every ship (whether registered or not and whether a New Zealand ship or not) in any circumstances in which the High Court has jurisdiction under section 4 of the Admiralty Act 1973.

Compare: 1952 No 49 s 467; 1987 No 184 s 23

93 Interpretation

(1) In this Part, unless the context otherwise requires,—

owner, in relation to a ship at fault, means every person who owns the ship or any interest in the ship; and includes every other person who is responsible for the fault of the ship; and in any case where, by virtue of any charter or demise or for any other reason, the owner is not responsible for the navigation and management of the ship, also includes every person who is responsible for the navigation and management of the ship

salvage services has the same meaning as in section 84

ship means every description of vessel (including barges, lighters, and like vessels) used or intended to be used in navigation, however propelled; and includes any structure (whether completed or not) launched and intended for use as a ship or part of a ship; and also includes any ship used by or set aside for the New Zealand Defence Force.

(2) In this Part, reference to damage or loss caused by the fault of a ship shall be construed as including references to any salvage or other expenses consequent upon that fault recoverable at law by way of damages.

Compare: 1952 No 49 s 468; 1987 No 184 s 23

94 Division of loss

(1) Subject to the succeeding provisions of this section, where, by the fault of 2 or more ships, damage or loss is caused to 1 or more of them, or to their cargoes or freight, or to any other property on board, the liability to make good the damage or loss shall be in proportion to the degree to which each ship was at fault.

(2) If, in any case to which subsection (1) applies, it is not possible to establish different degrees of fault, having regard to all the circumstances of the case, the liability shall be apportioned equally.

(3) Nothing in this section shall—

(a) render any ship liable for any loss or damage to which the fault of that ship has not contributed; or

(b) affect the liability of any person under a contract of carriage, or any other contract; or

(c) impose any liability upon any person from which that person is exempted by any contract or by any provision of law; or

(d) affect the right of any person to limit that person's liability in the manner provided by law.

Compare: 1952 No 49 s 469; 1987 No 184 s 23

95 Damages for personal injury

(1) Subject to subsection (2), where, by the fault of 2 or more ships, any person on board one of the ships is killed or injured, the liability of the owners of the ships shall be joint and several.

(2) Nothing in subsection (1) shall—

(a) deprive any person of any right of defence on which, had this section not been enacted, that person might have relied in an action brought against that person by the injured person or by any person entitled to sue in respect of the death of any person on board; or

(b) affect the right of any person to limit that person's liability in the manner provided by law.

Compare: 1952 No 49 s 470; 1987 No 184 s 23

96 Right of contribution

(1) Subject to subsection (2), where, by the fault of 2 or more ships, any person on board one of the ships is killed or injured, and a proportion of the damages is recovered against the owners of one of the ships that exceeds the proportion in which that ship was at fault, those owners may recover the amount of the excess by way of contribution from the owners of the other ship or ships to the extent to which those ships were respectively at fault.

(2) No amount shall be recovered under subsection (1) that could not, by reason of any statutory or contractual limitation of or exemption from liability, or for any other reasons, have been recovered in the first instance as damages by the persons entitled to sue for damages.

(3) In addition to any other remedy provided by law, the persons entitled to any contribution under this section shall, for the purpose of recovering the contribution, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

Compare: 1952 No 49 s 471; 1987 No 184 s 23

97 Limitation of actions

(1) Subject to subsections (3) and (4), no action may be brought to enforce any claim or lien against a ship (**the defendant ship**) or the owners of the ship, if the action concerns—

(a) any damage or loss to another ship, or to cargo or freight of another ship, or to any other property on board another ship, that was caused wholly or partly by the fault of the defendant ship; or

(b) damages for loss of life or personal injuries suffered by any person on board another ship, that were caused wholly or partly by the fault of the defendant ship,—

unless proceedings are commenced within 2 years after the date when the damage or loss or injury was caused.

(2) Subject to subsections (3) and (4), no action shall be maintainable under section 96 to recover any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings are commenced within 1 year after the date of payment.

(3) If, in any case to which subsection (1) or subsection (2) applies, the High Court is satisfied that there has not been a reasonable opportunity to arrest the defendant ship—

(a) at any port in New Zealand; or

(b) within New Zealand waters; or

(c) locally within the jurisdiction of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his or her principal place of business,—

within the period specified by subsection (1) or (as the case may require) subsection (2), the court shall, on the application of the plaintiff, extend that period to an extent sufficient to give such a reasonable opportunity.

(4) Without limiting subsection (3), in any case to which subsection (1) or subsection (2) applies, the High Court may, in accordance with rules of court, extend the period referred to in the appropriate one of those subsections to such extent and on such conditions as it thinks fit.

(5) This section shall not apply to proceedings in respect of any alleged fault of a ship used by or set aside for the New Zealand Defence Force.

(6) Subsection (3) shall not apply to any ships of the Crown.

(7) This section shall not limit or affect section 110, or anything in the Injury Prevention, Rehabilitation, and Compensation Act 2001 or Parts 18 to 26A of this Act or subpart 1 of Part 5 of the Contract and Commercial Law Act 2017.

Compare: 1952 No 49 s 471A; 1987 No 184 s 23

Section 97(1): substituted, on 16 October 2003, by section 11(1) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 97(7): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

Section 97(7): amended, on 23 October 2013, by section 31 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 97(7): amended, on 1 April 2002, by section 337(1) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49).

Section 97(7): amended, on 9 June 1999, by section 11(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Part 9
Wreck of ships and aircraft

Part 9 heading: amended, on 16 October 2003, by section 12 of the Maritime Transport Amendment Act 1999 (1999 No 68).

98 Interpretation

In this Part, unless the context otherwise requires,—

Crown entity has the same meaning as in section 7 of the Crown Entities Act 2004

tidal water means—

(a) any part of the sea:

(b) any part of a river within the ebb and flow of the tide at mean spring tides

wreck includes—

(a) any ship or aircraft which is abandoned, stranded, or in distress at sea or in any river or lake or other inland water, or any equipment or cargo or other articles belonging to or separated from any such ship or aircraft or belonging to or separated from any ship or aircraft which is lost at sea or in any river or lake or other inland water; and

(b) shipping containers and property lost overboard or similarly separated from a ship, other than cargo lost in the course of its unloading or discharge from the ship while the ship is in a port.

Compare: 1950 No 34 s 2(1); 1952 No 49 s 2(1); 1987 No 184 s 2(1)

Section 98 **Crown entity**: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 98 **Receiver**: repealed, on 9 June 1999, by section 13(1) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 98 **salvage**: repealed, on 16 October 2003, by section 13(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 98 **salvage services**: repealed, on 16 October 2003, by section 13(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 98 **salvor**: repealed, on 16 October 2003, by section 13(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 98 **wreck**: substituted, on 9 June 1999, by section 13(3) of the Maritime Transport Amendment Act 1999 (1999 No 68).

99 Director may appoint Receivers

[Repealed]

Section 99: repealed, on 9 June 1999, by section 20(1)(a) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Ships and aircraft in distress

100 Powers and duties of Director where ship or aircraft in distress

(1) If any ship or aircraft is wrecked, stranded, or in distress at any place on or over or near the coasts of New Zealand or any tidal waters within the limits of New Zealand or any river or lake or other inland water, the Director may give such directions as he or she thinks fit for the preservation of all or any of the following:

(a) the ship or aircraft:

(b) the lives of the passengers and crew (who are in this Part referred to as the shipwrecked persons):

(c) the equipment and cargo of the ship or aircraft.

(2) *[Repealed]*

(3) The Director may, with a view to the preservation of the lives of the shipwrecked persons or of the ship or aircraft or of its cargo or equipment,—

(a) require such persons as the Director thinks necessary to assist him or her:

(b) require the master or other person having the charge of any ship near at hand to give such aid with his or her crew or ship as may be within the master's power:

(c) demand the use of any vehicle that may be near at hand.

(4) Every person commits an offence who—

(a) wilfully disobeys the lawful direction of the Director; or

(b) refuses without reasonable cause to comply with any lawful requisition or demand made by the Director under this section.

(5) No power conferred by this section shall be exercised so as to conflict with the exercise of a power, or any lawful directions given, by—

(a) a harbourmaster (as defined in section 222(1)); or

(b) an on-scene commander (as defined in section 281); or

(c) a person under Part 5 of the Civil Defence Emergency Management Act 2002; or

(d) the person who is serving as the National Recovery Manager under the Civil Defence Emergency Management Act 2002; or

(e) *[Repealed]*

(f) any constable under section 10 of the International Terrorism (Emergency Powers) Act 1987; or

(g) a person under the Transport Accident Investigation Commission Act 1990; or

(h) the Minister under section 255.

(i) *[Repealed]*

(6) The Director may recover as a debt due from the owner of the ship or aircraft, or of the cargo or equipment, the costs of his or her intervention under this section in respect of that ship, aircraft, cargo, or equipment, other than costs in respect of the preservation of life.

Compare: 1952 No 49 s 343; 1963 No 129 s 23

Section 100 heading: substituted, on 9 June 1999, by section 14 of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 100(1): substituted, on 9 June 1999, by section 14(1) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 100(2): repealed, on 9 June 1999, by section 14(1) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 100(3): amended, on 9 June 1999, by section 14(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 100(3)(a): amended, on 9 June 1999, by section 14(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 100(4)(a): amended, on 23 October 2013, by section 32 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 100(4)(b): amended, on 23 October 2013, by section 32 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 100(5)(c): substituted, on 1 December 2002, by section 117 of the Civil Defence Emergency Management Act 2002 (2002 No 33).

Section 100(5)(d): replaced, at 9.59 pm on 29 November 2016, by section 42 of the Civil Defence Emergency Management Amendment Act 2016 (2016 No 88).

Section 100(5)(e): repealed, on 1 December 2002, by section 117 of the Civil Defence Emergency Management Act 2002 (2002 No 33).

Section 100(5)(f): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 100(5)(h): substituted, on 9 June 1999, by section 14(3) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 100(5)(i): repealed, on 9 June 1999, by section 14(3) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 100(6): added, on 9 June 1999, by section 14(4) of the Maritime Transport Amendment Act 1999 (1999 No 68).

100A Responsibility of owner of ship or aircraft in distress

(1) If any ship or aircraft is wrecked, stranded, or in distress at any place on or over or near the coasts of New Zealand or any tidal waters within the limits of New Zealand or any river or lake or other inland water, and the Director notifies the owner of the ship or aircraft that he or she considers that the ship or aircraft, or its equipment or cargo, is a hazard to navigation, the owner must make arrangements to secure and remove the hazard.

(2) This section is subject to section 100 and nothing in this section affects or limits any right, privilege, or power exercisable in relation to a ship or aircraft, or its equipment or cargo, by the Director or any other person under any other enactment or any rule of law.

(3) A person commits an offence if the person contravenes subsection (1).

Section 100A: inserted, on 9 June 1999, by section 15 of the Maritime Transport Amendment Act 1999 (1999 No 68).

101 Right of passage over adjoining lands

(1) Where a ship or aircraft is wrecked, stranded, or in distress as aforesaid, all persons may, for the purpose of rendering assistance to the ship or aircraft, or of saving the lives of the shipwrecked persons, or of saving the cargo or equipment of the ship or aircraft, unless there is some public road equally convenient, pass and repass, either with or without vehicles or equipment, over any adjoining lands without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and may also, on the like condition, deposit on those lands any cargo or other article recovered from the ship or aircraft.

(2) Any damage sustained by an owner or occupier in consequence of the exercise of the rights given by this section shall be a charge on the ship or aircraft or cargo or articles in respect of or by which the damage is occasioned.

(3) Every owner or occupier of land commits an offence who—

(a) impedes or hinders any person in the exercise of the rights given by this section, by locking his or her gates, or refusing upon request to open the same, or otherwise; or

(b) impedes or hinders the deposit on the land of any cargo or other article recovered from the ship or aircraft as aforesaid; or

(c) prevents or endeavours to prevent any such cargo or other article from remaining deposited on the land for a reasonable time until it can be removed to a safe place of public deposit.

Compare: 1952 No 49 s 344

Section 101(2): amended, on 9 June 1999, by section 16 of the Maritime Transport Amendment Act 1999 (1999 No 68).

102 Receiver to suppress plunder and disorder

[Repealed]

Section 102: repealed, on 9 June 1999, by section 20(1)(b) of the Maritime Transport Amendment Act 1999 (1999 No 68).

103 In Receiver's absence, who to act

[Repealed]

Section 103: repealed, on 9 June 1999, by section 20(1)(c) of the Maritime Transport Amendment Act 1999 (1999 No 68).

104 Receiver to make inquiry

[Repealed]

Section 104: repealed, on 9 June 1999, by section 20(1)(d) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Dealing with wreck

105 Rules to be observed by person finding wreck

(1) If a person finds or takes possession of any wreck within the limits of New Zealand, or takes possession of and brings within the limits of New Zealand any wreck found outside those limits, the following provisions apply:

(a) the person must, as soon as is reasonably practicable after finding or taking possession of the wreck, notify the Director that the person has found or taken possession of the wreck:

(b) if the person is not the owner of the wreck, the person must, as soon as is reasonably practicable after finding or taking possession of the wreck, either deliver it to the Police or allow the Police to take possession of it.

(1A) The Director may transmit to such persons and agencies as the Director thinks appropriate any information received by him or her under subsection (1).

(2) *[Repealed]*

(3) Every person commits an offence who, without reasonable excuse, fails to comply with this section, and shall in addition, if he or she is not the owner, forfeit any claim to salvage, and shall be liable to pay to the owner of the wreck if it is claimed, or, if it is unclaimed, to the person entitled to the same, double the value thereof, to be recovered in the same way as a fine of a like amount under this Act.

Compare: 1952 No 49 s 348; 1963 No 129 s 23

Section 105(1): substituted, on 9 June 1999, by section 17(1) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 105(1)(a): amended, on 23 October 2013, by section 33 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 105(1)(b): amended, on 23 October 2013, by section 33 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 105(1A): inserted, on 9 June 1999, by section 17(1) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 105(2): repealed, on 9 June 1999, by section 17(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

106 Articles washed ashore to be delivered to Receiver

[Repealed]

Section 106: repealed, on 9 June 1999, by section 20(1)(e) of the Maritime Transport Amendment Act 1999 (1999 No 68).

107 Claims to wreck

[Repealed]

Section 107: repealed, on 9 June 1999, by section 20(1)(f) of the Maritime Transport Amendment Act 1999 (1999 No 68).

108 Wreck may be sold immediately in certain cases

[Repealed]

Section 108: repealed, on 9 June 1999, by section 20(1)(g) of the Maritime Transport Amendment Act 1999 (1999 No 68).

109 Provisions where wreck claimed by 2 or more persons and as to unclaimed wreck

[Repealed]

Section 109: repealed, on 9 June 1999, by section 20(1)(h) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Removal of hazards to navigation

110 Removal of hazards to navigation

(1) The Director may cause to be removed any ship or aircraft referred to in section 100A, or any derelict ship, or any floating or submerged or stranded object, (**the hazard**), if—

(a) the owner of the hazard has not made arrangements under that section to secure and remove the hazard; and

(b) no regional council has jurisdiction over the waters or place where the hazard is located; and

(c) the Director considers the hazard is a hazard to navigation; and

(d) the action taken to remove the hazard is not inconsistent with the Resource Management Act 1991.

(2) The Director may, by notice in writing given to the owner or master or person in command of the hazard, or to any agent of the owner, require that person to remove the whole or any part of that hazard in a manner satisfactory to, and within a time to be specified by, the Director.

(3) If a person fails to comply with the notice, or if a person to whom the notice can be given cannot be found, the Director or a person authorised by the Director may—

(a) take possession of and remove or destroy the whole or any part of the hazard; and

(b) sell, in such manner as he or she thinks fit, the hazard or any part of it that is so removed, and also any property recovered from it, in the exercise of his or her powers under this section; and, out of the proceeds of any such sale, without any reference to the articles from the sale of which those proceeds arise, recover the whole of the expenses of removal; and

(c) if the proceeds of the sale are insufficient to pay the whole of the expenses of removal, recover the balance from the owner or master or person in command of the hazard, or from the owner of any ship or aircraft or from any other person if the sinking, stranding, or abandonment occurred through the fault or negligence of that ship, aircraft, or person.

(4) The Director or a person authorised by the Director must hold the surplus (if any) of the proceeds of any sale under this section and dispose of the surplus to the owner of the hazard or any other persons entitled to receive the surplus.

(5) This section applies to every article belonging to or forming part of a ship or aircraft, as it applies to a ship or aircraft; and the proceeds of the sale under this section of any ship or aircraft or any part of it or other property recovered from it must be regarded as a common fund.

(6) In this section, **owner**, in relation to any hazard, includes not only the owner or owners at the time of the sinking, stranding, abandonment, or other event, but also any subsequent purchaser of the hazard or of any article belonging to it or forming part of it, as long as the hazard remains a hazard to navigation.

Compare: 1952 No 49 s 353

Section 110: substituted, on 9 June 1999, by section 18 of the Maritime Transport Amendment Act 1999 (1999 No 68).

Offences in respect of wreck

[Repealed]

Heading: repealed, on 9 June 1999, pursuant to section 20(1)(j) of the Maritime Transport Amendment Act 1999 (1999 No 68).

111 Offences in respect of wreck

[Repealed]

Section 111: repealed, on 9 June 1999, by section 20(1)(i) of the Maritime Transport Amendment Act 1999 (1999 No 68).

112 Receiver may seize concealed wreck

[Repealed]

Section 112: repealed, on 9 June 1999, by section 20(1)(j) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Salvage

[Repealed]

Heading: repealed, on 16 October 2003, pursuant to section 20(1)(l) of the Maritime Transport Amendment Act 1999 (1999 No 68).

113 Salvage for saving life

[Repealed]

Section 113: repealed, on 16 October 2003, by section 20(1)(k) of the Maritime Transport Amendment Act 1999 (1999 No 68).

114 Salvage of cargo or wreck

[Repealed]

Section 114: repealed, on 16 October 2003, by section 20(1)(l) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Procedure in salvage

[Repealed]

Heading: repealed, on 16 October 2003, by section 20(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

115 Settlement of disputes as to salvage

[Repealed]

Section 115: repealed, on 16 October 2003, by section 20(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

116 Settlement of disputes by District Court

[Repealed]

Section 116: repealed, on 16 October 2003, by section 20(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

117 Apportionment of salvage among owners, etc, of ships and aircraft other than New Zealand ships or aircraft

[Repealed]

Section 117: repealed, on 16 October 2003, by section 20(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

118 Valuation of wreck

[Repealed]

Section 118: repealed, on 16 October 2003, by section 20(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

119 Enforcing payment of salvage

[Repealed]

Section 119: repealed, on 16 October 2003, by section 20(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

120 Receiver may sell wreck in case of non-payment

[Repealed]

Section 120: repealed, on 16 October 2003, by section 20(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

121 Payment of salvage in case of dispute as to apportionment

[Repealed]

Section 121: repealed, on 16 October 2003, by section 20(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

122 High Court may apportion

[Repealed]

Section 122: repealed, on 16 October 2003, by section 20(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

123 Salvage claims against the Crown

[Repealed]

Section 123: repealed, on 16 October 2003, by section 20(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

124 Salvage claims by the Crown

[Repealed]

Section 124: repealed, on 16 October 2003, by section 20(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Fees of Receivers

[Repealed]

Heading: repealed, on 9 June 1999, by section 20(1)(m) of the Maritime Transport Amendment Act 1999 (1999 No 68).

125 Fees to be paid to Receiver

[Repealed]

Section 125: repealed, on 9 June 1999, by section 20(1)(m) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Duties on wreck

126 Foreign wreck subject to duties as an importation

(1) All wreck, being goods brought or coming into New Zealand from a place outside New Zealand, shall be subject to the same duties as if the same was imported into New Zealand, and if any question arises as to the origin of the goods they shall be deemed to be the produce of such country as the chief executive of the New Zealand Customs Service may on investigation determine.

(2) The chief executive of the New Zealand Customs Service may permit all goods saved from any ship or aircraft stranded or wrecked on its homeward voyage to be forwarded to the port of its original destination, and all goods saved from any ship or aircraft stranded or wrecked on its outward voyage to be returned to the port at which they were laden; but the chief executive of the New Zealand Customs Service shall take security for the due protection of the revenue in respect of those goods.

(3) In this section, the term **goods** includes any part of any ship or aircraft and the cargo, machinery, and equipment thereof, and any other property belonging thereto.

Compare: 1952 No 49 s 370

Section 126(1): amended, on 1 October 1996, pursuant to section 294(3) of the Customs and Excise Act 1996 (1996 No 27).

Section 126(2): amended, on 1 October 1996, pursuant to section 294(3) of the Customs and Excise Act 1996 (1996 No 27).

127 Penalties

(1) Every person who commits an offence against section 100 or section 100A or section 101 is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $2,000:

(b) in the case of a body corporate, to a fine not exceeding $10,000.

(2) Every person who commits an offence against section 105 is liable on conviction to a fine not exceeding $5,000 and, if the offence is a continuing one, to a

further fine not exceeding $250 for every day or part of a day during which the offence is continued.

Compare: 1952 No 49 s 480(2)

Section 127(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 127(1): amended, on 9 June 1999, by section 19(1) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 127(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 127(2): amended, on 9 June 1999, by section 19(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Part 10
Construction, survey, and equipment

[Repealed]

Part 10: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

128 Interpretation

[Repealed]

Section 128: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

129 Application of this Part

[Repealed]

Section 129: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

130 Surveyors

[Repealed]

Section 130: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

131 Notice to be given before work commenced

[Repealed]

Section 131: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

132 Notice to be given before use changed

[Repealed]

Section 132: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

Requirement of survey

[Repealed]

Heading: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

133 Certain ships to be surveyed

[Repealed]

Section 133: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

134 Director may exempt any particular ship or class of ship from survey

[Repealed]

Section 134: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

Conduct of surveys

[Repealed]

Heading: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

135 Initial, intermediate, and periodical surveys

[Repealed]

Section 135: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

136 Additional surveys

[Repealed]

Section 136: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

137 Duties of surveyor on completion of survey where ship satisfactory

[Repealed]

Section 137: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

138 Duties of surveyor on completion of survey where ship unsatisfactory

[Repealed]

Section 138: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

139 Duties of Director on receipt of notice

[Repealed]

Section 139: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

140 Declarations of survey

[Repealed]

Section 140: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

Certificates

[Repealed]

Heading: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

141 Interim certificates

[Repealed]

Section 141: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

142 Safety Convention certificates

[Repealed]

Section 142: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

143 Certificates of survey

[Repealed]

Section 143: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

144 Requirement to hold appropriate certificate

[Repealed]

Section 144: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

145 Dispensation from having appropriate certificate

[Repealed]

Section 145: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

146 Conditions in respect of certificates

[Repealed]

Section 146: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

147 More than 1 certificate in respect of same ship

[Repealed]

Section 147: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

148 Duration of Safety Convention certificates

[Repealed]

Section 148: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

149 Duration of certificate of survey

[Repealed]

Section 149: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

150 Display of certificates

[Repealed]

Section 150: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

151 Offence in respect of display of certificates

[Repealed]

Section 151: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

Special provisions relating to barges

[Repealed]

Heading: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

152 Application of sections 153 to 155

[Repealed]

Section 152: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

153 Certificates of completion required for certain barges

[Repealed]

Section 153: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

154 Certificates of completion

[Repealed]

Section 154: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

155 Offence to proceed on voyage in certain circumstances

[Repealed]

Section 155: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

156 Government ships

[Repealed]

Section 156: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

Part 11
Load lines

[Repealed]

Part 11: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

157 Interpretation

[Repealed]

Section 157: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

158 Application of this Part

[Repealed]

Section 158: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

159 Load line ships and certificates

[Repealed]

Section 159: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

160 Issue of load line certificates

[Repealed]

Section 160: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

161 Duty to comply with Load Line Regulations

[Repealed]

Section 161: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

162 Overloading

[Repealed]

Section 162: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

163 Offences in relation to markings

[Repealed]

Section 163: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

164 Display of load line certificate and other requirements

[Repealed]

Section 164: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

165 Director may exempt certain ships from Load Line Regulations

[Repealed]

Section 165: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

166 Use of timber load lines

[Repealed]

Section 166: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

167 Submersion lines on ships not subject to Load Line Regulations

[Repealed]

Section 167: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

Part 12
Safety at sea

[Repealed]

Part 12: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

168 Interpretation

[Repealed]

Section 168: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

Prevention of collisions

[Repealed]

Heading: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

169 Application of Collision Regulations

[Repealed]

Section 169: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

170 Observance of Collision Regulations

[Repealed]

Section 170: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

General provisions relating to safety

[Repealed]

Heading: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

171 Radio messages

[Repealed]

Section 171: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

172 Additional duties in respect of reporting of dangers to navigation

[Repealed]

Section 172: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

173 Dangerous goods

[Repealed]

Section 173: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

174 Deck cargo

[Repealed]

Section 174: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

175 Livestock

[Repealed]

Section 175: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

176 Grain

[Repealed]

Section 176: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

177 Minister may define restricted limits

[Repealed]

Section 177: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

178 Medical officers to be carried on certain ships

[Repealed]

Section 178: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

179 Medical certificates required in respect of seafarers under 18 years of age

[Repealed]

Section 179: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

180 Crew accommodation

[Repealed]

Section 180: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

181 Official logbook to be kept

[Repealed]

Section 181: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

182 Matters to be entered in logbook

[Repealed]

Section 182: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

183 Chief engineer to keep engine room logbook

[Repealed]

Section 183: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

184 Offence in respect of official logbook, etc

[Repealed]

Section 184: repealed, on 2 February 1998 (after expiring on 1 February 1998), by section 187.

Part 13
Transitional provisions relating to Parts 10 to 12

185 Penalties

(1) Every person who commits an offence against any of sections 131, 132, and 171 shall be liable on conviction to a fine not exceeding $5,000 and, if the offence is a continuing one, to a further fine not exceeding $250 for every day or part of a day during which the offence is continued.

(2) Every person who commits an offence against any of sections 133, 136, 144, 146, 155, 161, and 173 is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000.

(3) Every person who commits an offence against any of sections 147, 170(3), 174(5), 175(3), 176(3), 178, 180, 181, 183, and 184 is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $5,000:

(b) in the case of a body corporate, to a fine not exceeding $30,000.

(4) Every person who commits an offence against section 151 or section 164(3) is liable on conviction to a fine not exceeding $2,000 and, if the offence is a continuing one, to a further fine not exceeding $100 for every day or part of a day during which the offence is continued.

(5) Every person who commits an offence against section 172(2) is liable on conviction to a fine not exceeding $10,000.

Section 185(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 185(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 185(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 185(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 185(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

186 Documents issued under Parts 10 to 12

Every licence, certificate, permit, authorisation, approval, or other document issued, recognised, or accepted by the Director under any of Parts 10, 11, and 12 shall be deemed to be a maritime document issued, recognised, or accepted, as the case may be, under this Act, and shall accordingly have effect and be subject to the provisions of this Act or regulations or rules made under this Act.

187 Expiry of Parts 10 to 12

Parts 10, 11, and 12 shall expire with the close of the period of 3 years beginning on the date of commencement of this Act, and on the day after the day on which that period closes those Parts shall be deemed to be repealed.

Part 14
General provisions relating to shipping

Duty of assistance

188 Duty of assistance

Every person on whom any duty is imposed by this Act—

(a) shall at all reasonable times furnish; and

(b) shall ensure that at all reasonable times the person's agents and employees furnish—

the means required by the Authority, its employees, the Director, or their respective agents for an entry, inspection, examination, audit, inquiry, or the exercise of any other power, under this Act in relation to the duty.

Compare: 1992 No 96 s 47

Maritime Registry

189 Maritime Registry

(1) The Authority shall establish a Maritime Registry.

(2) Copies or appropriate evidence of the following shall be recorded and maintained at the Registry:

(a) every maritime document and every marine protection document issued by the Director:

(b) every regulation made under this Act, and every rule notified in the *Gazette* and for the time being in force:

(c) every item incorporated by reference into rules under section 452:

(d) every accident, incident, and mishap notification given under section 31:

(e) every delegation, authorisation, notification of recognition of a document as a maritime document or marine protection document, and exemption granted in writing under this Act:

(f) the address for service of—

(i) every current applicant for a maritime document or marine protection document; and

(ii) every current holder of a maritime document or marine protection document; and

(iii) every person who holds a document recognised under this Act as a maritime document or marine protection document:

(g) a list of the conventions and the parties to each of those conventions:

(h) *[Repealed]*

(i) the current service charter.

(3) Documents kept at the Registry shall be made available by the Authority, in accordance with the provisions of the Official Information Act 1982, for inspection by the public free of charge.

(4) Subsection (3) is subject to the Privacy Act 1993.

Compare: 1990 No 98 s 74

Section 189(2)(h): repealed, on 1 July 2014, by section 72 of the Crown Entities Amendment Act 2013 (2013 No 51).

Section 189(4): added, on 15 December 2005, by section 7 of the Maritime Transport Amendment Act (No 2) 2005 (2005 No 108).

Information services

190 Information services

(1) The Authority shall ensure that an information service is provided to collect and disseminate information as to maritime safety requirements, marine protection requirements, and the placement and operation of navigational aids in respect of New Zealand waters.

(2) The Authority may require the payment of a reasonable charge fixed by the Authority for any costs incurred by the Authority under this section.

Compare: 1990 No 98 s 75

Maritime levies

Heading: replaced, on 23 October 2013, by section 34 of the Maritime Transport Amendment Act 2013 (2013 No 84).

191 Maritime levies

(1) The Governor-General may from time to time, by Order in Council, on the recommendation of the Minister, make regulations providing for the payment of maritime levies in respect of ships entering any port in New Zealand or operating in New Zealand waters and prescribing the amounts of those levies.

(2) Maritime levies may provide funding for any or all of the following purposes:

(a) to enable the provision of—

(i) navigational aids other than those referred to in section 200(2):

(ii) distress and safety radio services:

(iii) marine safety information:

(iv) other services related to the safety of shipping:

(b) any services provided, or any regulatory services or activities undertaken, by the Authority, the Director, the Maritime Appeal Authority, or the Crown in the performance or exercise of functions, duties, or powers under this Act.

(3) Any such regulations may—

(a) specify the persons by whom the levies are payable including (without limitation) all or any of the master, owner, charterer, person responsible for the management of the ship, or any agent of any of those persons who by law or by contract is liable to pay any other charge on account of the ship:

(b) prescribe different levies for different classes of ship based on length, tonnage, equipment available for use on board the ship, or such other criteria as may be specified in the regulations:

(c) provide for the refund or waiver of any levy in whole or in part, in any specified case or class of cases:

(d) provide that the levies are payable on an annual or other equal basis in advance or otherwise, or on a per voyage basis at the option of either the Director or the person liable to pay the levies; and provide for the changing of those options, and for the making of adjustments where an option is changed—

whether or not persons levied use, or the ship in respect of which the levy arises uses, any such services.

(3A) The Minister must not make a recommendation under subsection (1) unless he or she has consulted such persons, representative groups within the maritime industry or elsewhere, government departments, and Crown agencies as he or she considers appropriate.

(4) Nothing in this section limits the provisions of section 201 or section 204.

Compare: 1952 No 49 s 375; 1990 No 121 s 2

Section 191 heading: replaced, on 23 October 2013, by section 35(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 191(1): replaced, on 23 October 2013, by section 35(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 191(2): replaced, on 23 October 2013, by section 35(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 191(3)(a): amended, on 23 October 2013, by section 35(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 191(3)(b): amended, on 23 October 2013, by section 35(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 191(3)(c): amended, on 23 October 2013, by section 35(4) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 191(3)(d): amended, on 23 October 2013, by section 35(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 191(3A): inserted, on 23 October 2013, by section 35(5) of the Maritime Transport Amendment Act 2013 (2013 No 84).

192 Exemptions from maritime levies

(1) *[Repealed]*

(2) Regulations made under this Act may—

(a) exempt any ship or class or description of ship or any ship used for a purpose specified in the regulations from liability in respect of maritime levies, either totally or partially, and subject to such conditions, as may be imposed in the regulations:

(b) specify circumstances in which any ship or class or description of ship is exempt from liability in respect of maritime levies, either totally or partially.

Compare: 1952 No 49 s 376; 1990 No 121 s 2

Section 192 heading: amended, on 23 October 2013, by section 36(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 192(1): repealed, on 23 October 2013, by section 36(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 192(2)(a): amended, on 23 October 2013, by section 36(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 192(2)(a): amended, on 23 October 2013, by section 36(4) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 192(2)(b): amended, on 23 October 2013, by section 36(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 192(2)(b): amended, on 23 October 2013, by section 36(4) of the Maritime Transport Amendment Act 2013 (2013 No 84).

193 Power to appoint agents to collect maritime levies

(1) The Director may appoint the chief executive of the New Zealand Customs Service or the holder for the time being of any office (whether or not within the Public Service) or any other person to be the agent of the Director for the purpose of collecting maritime levies or any class of maritime levies.

(2) Any appointment under subsection (1) may—

(a) provide for the payment of a fee by the Director for the collection of maritime levies; or

(b) permit the agent to retain a specified proportion of the maritime levies as a collection fee; or

(c) both.

Compare: 1952 No 49 s 377; 1990 No 121 s 2

Section 193 heading: amended, on 23 October 2013, by section 36(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 193(1): amended, on 23 October 2013, by section 36(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 193(1): amended, on 23 October 2013, by section 36(4) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 193(1): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 193(2)(a): amended, on 23 October 2013, by section 36(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 193(2)(a): amended, on 23 October 2013, by section 36(4) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 193(2)(b): amended, on 23 October 2013, by section 36(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 193(2)(b): amended, on 23 October 2013, by section 36(4) of the Maritime Transport Amendment Act 2013 (2013 No 84).

194 Power of agent of ship, etc, to retain maritime levies out of other money

Any agent who by any regulations made under this Act is liable for the payment of maritime levies in respect of any ship may, out of the money received by the agent on account of that ship or belonging to the owner thereof, retain the amount of all such levies paid by the agent, together with any reasonable expenses incurred by reason of the payment of the levies or the agent's liability to pay the levies.

Compare: 1952 No 49 s 378; 1990 No 121 s 2

Section 194 heading: amended, on 23 October 2013, by section 36(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 194: amended, on 23 October 2013, by section 36(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 194: amended, on 23 October 2013, by section 36(4) of the Maritime Transport Amendment Act 2013 (2013 No 84).

195 Recovery in certain cases where maritime levies not paid

(1) This section shall apply only where a maritime levy is payable to the Director or the chief executive of the New Zealand Customs Service, and not where the levy is payable to any other person or any agent of the Director.

(2) If the person liable to pay any maritime levy in respect of any ship fails to do so on demand, and the levy is not paid by any other person, the Director or the chief executive of the New Zealand Customs Service may, in addition to any other remedy, go on board the ship and distrain the cargo and any other property belonging to or on board the ship, and may maintain that distraint until that levy is paid.

(3) For the purposes of subsection (1), the term **agent** does not include the chief executive of the New Zealand Customs Service.

Compare: 1952 No 49 s 378A; 1990 No 121 s 2

Section 195 heading: amended, on 23 October 2013, by section 36(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 195(1): amended, on 23 October 2013, by section 36(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 195(1): amended, on 23 October 2013, by section 36(5) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 195(1): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 195(2): amended, on 23 October 2013, by section 36(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 195(2): amended, on 23 October 2013, by section 36(5) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 195(2): amended, on 15 December 2005, by section 8 of the Maritime Transport Amendment Act (No 2) 2005 (2005 No 108).

Section 195(3): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

196 Issue of receipt for maritime levy

Every person who receives any maritime levy shall, on demand, issue to the person paying the levy a receipt showing clearly the ship in respect of which the levy is paid and the period to which the levy relates.

Compare: 1952 No 49 s 378B; 1990 No 121 s 2

Section 196 heading: amended, on 23 October 2013, by section 36(6) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 196: amended, on 23 October 2013, by section 36(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 196: amended, on 23 October 2013, by section 36(5) of the Maritime Transport Amendment Act 2013 (2013 No 84).

197 Detention of ship where maritime levies not paid or receipt not produced

(1) Where, on demand being made by any person for the payment of any maritime levy,—

(a) the levy is not paid; or

(b) evidence for the earlier payment of the levy is not produced,—

the Director or the chief executive of the New Zealand Customs Service may detain the ship concerned until the levy is paid or the receipt is produced.

(2) If payment of the levy is not made, or evidence of the earlier payment not produced, within the period of 28 days next following the detention, the Director may at any time during the continuance of the non-payment, or non-production, sell the ship, and apply the proceeds in payment of that levy, together with all reasonable expenses incurred by the Director under this subsection, paying the surplus (if any), on demand, to the owner or other person for the time being responsible for the management of the ship, or the master of the ship.

(3) Where a ship is detained or sold under this section, the Crown, the Director, and the chief executive of the New Zealand Customs Service, or any person acting under their direction or authority under this section shall not be liable for any loss or damage arising directly or indirectly from the detention or sale of the ship unless it is proved to the satisfaction of a court that the person acted in bad faith.

(4) The chief executive of the New Zealand Customs Service shall advise the Director of every ship detained pursuant to subsection (1) by the chief executive or by a person acting under the chief executive's direction or authority.

Compare: 1952 No 49 s 378C; 1990 No 121 s 2

Section 197 heading: amended, on 23 October 2013, by section 36(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 197(1): amended, on 23 October 2013, by section 36(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 197(1): amended, on 23 October 2013, by section 36(5) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 197(1)(a): amended, on 23 October 2013, by section 36(5) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 197(1)(b): amended, on 23 October 2013, by section 36(5) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 197(1): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 197(2): amended, on 23 October 2013, by section 36(5) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 197(3): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 197(4): substituted, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

197A Regulations may impose ballast water management levy

(1) The Governor-General may from time to time, by Order in Council, make regulations imposing a ballast water management levy on ships, as defined in section 246A(3)(a), that discharge ballast water from outside New Zealand waters into New Zealand waters or the exclusive economic zone.

(2) The purpose of the levy is to wholly or partly fund administration, inspection, and enforcement services relating to the control and management of ballast water.

(3) Sections 191(3) to 197 apply with all necessary modifications to regulations made under this section.

Section 197A: inserted, on 8 September 2017, by section 86(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Coastal shipping

198 Coastal shipping

(1) No ship shall carry coastal cargo, unless the ship is—

(a) a New Zealand ship; or

(b) a foreign ship on demise charter to a New Zealand-based operator who employs or engages a crew to work on board the ship under an employment agreement or contract for services governed by New Zealand law; or

(c) a foreign ship—

(i) that is passing through New Zealand waters while on a continuous journey from a foreign port to another foreign port, and is stopping in New Zealand to load or unload international cargo; and

(ii) whose carriage of coastal cargo is incidental in relation to the carriage of the international cargo.

(d) *[Repealed]*

(1A) A ship referred to in subsection (1)(c) may only load and unload coastal cargo—

(a) at a New Zealand port at which it loads or unloads international cargo; or

(b) at a New Zealand port that it is scheduled to pass in the course of its continuous journey.

(2) If, in any case, the Minister is satisfied that there are no ships of any of the kinds specified in subsection (1) available to carry any coastal cargo, the Minister may authorise the carrying of coastal cargo in that case by any other ship on such conditions as the Minister considers appropriate (including any conditions relating to occupational safety and health); and every authorisation granted under this subsection shall, subject to subsection (5), have effect according to its tenor.

(3) Every person commits an offence who—

(a) carries coastal cargo in contravention of this section; or

(b) contravenes or fails to comply with any condition imposed under subsection (2).

(4) Every person who commits an offence against subsection (3) is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000.

(5) Nothing in this section shall limit any other provision of this Act or any other Act, or any regulations or maritime rules made under this Act.

(6) In this section,—

coastal cargo, in relation to any ship, means—

(a) passengers who initially board the ship at a New Zealand port for carriage to and final disembarking from that ship at another New Zealand port; or

(b) goods initially loaded on the ship at a New Zealand port for carriage to and final unloading at another New Zealand port

continuous, in relation to a journey, means proceeding directly and expeditiously

foreign port means a port in a country other than New Zealand

goods has the same meaning as in section 246 of the Contract and Commercial Law Act 2017

international cargo, in relation to any ship, means—

(a) passengers who initially board the ship at—

(i) a foreign port for carriage to and disembarking at a New Zealand port; or

(ii) a New Zealand port for carriage to and disembarking at a foreign port; and

(b) goods initially loaded on the ship at—

(i) a foreign port for carriage to and unloading at a New Zealand port; or

(ii) a New Zealand port for carriage to and unloading at a foreign port; and

(c) excludes coastal cargo

New Zealand port means a port in New Zealand.

Section 198(1): substituted, on 15 December 2005, by section 9(1) of the Maritime Transport Amendment Act (No 2) 2005 (2005 No 108).

Section 198(1)(c): replaced, on 23 October 2013, by section 37(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 198(1)(d): repealed, on 23 October 2013, by section 37(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 198(1A): inserted, on 23 October 2013, by section 37(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 198(2): amended, on 23 October 2013, by section 37(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 198(2): amended, on 5 May 2003, by section 35(2) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 198(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 198(6) **coastal cargo**: replaced, on 23 October 2013, by section 37(4) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 198(6) **continuous**: inserted, on 23 October 2013, by section 37(5) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 198(6) **goods**: amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

Section 198(6) **international cargo**: inserted, on 23 October 2013, by section 37(5) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 198(6) **New Zealand port**: inserted, on 23 October 2013, by section 37(5) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Safety services

199 Search and rescue operations

[Repealed]

Section 199: repealed, on 1 December 2004, by section 12(3) of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

200 Navigational aids

(1) The Authority is responsible for the management of all navigational aids on or near the coasts of New Zealand and the adjacent seas and islands, except those to which subsection (2) applies.

(2) A person (including a local authority) who operates a port, cargo terminal, marina, jetty, marine farm, or other maritime facility (**an operator**) must provide navigational aids for that facility and is responsible for them.

(3) The Authority may—

(a) erect or place any navigational aid:

(b) add to, alter, remove, or maintain any navigational aid:

(c) inspect any navigational aid or property related to any navigational aid.

(3A) A regional council may erect, place, and maintain navigational aids in its region in accordance with section 33I.

(4) Any person who is authorised by the Director for that purpose either generally or specially may inspect and examine any navigational aid that is under the management of an operator, and may for that purpose enter, with such assistants as he or she may deem necessary, any such navigational aid and any premises and property that is appurtenant to the navigational aid.

(5) An operator who operates a port must, as and when required by the Director, do such of the following in or for that port as the Director may require:

(a) erect lights, lay down buoys and beacons, and replace, remove, or discontinue any harbour light, signal, buoy, beacon, or other sea mark:

(b) make any variation in the character of any harbour light, signal, buoy, beacon, or other sea mark or in the mode of exhibiting it.

(6) If an operator fails or neglects to comply with a requisition made under subsection (5) within a reasonable period to be stated in the requisition,—

(a) the Director may take all such steps and do all such acts as may be necessary to give effect to the requisition; and

(b) the cost and charges of so doing are a debt due from the operator to the Crown, and may be recovered accordingly.

(7) No person may erect or place a navigational aid, alter the character of a navigational aid, or alter or remove the position of a navigational aid, without the approval of the Director.

(8) Navigational aids must be provided and maintained in accordance with, and otherwise conform with, the maritime rules.

Compare: 1950 No 34 s 206; 1993 No 89 s 19

Section 200: substituted, on 9 June 1999, by section 21 of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 200(3A): inserted, on 23 October 2013, by section 38 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Provisions relating to special maritime events

Heading: inserted, on 19 December 1998, by section 2 of the Maritime Transport Amendment Act (No 2) 1998 (1998 No 116).

200A Minister may notify maritime event where special enforcement powers exercisable

(1) On application made by—

(a) a regional council that has navigational safety jurisdiction over the area or areas concerned under the Local Government Act 1974; or

(b) any other person or organisation, if no regional council has such jurisdiction in that case,—

the Minister may, by notice in the *Gazette*, declare a major maritime event or occasion to be an event or occasion to which section 200B applies.

(2) A notice under subsection (1)—

(a) must describe the event or occasion to which it applies; and

(b) must describe the waters (**the designated area**) to which it applies; and

(c) must specify the period during which the notice applies; and

(d) may set out requirements for the purposes of navigation safety and to enable the event or occasion to be properly managed, including requirements specifying the classes of ships that are authorised to enter the designated area, and the conditions and requirements to be complied with by persons in the designated area; and

(e) may authorise the regional council in whose region the maritime event or occasion is being held to determine, in accordance with the notice, which ships may enter the designated area and to specify and vary conditions for the day to day management and conduct of activities within the designated area (such as varying the hours of racing, closing and opening the course, and changing the course); and

(f) may contain such other information as may be necessary to explain the effect of the notice.

(3) A notice under subsection (1) may not be given unless the Minister—

(a) is satisfied that—

(i) the application is reasonable; and

(ii) the applicant has provided the information referred to in paragraphs (a), (b), and (c) of subsection (2); and

(iii) the applicant has provided any information required for the purposes of paragraphs (d), (e), and (f) of subsection (2); and

(b) is satisfied that the application of section 200B is in the interests of navigation safety or is an appropriate way to manage and control the event or occasion; and

(c) is satisfied that the applicant has considered the needs of commercial shipping; and

(d) has published in the *Gazette*, and in such daily newspapers as the Minister considers appropriate, a notice stating the Minister's intention to give the notice under subsection (1) and specifying a period (which may not be less than 10 days) within which interested persons and organisations may make written representations about the proposal; and

(e) has considered all representations received within the specified time.

(4) The Minister may from time to time, by notice in the *Gazette*,—

(a) extend the period during which a notice under subsection (1) applies:

(b) amend any description or correct any obvious mistake in a notice under subsection (1).

(5) Subsection (3) does not apply to a notice under subsection (4).

(6) An applicant must pay the costs and expenses of the notices referred to in subsection (3) that are published for the purposes of that person's application under this section; and a regional council may recover from the event organisers the costs and expenses the council incurs in relation to applications it makes under this section on their behalf.

(7) This section applies only to specified maritime events and occasions that are to be held in or on New Zealand waters.

Section 200A: inserted, on 19 December 1998, by section 2 of the Maritime Transport Amendment Act (No 2) 1998 (1998 No 116).

200B Special enforcement powers may be exercised when this section applies

(1) This section applies to a major maritime event or occasion that is subject to a notice under section 200A.

(2) During the period specified for the purpose in the notice under section 200A that applies to the event or occasion, an enforcement officer who has reasonable cause to believe that the action is necessary to maintain public order, or to preserve the safety of any person or ship, craft, or seaplane, or to enforce the provisions of the notice may do all or any of the following things:

(a) stop and detain any ship, craft, or seaplane in the designated area:

(b) remove any ship, craft, or seaplane or person from the designated area:

(c) prevent any ship, craft, or seaplane or person from entering the designated area:

(d) prohibit the use of a ship, craft, or seaplane in the designated area, if the enforcement officer considers its use in the designated area would pose an unreasonable risk to the safety of those on board or of other persons:

(e) board a ship, craft, or seaplane, give directions for the purposes of this section to the person appearing to be in charge, and require that person to give his or her name and address:

(f) exercise any power that a harbourmaster may exercise for the purposes of ensuring maritime safety under Part 3A.

(3) The exercise of any power conferred by subsection (2) does not prevent an enforcement officer or any other person from taking any further action against a person under some other provision of this Act or under any other enactment.

(4) An enforcement officer exercising any power under this section must produce evidence of identity and evidence that he or she is an enforcement officer, whenever reasonably requested to do so.

(5) The person in charge of a ship, craft, or seaplane commits an infringement offence and is liable to the penalty prescribed by regulations made under section 201 if—

(a) the ship, craft, or seaplane enters or remains in a designated area in contravention of a notice given under section 200A or otherwise contravenes the notice; or

(b) the person obstructs an enforcement officer while the officer is lawfully exercising a power under subsection (2); or

(c) the person fails to comply with the lawful exercise by an enforcement officer of a power under subsection (2).

(6) For the purposes of this section, the following persons are enforcement officers:

(a) all constables; and all police employees who are not constables authorised for the purpose by the Commissioner of Police:

(b) all members of the New Zealand Defence Force authorised for the purpose by the Chief of Defence Force:

(c) harbourmasters employed or engaged by any harbour controlling authority:

(d) such other persons as may for the time being be authorised for the purpose by the regional council within whose region the event or occasion is being held.

Section 200B: inserted, on 19 December 1998, by section 2 of the Maritime Transport Amendment Act (No 2) 1998 (1998 No 116).

Section 200B(2)(f): amended, on 23 October 2013, by section 39 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 200B(6)(a): amended, on 1 October 2008, pursuant to section 116(a)(vii) of the Policing Act 2008 (2008 No 72).

Section 200B(6)(a): amended, on 1 October 2008, pursuant to section 116(d) of the Policing Act 2008 (2008 No 72).

Dangerous goods

Heading: inserted, on 19 December 1998, by section 2 of the Maritime Transport Amendment Act (No 2) 1998 (1998 No 116).

200C Opening and testing of packages containing dangerous goods

(1) This section applies to—

(a) New Zealand ships; and

(b) other ships in a port in New Zealand or in New Zealand waters that load or unload cargo or fuel or embark or disembark passengers.

(2) A person referred to in subsection (3) may require a package or container to be opened and subjected to such tests as may be necessary to identify the contents, if—

(a) the package or container is, or is intended to be, loaded or carried on a ship to which this section applies; and

(b) the person reasonably believes the package or container contains dangerous goods (as defined in rules made under this Act) that are not marked or packed in accordance with the rules.

(3) The persons referred to in subsection (2) are—

(a) the owner, master, or charterer of a ship to which this section applies:

(b) the agent of the owner or charterer:

(c) the consolidator of any freight container or other form of secondary containment intended for shipment on the ship:

(d) a person authorised by the Director or by the chief executive of the Department of Labour or of the New Zealand Customs Service or of the Ministry of Fisheries or of the Ministry of Agriculture and Forestry.

(4) The shipper of the package or container is liable for the costs of inspections and tests carried out under subsection (2), and of any delay caused by the inspections and tests.

Section 200C: inserted, on 19 December 1998, by section 2 of the Maritime Transport Amendment Act (No 2) 1998 (1998 No 116).

Miscellaneous provisions

201 Regulations

(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

(a) prescribing those breaches of maritime rules, or breaches of navigation bylaws, that constitute offences against this Act:

(b) prescribing those breaches of maritime rules, or breaches of navigation bylaws, that constitute infringement offences against this Act:

(c) prescribing the penalty for each offence prescribed under paragraph (a) which,—

(i) in the case of an individual, shall be a fine not exceeding $5,000:

(ii) in the case of a body corporate, shall be a fine not exceeding $30,000:

(d) prescribing the infringement fee for each offence prescribed under paragraph (b) and for infringement offences against section 200B, which,—

(i) in the case of an individual, must not exceed $2,000:

(ii) in the case of a body corporate, must not exceed $12,000:

(e) such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act (other than those referred to in section 394(1)(i)) and for their due administration.

(2) Any regulations made under this Act may be so made that different regulations shall apply with respect to different classes of persons, ships, or maritime products, or with respect to the same class of person, ship, or maritime product in different circumstances.

Compare: 1990 No 98 s 100

Section 201(1)(a): amended, on 23 October 2013, by section 40 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 201(1)(b): amended, on 23 October 2013, by section 40 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 201(1)(d): amended, on 19 December 1998, by section 3 of the Maritime Transport Amendment Act (No 2) 1998 (1998 No 116).

Section 201(1)(d)(i): amended, on 16 December 2017, by section 35(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 201(1)(d)(ii): amended, on 16 December 2017, by section 35(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Part 15
Transitional and consequential provisions relating to maritime transport

202 Repeals and revocations

(1) The enactments specified in Part 1 of Schedule 3 are hereby repealed.

(2) The regulations, rules, orders, and notices specified in Part 2 of Schedule 3 are hereby revoked.

(3) Notwithstanding the repeal of the Maritime Transport Act 1993 by subsection (1), sections 21, 22, 23, 24, 25, and 27 of that Act shall be deemed to have effect as if those sections had not been repealed.

(4) Nothing in subsection (1) shall affect any amendment made—

(a) to the Harbours Act 1950, the Ombudsmen Act 1975, the Public Finance Act 1989, or the Ship Registration Act 1992; or

(b) to any regulations (other than the Coastal Pilots Regulations 1964), rules, orders, and notices—

by section 20 of the Maritime Transport Act 1993.

(5) *Amendment(s) incorporated in the Act(s)*.

203 Amendments to other enactments

The enactments specified in Schedule 4 are hereby amended in the manner indicated in that schedule.

204 Regulations, etc, deemed made under this Act

[Expired]

Section 204: expired, on 1 February 2001, by section 205(a).

205 Expiry of section 204

Section 204 shall expire—

(a) with the close of the period of 6 years beginning on the date of commencement of this Act; or

(b) on such earlier date as may be appointed by the Governor-General by Order in Council.

Section 205(a): amended, on 9 June 1999, by section 22 of the Maritime Transport Amendment Act 1999 (1999 No 68).

206 Dispensing powers of Director

The Director may, if he or she thinks fit, and subject to such conditions as he or she thinks fit to impose, exempt any ship or class of ship from any specified requirement contained in Part 10 or Part 11 or Part 12 or in any regulation, order, or notice continued in force by section 204, or dispense with the observance of any such requirement in the case of any ship or class of ship, if he or she is satisfied that—

(a) the requirement has been substantially complied with in the case of that ship or ships of that class; or

(b) compliance with the requirement is unnecessary in the circumstances of the case; or

(c) the action taken or provision made in relation to the subject matter of the requirement in the case of the ship or ships of that class is as effective as or more effective than actual compliance with the requirement.

Compare: 1952 No 49 s 505; 1987 No 184 s 27

207 Abolition of Marine Council and Marine Advisory Committee, etc

(1) The following bodies are hereby abolished:

(a) the Marine Council:

(b) the Marine Advisory Committee:

(c) the Mercantile Marine Office:

(d) every other body established by or under the Shipping and Seamen Act 1952 other than the Maritime Appeal Authority.

(2) Every member of a body abolished by subsection (1) shall vacate office on the commencement of this Act, and shall not be entitled to any compensation in respect of such loss of office.

Part 16
Carriage of goods by sea

208 Interpretation

(1) In this Part, **the Rules** means the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading signed at Brussels on 25 August 1924, as amended by the Protocol signed at Brussels on 23 February 1968 and by the Protocol signed at Brussels on 21 December 1979.

(2) For the purposes of Article 10 of the Rules, **State** includes each of Niue and Tokelau.

(3) A reference in this Act to a **non-negotiable document** includes a reference to a sea waybill.

209 Hague Rules to have force of law

(1) The Rules, as set out in Schedule 5, shall have the force of law in New Zealand.

(2) Subsection (1) shall apply to carriage of goods by sea evidenced by a non-negotiable document (other than a bill of lading or similar document of title) that contains express provision to the effect that the Rules are to govern the carriage as if the document were a bill of lading.

Compare: Carriage of Goods by Sea Act 1991 s 10 (Aust)

210 Jurisdiction of New Zealand courts

(1) An agreement, whether made in New Zealand or elsewhere, has no effect to the extent that it purports to—

(a) preclude or limit the jurisdiction of the courts of New Zealand in respect of—

(i) a bill of lading or a similar document of title, relating to the carriage of goods from any place in New Zealand to any place outside New Zealand; or

(ii) a non-negotiable document of a kind mentioned in section 209(2) relating to such a carriage of goods; or

(b) preclude or limit the jurisdiction of the courts of New Zealand in respect of—

(i) a bill of lading, or a similar document of title, relating to the carriage of goods from any place outside New Zealand to any place in New Zealand; or

(ii) a non-negotiable document of a kind mentioned in section 209(2) relating to such a carriage of goods.

(2) Nothing in this section shall be construed as limiting or affecting any stipulation or agreement to submit any dispute to arbitration in New Zealand or any other country.

Compare: 1940 No 31 s 11A; 1968 No 17 s 3; 1985 No 97 s 2; Carriage of Goods by Sea Act 1971 s 2 (UK); Carriage of Goods by Sea Act 1991 s 11 (Aust)

211 Contracting parties to the Rules

If the Secretary of Foreign Affairs and Trade certifies that, for the purposes of the Rules or any convention relating to liability of sea carriers for loss of, or damage to, cargo,—

(a) a State specified in the certificate is a Contracting State, or is a Contracting State in respect of any place or territory so specified; or

(b) any place or territory specified in the certificate forms part of a State so specified (whether a Contracting State or not),—

then, in any proceedings, the certificate shall, in the absence of proof to the contrary, be sufficient evidence of the matters so certified.

212 Repeals

(1) The Sea Carriage of Goods Act 1940 is hereby repealed.

(2) *Amendment(s) incorporated in the Act(s)*.

(3) The following enactments are hereby consequentially repealed:

(a) the Sea Carriage of Goods Amendment Act 1968:

(b) the Sea Carriage of Goods Amendment Act 1985.

213 Savings

(1) Notwithstanding section 212(1), the Sea Carriage of Goods Act 1940, as in force immediately before the commencement of that section, shall be deemed

to continue to apply to a contract of carriage of goods by sea after that commencement if—

(a) the contract was made before that commencement; and

(b) that Act would have applied but for the operation of section 212(1).

(2) Notwithstanding section 212(2), section 5(5) of the Carriage of Goods Act 1979, as in force immediately before the commencement of that section, shall be deemed to continue to apply to a contract of carriage of goods by sea between any place in New Zealand and any place in the Cook Islands or in Niue or in Tokelau after the commencement if—

(a) the contract was made before that commencement; and

(b) that subsection would have applied but for the operation of section 212(2).

Compare: 1940 No 31 s 15; Carriage of Goods by Sea Act 1991 s 20 (Aust)

Part 17
Salvage

214 Commencement

Sections 215 to 220 and Schedule 6 shall come into force on a date to be appointed by the Governor-General by Order in Council.

215 Interpretation

In this Part, unless the context otherwise requires,—

coastal or inland waters means New Zealand waters

Convention means the International Convention on Salvage, 1989, as set out in Schedule 6

court means the High Court and the District Court

freight at risk includes payments due to an owner or charterer for the carriage of cargo.

Section 215 **court**: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

216 Application of Convention

The provisions of the Convention shall have the force of law in New Zealand.

217 Salvage claims against the Crown

Subject to the provisions of the Crown Proceedings Act 1950, the provisions of this Part shall apply to salvage operations which assist any New Zealand warship, or any other New Zealand State-owned ship or other property, in the same manner as if the ship or property belonged to a private person.

Compare: 1952 No 49 s 367(1)

218 Salvage claims by the Crown

Where salvage operations are rendered by any New Zealand warship, or any other New Zealand State-owned ship, the Crown shall be entitled to claim salvage in respect of those operations to the same extent as any other salvor, and shall have the same rights as any other salvor.

Compare: 1952 No 49 s 368(1)

219 Apportionment between salvors

A payment in respect of a salvage operation that is due to more than 1 person shall, in the absence of agreement between those persons, be apportioned among those persons in such manner as the court thinks fit, having regard to the terms of the Convention.

Compare: 1952 No 49 s 366

219A Salvage for saving life

(1) Where services are rendered—

(a) wholly or in part within New Zealand waters in saving life from any ship or aircraft, whether or not a New Zealand ship or an aircraft registered in or belonging to New Zealand; or

(b) elsewhere in saving life from any New Zealand ship or any aircraft which is registered in or belongs to New Zealand,—

there is payable to the salvor by the owner of the ship or aircraft or cargo or equipment saved a reasonable amount of salvage, to be determined in case of dispute in the manner set out in subsections (2) and (3).

(2) Salvage in respect of the preservation of life, when payable by the owners of the ship or aircraft, is payable in priority to all other claims for salvage.

(3) Where the ship or aircraft and its cargo and equipment are destroyed, or the value of it is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage payable in respect of the preservation of life, the Minister may in his or her discretion award to the salvor, out of any money appropriated by Parliament for the purpose, such sum as he or she thinks fit in whole or part satisfaction of any amount of salvage so left unpaid.

Compare: 1952 No 49 s 356

Section 219A: inserted, on 9 June 1999, by section 23 of the Maritime Transport Amendment Act 1999 (1999 No 68).

220 Actions for indemnity

Any person who—

(a) is liable to pay a payment in respect of a salvage operation; and

(b) is indemnified against that liability—

shall take action to enforce that indemnity within 2 years of the liability arising and, in the event of failure to do so, that right of enforcement shall no longer be available to that person.

Part 18
Preliminary provisions relating to marine pollution

221 Commencement of provisions relating to marine pollution

Sections 222 and 224, Parts 19 to 27, and sections 469, 470, 471(2), 472, 473, 474, 475(2), 476 to 481, 484, 485(2), and 485(4), and Schedule 7 shall come into force on a date to be appointed by the Governor-General by Order in Council; and different dates may be so appointed by 1 or more Orders in Council for different provisions and different purposes.

222 Interpretation

(1) In this Part and in Parts 19 to 28, unless the context otherwise requires,—

agent or **agent of the ship**, in relation to a ship, means—

(a) any agent in New Zealand of the owner of the ship; and

(b) any agent for the ship

Civil Liability Convention has the meaning given to it by section 342

CLC owner has the meaning given to it by section 342

CLC ship has the meaning given to it by section 342

CLC State has the meaning given to it by section 342

controlled offshore installation has the meaning given to it by section 257

discharge has the meaning given to it by section 225

dumping has the meaning given to it by section 257

emergency dumping permit has the meaning given in section 257

exclusive economic zone of New Zealand has the meaning given to it by section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977; and **exclusive economic zone** has the same meaning

Fund Convention has the meaning given to it by section 370

harmful substance has the meaning given to it by section 225

London Convention has the meaning given to it by section 257

marine incineration facility has the meaning given to it by section 257

marine oil spill contingency plan has the meaning given to it by section 281

marine operations means any operations or operation for, or connected with, the exploration for, or the exploitation or associated processing of, any mineral in the sea or the seabed

marine protection convention, in relation to this Part and Parts 19 to 27, means any international convention, protocol, or agreement relating to the protection of the marine environment from pollution that is declared for the purposes of any such Part by Order in Council pursuant to subsection (4); and includes every amendment to, or revision of, any such instrument, being an amendment or revision to which New Zealand is a party that is declared in the same manner

marine protection document means—

(a) any permit issued by the Director under section 262 or 262A:

(b) any certificate of insurance issued, recognised, or accepted by the Director under section 363, 363A, or 385H:

(c) any permit, certificate, licence, or other document issued or recognised by the Director under section 270 or any permit, certificate, licence, or other document issued by another person and accepted by the Director under section 271

marine protection product has the meaning given to it by section 225

marine protection rules means the marine protection rules made by the Minister or the Director under Part 27

MARPOL has the meaning given to it by section 225

mineral has the same meaning as in section 2(1) of the Crown Minerals Act 1991

mining activity has the meaning given in section 225

mining discharge has the meaning given in section 225

National On-Scene Commander has the meaning given to it by section 281

New Zealand aircraft has the same meaning as the term New Zealand registered aircraft is given by section 2 of the Civil Aviation Act 1990

New Zealand continental waters means—

(a) New Zealand marine waters; and

(b) the waters beyond the outer limits of the exclusive economic zone of New Zealand but over the continental shelf of New Zealand

New Zealand marine waters means—

(a) the territorial sea of New Zealand; and

(b) the waters of the exclusive economic zone of New Zealand

New Zealand Oil Pollution Fund has the meaning given to it by section 281

New Zealand structure has the meaning given in section 257

noxious liquid substance has the meaning given to it by section 225

offshore installation or **installation** includes any artificial structure (including a floating structure other than a ship) used or intended to be used in or on, or

anchored or attached to, the seabed for the purpose of the exploration for, or the exploitation or associated processing of, any mineral; but does not include a pipeline

offshore terminal means any place in the sea where cargo is loaded or unloaded

oil, except in Parts 25, 26, and 26A, means petroleum in any form including crude oil, fuel oil, sludge, oil refuse, and refined products (other than petrochemicals that are subject to the provisions of Annex II of MARPOL); and includes any substance declared to be oil for the purposes of this definition by the marine protection rules

oil transfer site has the meaning given to it by section 281

on-scene commander has the meaning given to it by section 281

owner has the meaning given to it by subsection (2)

pipeline means a pipeline constructed or used to convey any matter or substance; and includes all machinery, tanks, and fittings connected to the pipeline

pollution incident has the meaning given to it by section 225

reception facility has the meaning given to it by section 225

region means a region within the meaning of the Local Government Act 2002

regional council or **council** means a regional council within the meaning of the Local Government Act 2002; and includes—

(a) any territorial authority that has, by reason of the transfer to it under section 17 of the Local Government Act 2002 of a responsibility of a regional council, the functions powers and duties of a regional council; and

(b) the Chatham Islands Council

regional marine oil spill contingency plan has the meaning given to it by section 281

regulated oil tanker has the meaning given to it by section 342

regulated ship has the meaning given to it by section 342

seabed includes the subsoil of the seabed

shipboard marine oil spill contingency plan has the meaning given to it by section 281

site marine oil spill contingency plan has the meaning given to it by section 281

structure has the meaning given in section 257

toxic or hazardous waste has the meaning given to it by section 257

transfer, in relation to oil or any other harmful substance, means transfer to or from a cargo or fuel tank

transfer facility has the meaning given to it by section 225

waste or other matter has the meaning given to it by section 257.

(2) In this Part, Parts 19 to 27, and section 418, unless the context otherwise requires, **owner**,—

(a) in relation to any ship (except in the circumstances, and to the extent, provided in sections 343 and 370), includes—

(i) any person who is the legal or equitable owner, or both, of the ship; and

(ii) any person in possession of the ship; and in Parts 19, 20, and 21 and section 344, includes any salvor in possession of the ship, and any servant or agent of any salvor in possession of the ship; and

(iii) any charterer, manager, or operator of the ship, or any other person (other than a pilot) responsible for the navigation or management of the ship:

(b) in relation to an offshore installation, includes—

(i) the person having any right, privilege, or licence to explore for or exploit minerals in connection with which the installation is being, has been, or is to be used; and

(ii) the manager, lessee, licensee, or operator of the installation; and

(iii) any agent or employee of the owner, manager, lessee, or licensee, or operator of the installation, or the person in charge of any operations connected with the installation:

(c) in relation to a pipeline, includes any manager, lessee, licensee, or operator of the pipeline, or the person in charge of the pipeline:

(d) in relation to an oil transfer site, includes any manager, lessee, licensee, or operator of the transfer site or the person in charge of the site.

(3) Unless the context otherwise requires, any term defined in this section or any of sections 225, 247, 257, 281, 329, 342, and 370 shall have that meaning throughout Parts 19 to 28 and any regulations or rules made under any of those Parts.

(4) The Governor-General may from time to time, by Order in Council, declare—

(a) that any specified international convention, protocol, or agreement relating to the protection of the marine environment from pollution, to which New Zealand is a party, shall be a marine protection convention for the purposes of this Part and Parts 19 to 27, or such of them (or their provisions) as may be specified in the order:

(b) that any specified amendment to, or revision of, any such instrument shall form part of that instrument for any such purposes.

Compare: 1974 No 14 s 2; 1980 No 53 s 2; 1990 No 34 s 2

Section 222(1) **emergency dumping permit**: inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 222(1) **exclusive economic zone of New Zealand**: amended, on 1 August 1996, pursuant to section 5(4) of the Territorial Sea and Exclusive Economic Zone Amendment Act 1996 (1996 No 74).

Section 222(1) **harbourmaster**: repealed, on 23 October 2013, by section 41(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 222(1) **marine protection document** paragraph (a): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 222(1) **marine protection document** paragraph (b): amended, on 1 October 2014, by section 91 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 222(1) **mining activity**: inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 222(1) **mining discharge**: inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 222(1) **New Zealand structure**: inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 222(1) **oil**: amended, on 23 October 2013, by section 41(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 222(1) **region**: substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 222(1) **regional council** or **council**: substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 222(1) **structure**: inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

223 Application of Parts 19 to 27 to ships of New Zealand Defence Force

Without limiting section 4(2), Parts 19 to 27 shall apply to every warship and every other ship of the New Zealand Defence Force that is in waters outside the territorial sea of New Zealand, to the extent that those Parts apply to such waters.

224 Application of certain provisions of Parts 19 to 28

(1) Notwithstanding anything in any other enactment, criminal proceedings shall not be commenced against a natural person in respect of a contravention of any provision of any of Parts 19 to 28 that is alleged to have occurred beyond the territorial sea of New Zealand unless they are commenced against—

(a) a New Zealand citizen; or

(b) a person who is ordinarily resident in New Zealand; or

(c) any other person with the consent of the Attorney-General on his or her certificate that it is expedient that they be commenced.

(2) Notwithstanding subsection (1), a person may be arrested, or a warrant for a person's arrest may be issued and executed, and the person may be remanded

in custody or on bail, but no further proceedings may be taken against a person who is neither a New Zealand citizen nor ordinarily resident in New Zealand, until the Attorney-General's consent under subsection (1) has been obtained.

(3) If any person alleges that he or she is not a New Zealand citizen, nor ordinarily resident in New Zealand, the onus of proof shall be on that person to prove that allegation.

Part 19
Protection of marine environment from harmful substances

224A Regulation under this Part and Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 of discharges

(1) This section describes how the discharge of harmful substances is regulated under this Part and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, but it does not affect the interpretation or the application of this Part or that enactment.

(2) This Part regulates—

- (a) the discharge of harmful substances (other than a mining discharge) from a ship into the sea or seabed of the exclusive economic zone:
- (b) the discharge of harmful substances (other than a mining discharge) into the sea above the continental shelf beyond the exclusive economic zone and the seabed below that sea from a New Zealand ship or from a foreign ship involved in a mining activity:
- (c) the discharge of harmful substances from a New Zealand ship into the sea beyond the continental shelf or the seabed below that sea.

(3) In relation to the discharge of harmful substances, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 regulates—

- (a) discharges into the exclusive economic zone and into or onto the seabed below it from—
  - (i) structures:
  - (ii) submarine pipelines:
  - (iii) ships, if the discharge is a mining discharge:
- (b) discharges into or onto the continental shelf beyond the exclusive economic zone or into the sea above that part of the continental shelf from—
  - (i) New Zealand structures:
  - (ii) structures (other than New Zealand structures) involved in a mining activity:
  - (iii) submarine pipelines:
  - (iv) ships, if the discharge is a mining discharge.

Section 224A: inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

225 Interpretation

In this Part, unless the context otherwise requires,—

discharge includes any release, disposal, spilling, leaking, pumping, emitting, or emptying; but does not include—

(a) dumping in accordance with a permit issued by the Director under section 262; or

(b) release of harmful substances for the purposes of legitimate scientific research into pollution abatement and control;—

and **to discharge** and **discharged** have corresponding meanings

harmful substance means any substance specified as a harmful substance for the purposes of this definition by the marine protection rules

marine protection product means—

(aa) anything or any substance specified as a marine protection product for the purposes of this definition by the marine protection rules; and

(a) anything that comprises, or is intended to comprise, any part of a ship, offshore installation, or pipeline, or that is or is intended to be installed on or fitted or supplied to a ship, offshore installation, or pipeline for the purpose of preventing, limiting, or controlling a discharge or the escape of a harmful substance or ballast water, including (but not limited to)—

  (i) any plant or equipment that treats or is intended to treat a harmful substance or ballast water; and

  (ii) any plant or equipment that monitors or is intended to monitor the discharge or escape of a harmful substance or ballast water; and

(b) any substance used or intended to be used for the dispersal or emulsification of a harmful substance or ballast water in the sea

MARPOL means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto; and includes any subsequent protocol or amendment to, or revision of, that convention accepted or ratified by New Zealand

mining activity means an activity carried out for, or in connection with,—

(a) the identification of areas of the seabed likely to contain mineral deposits; or

(b) the identification of mineral deposits; or

(c) the taking or extraction of minerals from the sea or seabed, and associated processing of those minerals

mining discharge, in relation to a harmful substance, means a discharge made as an integral part of, or as a direct result of, mining activity

noxious liquid substance means any substance specified as a noxious liquid substance for the purposes of this definition by the marine protection rules

pollution incident means an event involving the probable discharge or escape into the sea or seabed of a harmful substance in contravention of this Act or the Resource Management Act 1991 or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

reception facility means a facility for the reception of harmful substances from ships

transfer facility means any facility, structure, or building for transferring liquids to or from a ship or an offshore installation; and includes any storage tanks or pipelines connected to the facility.

Compare: 1974 No 14 s 2(1), (3)

Section 225 **marine protection product**: amended, on 16 December 2017, by section 36(c) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 225 **marine protection product** paragraph (aa): inserted, on 16 December 2017, by section 36(a) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 225 **marine protection product** paragraph (a): amended, on 8 September 2017, by section 86(4) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 225 **marine protection product** paragraph (a)(i): amended, on 8 September 2017, by section 86(4) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 225 **marine protection product** paragraph (a)(ii): amended, on 8 September 2017, by section 86(4) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 225 **marine protection product** paragraph (b): amended, on 16 December 2017, by section 36(b) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 225 **marine protection product** paragraph (b): amended, on 8 September 2017, by section 86(4) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 225 **mining activity**: inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 225 **mining discharge**: inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 225 **pollution incident**: amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Obligations to protect marine environment from harmful substances

226 Harmful substances not to be discharged into sea or seabed of exclusive economic zone or continental shelf

(1) This section applies to the discharge of harmful substances (other than a mining discharge).

(2) Harmful substances must not be discharged from a ship—

(a) into the sea within the exclusive economic zone; or

(b) into or onto the seabed below that sea.

(3) Harmful substances must not be discharged from a New Zealand ship or from a foreign ship that is involved in mining activity—

(a) into the sea beyond the outer limits of the exclusive economic zone but over the continental shelf; or

(b) into or onto the seabed below that sea.

(4) However, a harmful substance may be discharged if the substance is discharged in accordance with the marine protection rules.

Section 226: replaced, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

226A Harmful substances not to be discharged into sea or seabed beyond New Zealand continental waters from New Zealand ships

(1) Harmful substances must not be discharged from a New Zealand ship—

(a) into the sea beyond New Zealand continental waters; or

(b) onto or into the seabed below that sea.

(2) However, a harmful substance may be discharged if the substance is discharged in accordance with the marine protection rules.

Section 226A: inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

227 Duty to report discharge or escape of harmful substances

(1) This section applies to the discharge or escape of a harmful substance into the sea, or onto or into the seabed, in breach of—

(a) section 226 or 226A; or

(b) section 15B of the Resource Management Act 1991; or

(c) section 20B or 20C of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

(2) Notice of the discharge or escape must be given,—

(a) if the discharge or escape occurred beyond New Zealand continental waters, to the Director; or

(b) if the discharge or escape occurred within the internal waters or the territorial sea, to the Director and the regional council within whose region the discharge or escape occurred; or

(c) if the discharge or escape occurred in the exclusive economic zone or in relation to the continental shelf, to the Director and the Environmental Protection Authority.

(3) Each of the following persons is under a duty to give notice of the discharge or escape of a harmful substance:

(a) if the discharge or escape was from a ship, the owner and the master of the ship:

(b) if the discharge or escape was from an offshore installation, the owner of the installation:

(c) if the discharge or escape was from a pipeline, the owner of the pipeline:

(d) if the discharge or escape was a result of a marine operation, the person in charge of and the person carrying on the operation.

(4) If one person gives notice of the discharge or escape of a harmful substance in accordance with subsection (3), no other person is required to give notice of the discharge or escape.

(5) If the discharge or escape of a harmful substance breaches section 226A, the master of the ship must, as soon as practicable, report the discharge or escape to the appropriate authority of the nearest State.

(6) This section applies whether or not a defence may be available under this Act, the Resource Management Act 1991, or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

Section 227: replaced, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

228 Notice of pollution incidents

(1) This section applies to a pollution incident involving—

(a) a ship in the internal waters of New Zealand or New Zealand marine waters; or

(b) a ship involved with marine operations or an offshore installation or pipeline within New Zealand continental waters; or

(c) any marine operations within New Zealand continental waters.

(1A) Notice of the pollution incident must be given—

(a) to the Director; or

(b) if the incident occurs in the internal waters or the territorial sea, to the Director and the regional council in whose region the incident occurs; or

(c) if the incident occurs in the exclusive economic zone or in relation to the continental shelf, to the Director and the Environmental Protection Authority.

(2) Each of the following persons shall be under a duty to give notice of the occurrence of a pollution incident in accordance with subsection (1):

(a) if a ship is involved, the master of the ship:

(b) if an offshore installation is involved, the owner of the offshore installation:

(c) if a pipeline is involved, the owner of the pipeline:

(d) if marine operations are involved, the person in charge of and the person carrying out those operations.

(3) The giving of notice of a pollution incident in accordance with subsection (1) by one person shall be sufficient to discharge every other person from a duty to give such notice in respect of that pollution incident.

(4) Where any pollution incident involving a New Zealand ship occurs beyond the outer limits of the exclusive economic zone of New Zealand, the master of the ship shall, as soon as is practicable, report the incident to the appropriate authority of the nearest State.

Compare: 1974 No 14 s 16A; 1990 No 34 s 3

Section 228(1): replaced, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 228(1A): inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

229 Notice of prospective arrival of ship carrying oil or noxious liquid substance

Notice of the arrival at a port in New Zealand of a ship carrying oil, or any noxious liquid substance, in bulk as cargo shall be given prior to its arrival by the master or owner of the ship to the Director or the regional council within whose region the port of prospective arrival is located, in accordance with the requirements of the marine protection rules.

Compare: 1974 No 14 s 15

230 Notice of transfer of oil or noxious liquid substances to or from ships

No oil or noxious liquid substance—

(a) carried in bulk by a ship shall be transferred from that ship in the internal waters, territorial sea, or exclusive economic zone of New Zealand; or

(b) shall be transferred to a ship in the internal waters, territorial sea, or exclusive economic zone of New Zealand to be carried in bulk by that ship,—

unless notice has been given by the master or owner of the ship to the Director or the regional council within whose region the transfer is intended to be made, in accordance with the requirements of the marine protection rules.

Compare: 1974 No 14 s 14

Section 230(a): amended, on 23 October 2013, by section 42(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 230(b): amended, on 23 October 2013, by section 42(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

231 Obligations of Director, Environmental Protection Authority, and regional councils to share information concerning notices

(1) This section applies if a notice is given under any of sections 227, 228, 229, 230, and 299 to a regional council, the Environmental Protection Authority, or the Director.

(2) The regional council must, without delay, inform the Director of the matters about which it has been notified.

(3) The Environmental Protection Authority must, without delay, inform the Director of the matters about which it has been notified.

(4) The Director must, without delay, inform—

(a) a regional council of the matters about which the Director has been notified if the matters have occurred or may occur in the region of the council; or

(b) the Environmental Protection Authority of the matters about which the Director has been notified if the matters have occurred or may occur in New Zealand continental waters.

Section 231: replaced, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Powers of Director in relation to protection of marine environment from harmful substances

232 Director may require provision of financial security

(1) This section applies if the Director has reasonable cause to believe that a harmful substance has been discharged or has escaped from a ship in breach of this Act, the Resource Management Act 1991, or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

(1A) The Director may require the owner of the ship to provide a contract of insurance or other financial security of a kind and for an amount that is sufficient security for the payment of any amounts that may be payable by the owner, or the master of the ship, under this Act, the Resource Management Act 1991, or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 in respect of the discharge or escape.

(2) The Director shall not exercise his or her powers under subsection (1A) in relation to a ship in respect of which an insurance certificate under section 363 or the marine protection rules has been issued, recognised, or accepted.

Section 232(1): replaced, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 232(1A): inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 232(2): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

233 Rectification of hazardous conditions

(1) This section applies if the Director believes on reasonable grounds that the conditions on a ship, offshore installation, or pipeline—

(a) have been or are likely to be responsible for a discharge or escape of a harmful substance into the sea or onto or into the seabed in breach of this Act, the Resource Management Act 1991, or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; or

(b) pose an unreasonable threat of harm to the marine environment.

(1A) The Director may require the owner of the ship, offshore installation, or pipeline to take all necessary steps to rectify the conditions.

(2) Any owner of any ship, offshore installation, or pipeline whom the Director requires to do anything under this section may appeal against that requirement to the District Court under section 424.

Section 233(1): replaced, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 233(1A): inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 233(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

233A Power to prohibit transfer of oil or noxious liquid substance

(1) The Director may prohibit the transfer of any oil or noxious liquid substance from or to any ship in the internal waters, the territorial sea, or the exclusive economic zone of New Zealand if the Director believes on reasonable grounds that the transfer will pose an unreasonable threat of harm to the marine environment.

(2) The owner may appeal against a prohibition under subsection (1) to the District Court under section 424.

Section 233A: inserted, on 23 October 2013, by section 43 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 233A(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

234 Precautionary measures in the event of transfer of oil or noxious liquid substance

(1) The Director may from time to time, in respect of a ship from which or to which any oil or noxious liquid substance is being or will be transferred in the internal waters or the territorial sea of New Zealand, take, or require the owner or master of that ship to take, any measures that the Director believes on reasonable grounds will remove, contain, or render harmless, any oil or noxious liquid substance that may be spilt as a result of that transfer.

(2) An owner of a ship whom the Director requires to do anything under this section may appeal against that requirement to the District Court under section 424.

Section 234(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

235 Powers of investigation of Director

(1) The Director may investigate any discharge or escape of a harmful substance in breach of this Act, the Resource Management Act 1991, or the Exclusive Eco-

nomic Zone and Continental Shelf (Environmental Effects) Act 2012, or any pollution incident.

(2) For the purposes of carrying out an investigation under this section, the Director (or a person authorised for the purpose by the Director) may—

(a) make inquiries from any person who he or she has reason to believe is in possession of information that may lead to discovery of the cause of the discharge or escape or pollution incident:

(b) issue in writing a summons requiring any person to attend at the time and place specified in the summons and to give evidence, and to produce any documents or things in that person's possession or under that person's control that are relevant to the subject of the investigation:

(c) take possession of and remove any such document from the place where it is kept for such period of time as is reasonable in the circumstances:

(d) require a person to reproduce, or to allow the Director (or authorised person) to reproduce, in usable form any information recorded or stored on a document electronically or by other means.

(3) A person who is required by the Director (or an authorised person) to do anything under subsection (2) has the same privileges and immunities as a person giving evidence before a commission of inquiry has under section 6 of the Commissions of Inquiry Act 1908.

(4) A summons under this section may be served in the same manner as a summons served under section 5 of the Commissions of Inquiry Act 1908, and that section 5 applies accordingly with any necessary modifications.

(5) For the purposes of this section, **document** means a document in any form; and includes—

(a) any writing on or in any material; and

(b) information recorded or stored by means of a tape recorder, computer, or other device; and material subsequently derived from information so recorded or stored; and

(c) a record, book, graph, or drawing; and

(d) a photograph, film, negative, tape, disk, or other device in which 1 or more visual images are embodied or stored so as to be capable (with or without the aid of equipment) of being reproduced.

(6) A person who fails without reasonable cause to comply with a requirement made under subsection (2) commits an offence and is liable on conviction to a fine not exceeding $1,000.

Section 235: substituted, on 9 June 1999, by section 25 of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 235(1): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 235(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

235A Additional powers of Director

For the purposes of an investigation under section 235, but without limiting the powers conferred by that section, the Director (or a person authorised for the purpose by the Director) may—

(a) prohibit or restrict access of persons or classes of persons to the site of the discharge, escape, or pollution incident to which the investigation relates, if the Director believes on reasonable grounds that it is necessary to preserve or record evidence, or to prevent the tampering with or alteration, mutilation, or destruction of any thing involved in the discharge, escape, or pollution incident:

(b) collect oil samples:

(c) seize, detain, remove, preserve, protect, or test any thing that the Director believes on reasonable grounds will assist in establishing the cause of the discharge, escape, or pollution incident.

Section 235A: inserted, on 9 June 1999, by section 25 of the Maritime Transport Amendment Act 1999 (1999 No 68).

236 Power to require reception facilities

The Director may from time to time, by notice in writing, require any person who operates a port in New Zealand, or New Zealand continental waters, to provide at that port a reception facility for the reception of harmful substances from ships which complies with the requirements of the marine protection rules.

Offences in respect of discharge or escape of harmful substances into sea or seabed

237 Discharge or escape of harmful substances from ship into sea or seabed

(1) If a harmful substance is discharged or escapes from a ship into the sea or onto or into the seabed in breach of section 226 or 226A, the master and the owner of the ship each commit an offence.

(2) If the discharge or escape results from intentional damage caused by a person other than the master or the owner of the ship, the person who caused the damage commits an offence.

Section 237: replaced, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

238 Failure to report discharge of harmful substance into sea or seabed

If, without reasonable excuse, notice of discharge or escape of a harmful substance is not given in accordance with section 227, the following persons commit an offence:

(a) if the discharge or escape was from a ship, the master and owner of the ship:

(b) if the discharge or escape was from an offshore installation, the owner of the offshore installation:

(c) if the discharge or escape was from a pipeline, the owner of the pipeline:

(d) if the discharge or escape was a result of any marine operations, the person in charge of and the person carrying on the marine operations.

239 Failure to notify pollution incidents

If, without reasonable excuse, notice of the occurrence of a pollution incident is not given in accordance with section 228, the following persons commit an offence:

(a) if the pollution incident involved a ship, the master and owner of the ship:

(b) if the pollution incident involved an offshore installation, the owner of the offshore installation:

(c) if the pollution incident involved a pipeline, the owner of the pipeline:

(d) if the pollution incident involved any marine operations, the person in charge of and the person carrying on the marine operations.

240 Failure to notify arrival of ship carrying oil or noxious liquid substance

The master and the owner of a ship commit an offence if, without reasonable excuse, the ship arrives at a port in New Zealand carrying oil, or any noxious liquid substance, in bulk as cargo without notice of its arrival having been given in accordance with the provisions of section 229.

241 Failure to notify transfer of oil or noxious liquid substance from or to ships

If, without reasonable excuse, any oil or noxious liquid substance is transferred to or from a ship in the internal waters, territorial sea, or exclusive economic zone of New Zealand without notice of the transfer having been given in accordance with the provisions of section 230, the following persons commit an offence:

(a) the master of the ship to or from which the oil or noxious liquid substance has been transferred:

(b) the owner of the ship to or from which the oil or noxious liquid substance has been transferred:

(c) the owner of any transfer facility to or from which the oil or noxious liquid substance has been transferred.

Section 241: amended, on 23 October 2013, by section 44 of the Maritime Transport Amendment Act 2013 (2013 No 84).

242 Failure to comply with requirement of Director

Every person commits an offence who fails to comply with a requirement of the Director under any of sections 232, 233, 234, and 236.

242A Failure to comply with prohibitions

If, without reasonable excuse, any oil or noxious liquid substance is transferred to or from a ship in the internal waters, territorial sea, or exclusive economic zone of New Zealand contrary to any prohibition under section 233A, the following persons each commit an offence:

(a) the master of the ship to or from which the oil or noxious liquid substance has been transferred:

(b) the owner of the ship to or from which the oil or noxious liquid substance has been transferred:

(c) the owner of any transfer facility to or from which the oil or noxious liquid substance has been transferred.

Section 242A: inserted, on 23 October 2013, by section 45 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Defences

243 Defences to offence against section 237

It is a defence to proceedings for an offence against section 237 if the defendant proves that—

(a) the harmful substance was discharged for the purpose of securing the safety of a ship or for the purpose of saving life, and the discharge was a reasonable step to take to effect that purpose; or

(b) the harmful substance escaped as a consequence of damage to the ship or its equipment and—

(i) the damage occurred without the negligence or deliberate act of the defendant; and

(ii) as soon as practicable after the damage occurred, all reasonable steps were taken to prevent the escape of the harmful substance or, if an escape could not be prevented, to minimise the escape.

Section 243: replaced, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Penalties

244 Penalties in respect of sections 237, 238, 239, and 242

(1) Subject to subsection (2), every person who commits an offence against section 237 is liable on conviction—

(a) to imprisonment for a term not exceeding 2 years or a fine not exceeding $200,000 and, if the offence is a continuing one, to a further fine not exceeding $10,000 for every day or part of a day during which the offence is continued; and

(b) to pay such amount as the court may assess in respect of the costs incurred in respect of or associated with removing, containing, rendering harmless, or dispersing any harmful substance discharged as a result of the offence; and

(c) to an additional penalty under section 409.

(2) The court shall not sentence to imprisonment any person who commits an offence against section 237 unless the court is satisfied,—

(a) where the person is the master or owner of a foreign ship,—

(i) that the offence was committed within the territorial sea; and

(ii) that the person intended to commit the offence, or the offence occurred as a consequence of any reckless act or omission by the person with the knowledge that that act or omission would or would be likely to cause serious damage to the marine environment within the territorial sea; and

(iii) that the commission of the offence has caused or is likely to cause serious damage to the marine environment within the territorial sea:

(b) in any other case,—

(i) that the person intended to commit the offence, or the offence occurred as a consequence of any reckless act or omission by the person with the knowledge that that act or omission would or would be likely to cause serious damage to the marine environment; and

(ii) that the commission of the offence has caused or is likely to cause serious damage to the marine environment.

(3) Every person who commits an offence against section 238 or section 239 or section 242 is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $10,000 and, if the offence is a continuing one, to a further fine not exceeding $2,000 for every day or part of a day during which the offence is continued:

(b) in the case of a body corporate, to a fine not exceeding $100,000 and, if the offence is a continuing one, to a further fine not exceeding $20,000 for every day or part of a day during which the offence is continued:

(c) in the case of an individual who, or a body corporate that, commits an offence against section 238, to an additional penalty under section 409.

Compare: United Nations Convention on the Law of the Sea art 230

Section 244(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 244(2): substituted, on 1 August 1996, by section 2 of the Maritime Transport Amendment Act 1996 (1996 No 79).

Section 244(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 244 compare note: added, on 1 August 1996, by section 2 of the Maritime Transport Amendment Act 1996 (1996 No 79).

245 Penalties in respect of sections 240, 241, and 242A

Every person who commits an offence against section 240, 241, or 242A is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $5,000 and, if the offence is a continuing one, to a further fine not exceeding $1,000 for every day or part of a day during which the offence is continued:

(b) in the case of a body corporate, to a fine not exceeding $50,000 and, if the offence is a continuing one, to a further fine not exceeding $10,000 for every day or part of a day during which the offence is continued.

Section 245 heading: amended, on 23 October 2013, by section 46(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 245: amended, on 23 October 2013, by section 46(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 245: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

246 Amount of fine or other monetary penalty recoverable from agent

(1) Notwithstanding any enactment or rule of law to the contrary, if any master or owner of a ship—

(a) is convicted of an offence against section 237; and

(b) makes default in the payment of any fine or other monetary penalty imposed by the court under section 244,—

the Crown may recover as a debt from the agent of the ship such amount of that fine or monetary penalty as remains unpaid.

(2) Every agent of a ship who, under subsection (1), pays any fine or other monetary penalty imposed on the master or owner of the ship shall be entitled to recover the amount so paid from that master or owner as a debt or deduct that amount out of or from any money which is or becomes payable by that agent to that master or owner; and any amount so paid by the agent shall, for the purposes of section 4(1)(p) of the Admiralty Act 1973, be deemed to be a disbursement made on account of the ship.

(3) Notwithstanding anything in the District Court Act 2016, the District Court shall have jurisdiction to hear and determine proceedings for the recovery, in accordance with this section, of any money from any agent or master or owner of a ship whatever the amount of money involved.

Section 246(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Part 19A
Protection of marine environment from ballast water

Part 19A: inserted, on 8 September 2017, by section 86(5) of the Biosecurity Law Reform Act 2012 (2012 No 73).

246A Meaning of ballast water, convention, and ship

(1) **Ballast water** means water with its suspended matter taken on board a ship to control the ship's trim, list, draught, stability, or stresses.

(2) **Convention** means the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004, in—

(a) this section; and

(b) sections 271(2)(ca), 272(1)(aa), and 388(n).

(3) **Ship**—

(a) means a ship within the meaning of the convention, in sections 197A, 246B to 246D, 271(2)(ca), 388(n), 396(3)(aa), 397(2)(ca), and 397(3):

(b) includes a ship within the meaning of the convention, in sections 396(1)(c) and (3)(c) and 397(1) and (2)(d) to (g).

Section 246A: inserted, on 8 September 2017, by section 86(5) of the Biosecurity Law Reform Act 2012 (2012 No 73).

246B Discharge from ships

(1) Ballast water may be discharged from a ship only in accordance with the applicable marine protection rules.

(2) Subsection (1) applies to—

(a) a ship in—

(i) the territorial sea of New Zealand; or

(ii) the internal waters of New Zealand; or

(iii) the exclusive economic zone of New Zealand; and

(b) a ship that is a New Zealand ship in the sea beyond the outer limits of the exclusive economic zone of New Zealand.

Section 246B: inserted, on 8 September 2017, by section 86(5) of the Biosecurity Law Reform Act 2012 (2012 No 73).

246C Offence

(1) This section applies if ballast water is discharged from a ship in breach of section 246B.

(2) The master or owner of the ship commits an offence.

(3) A person who is not the master or owner of the ship and who causes intentional damage resulting in the discharge of the ballast water commits an offence.

(4) A person who commits an offence under this section is liable to—

(a) imprisonment for a term not exceeding 2 years; or

(b) a fine or fines as follows:

(i) a fine not exceeding $200,000; and

(ii) if the offence is a continuing one, a further fine not exceeding $10,000 for every day or part of a day during which the offence is continued.

(5) Section 246 applies as if the reference to section 237 were a reference to this section.

Section 246C: inserted, on 8 September 2017, by section 86(5) of the Biosecurity Law Reform Act 2012 (2012 No 73).

246D Defences

(1) This section sets out defences to proceedings for an offence against section 246C.

(2) The defendant has a defence if the defendant proves that the discharge—

(a) was for the purpose of saving life; and

(b) was a reasonable step to take to achieve the purpose.

(3) The defendant has a defence if the defendant proves that the discharge—

(a) was for the purpose of securing the safety of a ship; and

(b) was a reasonable step to take to achieve the purpose.

(4) The defendant has a defence if the defendant proves that—

(a) the ballast water escaped as a consequence of damage to—

(i) a ship or its equipment; or

(ii) apparatus other than a ship used in connection with marine operations; or

(iii) a pipeline; and

(b) the damage did not result from the defendant's negligence or deliberate act; and

(c) as soon as practicable after the damage occurred, all reasonable steps were taken—

(i) to prevent the escape; or

(ii) if the escape could not be prevented, to minimise the escape.

Section 246D: inserted, on 8 September 2017, by section 86(5) of the Biosecurity Law Reform Act 2012 (2012 No 73).

246E Director's powers

(1) The Director may investigate a discharge or escape of ballast water.

(2) For the purposes of carrying out the investigation, the Director may—

(a) make inquiries of a person who the Director has reason to believe is in possession of information that may assist in establishing the cause of the discharge or escape:

(b) issue a summons requiring a person to—

(i) attend at the time and place specified in the summons:

(ii) give evidence:

(iii) produce documents or things in his or her possession or control that are relevant to the subject of the investigation:

(c) remove a document from the place where it is kept and take possession of it for a period of time that is reasonable in the circumstances:

(d) require a person to reproduce in a usable form information recorded or stored on a document, electronically or otherwise, or allow the Director to reproduce it:

(e) prohibit or restrict access by persons or classes of persons to the site of the discharge or escape to which the investigation relates, if the Director believes on reasonable grounds that prohibiting or restricting access is necessary to—

(i) preserve or record evidence; or

(ii) prevent any thing involved in the discharge or escape being tampered with, altered, mutilated, or destroyed:

(f) seize, detain, remove, preserve, protect, or test any thing that the Director believes on reasonable grounds may assist in establishing the cause of the discharge or escape.

(3) The Director may authorise a person to carry out an action described in subsection (2).

(4) Section 5 of the Commissions of Inquiry Act 1908 applies to a summons under this section.

Definition for this section

(5) In this section, **document** means a document in any form, electronic or otherwise.

Section 246E: inserted, on 8 September 2017, by section 86(5) of the Biosecurity Law Reform Act 2012 (2012 No 73).

246F Person subject of exercise of Director's powers

(1) A person required to do anything under section 246E(2) has the same privileges and immunities as a person giving evidence before a commission of inquiry has under section 6 of the Commissions of Inquiry Act 1908.

(2) A person required to do anything under section 246E(2) who fails, without reasonable cause, to do it commits an offence and is liable to a fine not exceeding $1,000.

Section 246F: inserted, on 8 September 2017, by section 86(5) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Part 20
Protection of marine environment from hazardous ships, structures, and offshore operations

247 Interpretation

In this Part, unless the context otherwise requires,—

harmful substance means—

(a) any substance specified as a harmful substance for the purposes of section 225 by the marine protection rules:

(b) any hazardous substance other than oil

hazardous marine operations means marine operations in New Zealand continental waters that are discharging, or are likely to discharge, a harmful substance into New Zealand continental waters or the seabed below them

hazardous offshore installation means an offshore installation in New Zealand continental waters that is discharging, or is likely to discharge, a harmful substance into New Zealand continental waters or the seabed below them

hazardous pipeline means a pipeline in New Zealand continental waters that is discharging, or is likely to discharge, a harmful substance into New Zealand continental waters or the seabed below them

hazardous ship means a ship that is in the internal waters of New Zealand or in New Zealand continental waters, or on the high seas and, as a result of a shipping casualty or acts related to such a casualty, is discharging, or is likely to discharge, a harmful substance into the internal waters of New Zealand or New Zealand continental waters or the seabed below them

hazardous structure means a hazardous offshore installation or a hazardous pipeline

hazardous substance other than oil—

(a) means a substance—

(i) contained in the list of substances that is annexed to the Intervention Protocol and amended from time to time by the International Maritime Organization; or

(ii) that is likely to create hazards to human health, harm living resources and marine life, damage amenities, or interfere with other legitimate uses of the sea; and

(b) includes a substance within the meaning of Article 2(a) or (b) of the Intervention Protocol that is specified in the marine protection rules as a hazardous substance other than oil

Intervention Protocol means the Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil done at London on 2 November 1973

marine interests means the interests that are related to, or affected by, the marine environment, including maritime, coastal, port, or estuarine activities (including fisheries activities constituting an essential means of livelihood of the persons concerned), tourist attractions, public health and welfare, and the conservation of living marine resources and wildlife

offshore installation has the meaning given to it by section 222(1)

shipping casualty means any of the following:

(a) a collision of ships:

(b) the loss, stranding, or abandonment of a ship:

(c) any other event occurring on board, outside, or to a ship, resulting in material damage or the risk of material damage to a ship, or cargo, or both

structure means an offshore installation or a pipeline.

Section 247 **hazardous ship**: amended, on 23 October 2013, by section 47(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 247 **harmful substance**: inserted, on 23 October 2013, by section 47(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 247 **hazardous substance other than oil**: inserted, on 23 October 2013, by section 47(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 247 **Intervention Protocol**: inserted, on 23 October 2013, by section 47(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

248 Powers of Director in relation to hazardous ships

(1) In the case of a ship that, in the opinion of the Director, is a hazardous ship, the Director may from time to time—

(a) issue any instructions to the master, owner, or agent of the ship, or to any person in charge of any salvage operation in respect of the ship and an employee or agent of that person, with respect to the ship, or its cargo, or both:

(b) take any measures with respect to the ship, or its cargo, or both, including taking over control of the ship.

(2) Without limiting subsection (1), that subsection authorises the Director to take, or to require any person referred to in paragraph (a) of that subsection to take, all or any of the following measures:

(a) the removal of the ship to another place:

(b) the removal of cargo from the ship:

(c) the salvage of the ship, or its cargo, or both:

(d) the sinking or destruction of the ship, or its cargo, or both.

(3) The Director shall use reasonable endeavours to notify the master, owner, or agent of the ship of any measures the Director proposes to take under subsection (1) or subsection (2) with respect to the ship, or its cargo, but the Director shall not be obliged to give such notification where, in his or her opinion, the urgency of the situation is such that the measures must be taken immediately.

(4) In order to carry out, or assist in carrying out, any measures taken under this section, after making reasonable endeavours to consult the owner, or the agent, of the ship to whose master the instructions are to be given, the Director may from time to time—

(a) instruct the master of any New Zealand ship, or of any other ship within the internal waters of New Zealand or New Zealand continental waters, to render assistance to a ship that, in the opinion of the Director, is a hazardous ship; and

(b) instruct the master of any New Zealand ship to do all or any of the following:

(i) take on board any item or equipment:

(ii) sail to any place:

(iii) render assistance to a ship assisting a ship that, in the opinion of the Director, is a hazardous ship:

(iv) assist in operations for the cleaning up and control of a harmful substance.

(5) For the purposes of this section, **ship** excludes any installation, device, or offshore drilling unit engaged in the exploration and exploitation of the resources of the seabed and ocean floor and subsoil of the ocean floor.

Section 248(5): inserted, on 23 October 2013, by section 48 of the Maritime Transport Amendment Act 2013 (2013 No 84).

249 Powers of Director in relation to hazardous structures and operations

(1) In the case of a structure that, in the opinion of the Director, is a hazardous structure, the Director may from time to time—

(a) issue any instructions to the owner of the structure with respect to the structure:

(b) take any measure with respect to the structure.

(2) Subsection (1) includes power to take or require to be taken either or both of the following measures:

(a) the removal to another place of the structure:

(b) the sinking or destruction of the structure.

(3) In the case of marine operations that, in the opinion of the Director, are hazardous marine operations, the Director may from time to time—

(a) issue any instructions to the owner, or the person in charge, of the marine operations:

(b) take, or require that owner or person in charge to take, any measures with respect to the marine operations.

(4) The Director shall use reasonable endeavours to notify the owner of a structure, or the owner or person in charge of marine operations, of any measures the Director proposes to take under this section with respect to the structure or marine operations, but the Director shall not be obliged to give such notification where in his or her opinion the urgency of the situation is such that the measures must be taken immediately.

250 Exercise of power by Director

(1) The Director must not issue any instructions, or take any measures, under section 248 or 249 unless the Director considers the issue of such instructions, or the taking of such measures, necessary to avoid, reduce, or remedy pollution, or a significant risk of pollution, by—

(a) a hazardous substance other than oil; or

(b) oil or any other harmful substance that is causing, will cause, or will be likely to cause serious harmful consequences to the marine environment or marine interests.

(2) The Director must notify the Environmental Protection Authority as soon as practicable after the Director decides to issue instructions or take measures if the instructions or measures (which the Director intends to issue or take) affect the exclusive economic zone or New Zealand continental waters.

Section 250: replaced, on 23 October 2013, by section 49 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 250(2): inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

251 Right to compensation

(1) Any person who has incurred expense, or suffered loss or damage, as a result of any action duly taken under instructions issued by the Director under section 248 or section 249, or as a result of any measure taken by the Director under either of those sections, may recover compensation from the Crown if the action or measure—

(a) was not reasonably necessary—

(i) to protect the marine environment or marine interests from a harmful substance; or

(ii) to prevent or reduce the risk of a harmful substance being discharged into the sea; or

(b) was such that the good done by the action or measure, or the good likely to be done, was disproportionately less than the expense incurred, or the loss or damage suffered, as a result of that action or that measure.

(2) Where a claim is brought against the Crown for compensation under this section, the court, in determining whether subsection (1)(b) applies, shall take into account—

(a) the probability of a harmful substance being discharged into the sea if the action or measure had not been taken; and

(b) the likelihood of the action or measure taken being effective; and

(c) the extent of the loss or the damage which has been caused by the action or measure taken.

Compare: 1974 No 14 s 27

252 Compliance with instructions

Every person shall comply with the instructions given by the Director under section 248 or section 249.

253 Offences

(1) Every person commits an offence who—

(a) fails to comply with any instructions issued by the Director under section 248 or section 249; or

(b) wilfully obstructs a person acting in compliance with any instructions issued by the Director under either of those sections; or

(c) wilfully obstructs the Director in carrying out any of the powers conferred on the Director by either of those sections.

(2) It shall be a defence to proceedings for an offence against this section to prove that the action, or failure to act, which is alleged to constitute the offence resulted from the need to save life at sea.

(3) It shall be an additional defence to an offence against subsection (1)(a) to prove that the person charged complied as promptly as possible with the instructions.

(4) Every person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding $200,000 and, if the offence is a continuing one, to a fine not exceeding $10,000 for every day or part of a day on which the offence is continued.

(5) The court shall not sentence to imprisonment any person who commits an offence against this section unless the court is satisfied that—

(a) either—

(i) the person intended to commit the offence; or

(ii) the offence occurred as a consequence of any reckless act or omission by the person with the knowledge that the act or omission

would be likely to cause serious damage to the marine environment; and

(b) the commission of the offence has caused or is likely to cause serious damage to the marine environment.

Section 253(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

254 Instructions under this Part that conflict with other instructions

(1) If a harbourmaster or any other person gives, under Part 3A or any navigation bylaws, instructions (**harbourmaster's instructions**) that conflict with instructions given by the Director under section 248 or section 249 (**Director's instructions**), the Director's instructions prevail.

(2) If the Director becomes aware of any conflict between any Director's instructions and any harbourmaster's instructions, the Director shall, as soon as practicable, advise the person who has made the harbourmaster's instructions of the conflict, and that person shall immediately upon being so advised withdraw those instructions or alter them so as to remove the conflict.

(3) The Director must not issue Director's instructions that conflict with the exercise of a power by—

(a) a person under Part 5 of the Civil Defence Emergency Management Act 2002; or

(b) the person who is serving as the National Recovery Manager under the Civil Defence Emergency Management Act 2002; or

(c) any constable under section 10 of the International Terrorism (Emergency Powers) Act 1987.

Section 254(1): substituted, on 9 June 1999, by section 26(1) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 254(1): amended, on 23 October 2013, by section 50 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 254(2): amended, on 9 June 1999, by section 26(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 254(3): substituted, on 1 December 2002, by section 117 of the Civil Defence Emergency Management Act 2002 (2002 No 33).

Section 254(3)(b): replaced, at 9.59 pm on 29 November 2016, by section 42 of the Civil Defence Emergency Management Amendment Act 2016 (2016 No 88).

Section 254(3)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

255 Minister's power of direction

(1) The Minister may, if he or she considers that having regard to the circumstances it is expedient to do so, give directions to the Director in respect of the performance of any function or duty or the exercise of any power under this Part, and the Director shall comply with such directions.

(2) The Minister shall not give directions under subsection (1) that conflict with the exercise of the powers referred to in section 254(3).

(3) Sections 250 and 251 shall apply in respect of every direction under subsection (1) as if it were an instruction under section 248.

(4) Where any direction has been made by the Minister under subsection (1), the Minister shall, as soon as practicable, lay before the House of Representatives a copy of the direction in written form.

(5) For the avoidance of doubt, a direction under this section is not a direction to the Authority for the purposes of sections 114 and 115 of the Crown Entities Act 2004.

Section 255(5): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

256 Protection of Director and other persons

(1) Where—

(a) the Director has taken any measures under the provisions of section 248 or section 249; or

(b) any person has complied with any instructions issued under either of those sections,—

then, subject to section 251, neither the Director nor that person shall be under any criminal liability or any civil liability in respect thereof.

(2) Section 121 of the Crown Entities Act 2004 does not limit this section.

(3) Nothing in subsection (1) affects the liability of any person under section 344, 345, or 346.

Section 256(2): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 256(3): inserted, on 23 October 2013, by section 51 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Part 21
Protection of marine environment beyond New Zealand continental waters from dumping, incineration, and storing of wastes

Part 21 heading: replaced, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

257 Interpretation

In this Part, unless the context otherwise requires,—

controlled offshore installation means any offshore installation that is—

(a) in the waters of the exclusive economic zone of New Zealand; or

(b) in the waters beyond the outer limits of the exclusive economic zone of New Zealand, but over the continental shelf of New Zealand

Convention State means a State that is a party to the London Convention

dumping—

(a) means—

(i) any deliberate disposal into the sea of wastes or other matter from vessels, aircraft, platforms, or other structures (other than natural structures) at sea; and

(ii) any deliberate disposal into the sea of vessels, aircraft, platforms, or other structures (other than natural structures) at sea; and

(iii) any storage of wastes or other matter in the seabed and the subsoil of the seabed from vessels, aircraft, platforms, or other structures (other than natural structures) at sea; and

(iv) any abandonment or toppling at site of platforms or other structures (other than natural structures) at sea, for the sole purpose of deliberate disposal; but

(b) does not include—

(i) the disposal into the sea of wastes or other matter incidental to, or derived from, the normal operations of vessels, aircraft, platforms, or other structures (other than natural structures) at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms, or other structures (other than natural structures) at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms, or other structures; or

(ii) placement of matter for a purpose other than the mere disposal of them, provided that such placement is not contrary to the aims of the 1996 Protocol to the London Convention; or

(iii) abandonment in the sea of matter (for example cables, pipelines, and marine research devices) placed for a purpose other than the mere disposal of them; and

(c) does not include the disposal or storage of wastes or other matter directly arising from, or related to, the exploration, exploitation, and associated offshore processing of seabed mineral resources

emergency dumping permit means a permit granted under section 262A

incinerated at sea—

(a) means the deliberate disposal of waste or other matter by thermal destruction on board a ship, platform, or other artificial structure at sea; but

(b) does not include the incineration on board a ship, platform, or other artificial structure at sea of waste or other matter generated during the normal operation of that ship, platform, or other structure at sea

London Convention means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972; and includes any subsequent amendment or protocol to, or revision of, that Convention accepted or ratified by New Zealand

marine incineration facility means a ship or an offshore installation that incinerates waste or other matter at sea

New Zealand marine incineration facility means a marine incineration facility that is owned or managed by—

(a) a New Zealand citizen; or

(b) a person who is ordinarily resident in New Zealand; or

(c) a company registered under the Companies Act 1993

New Zealand structure means a structure that is owned by—

(a) a New Zealand citizen; or

(b) a person who is ordinarily resident in New Zealand; or

(c) a company registered under the Companies Act 1993

radioactive waste or other radioactive matter means any waste or other matter containing any radioactive material within the meaning of section 5(1) of the Radiation Safety Act 2016

structure includes an offshore installation, artificial island, or floating platform, but does not include a submarine pipeline

toxic or hazardous waste means any waste or other matter specified as toxic or hazardous waste for the purposes of this definition by the marine protection rules

waste or other matter means material and substances of any kind, form, or description.

Section 257 **dumping**: substituted, on 9 June 1999, by section 27 of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 257 **emergency dumping permit**: inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 257 **incinerated at sea**: inserted, on 9 June 1999, by section 27 of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 257 **incineration**: repealed, on 9 June 1999, by section 27 of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 257 **New Zealand marine incineration facility** paragraph (c): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 257 **New Zealand structure**: inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 257 **radioactive waste or other radioactive matter**: amended, on 7 March 2017, by section 99 of the Radiation Safety Act 2016 (2016 No 6).

Section 257 **structure**: inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

257A Regulation under this Part and Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 of dumping

(1) This section describes how the dumping of waste or other matter is regulated under this Part and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, but it does not affect the interpretation or the application of this Part or that enactment.

(2) This Part regulates the dumping of waste or other matter into the waters beyond the continental shelf.

(3) In relation to the exclusive economic zone and the continental shelf, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012—

(a) prohibits—

(i) the dumping of radioactive waste or other radioactive matter:

(ii) the dumping of toxic or hazardous waste:

(iii) the incineration of waste or other matter at sea; and

(b) regulates—

(i) the disposal of human remains other than ashes:

(ii) the dumping of waste or other matter (other than waste or other matter described in paragraph (a)).

Section 257A: inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Obligations in respect of dumping, storing, and incineration of wastes

258 Dumping of radioactive waste or other radioactive matter

(1) Radioactive waste or other radioactive matter shall not be—

(a) taken on board any ship or aircraft in New Zealand or in the internal waters of New Zealand or in New Zealand marine waters for the purpose of dumping that radioactive waste or other radioactive matter; or

(b) taken on board any ship or aircraft at any controlled offshore installation for the purpose of dumping that radioactive waste or other radioactive matter; or

(c) dumped from any ship or aircraft into the sea above the continental shelf beyond the outer limits of the exclusive economic zone; or

(d) *[Repealed]*

(e) dumped from any New Zealand ship or any New Zealand aircraft into the sea or onto or into the seabed beyond New Zealand continental waters.

(2) No person may incinerate radioactive waste or other radioactive matter at sea—

(a) in the internal waters of New Zealand; or

(b) beyond New Zealand continental waters on a New Zealand ship, a New Zealand structure, or a New Zealand aircraft.

(3) No person may export radioactive waste or other radioactive matter to another country for dumping at sea or incineration at sea.

Compare: 1974 No 14 s 21A; 1980 No 53 s 4

Section 258(1)(c): replaced, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 258(1)(d): repealed, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 258(2): inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 258(3): inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

259 Storing of radioactive waste or other radioactive matter

[Repealed]

Section 259: repealed, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

260 Storing of toxic or hazardous waste

[Repealed]

Section 260: repealed, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

261 Dumping and incineration of waste or other matter

(1) No person may dump waste or other matter from a New Zealand ship or a New Zealand aircraft or a New Zealand structure into the sea, or into or onto the seabed, beyond New Zealand continental waters, unless the dumping is authorised by—

(a) a permit issued under section 262; or

(b) a permit issued by a Convention State; or

(c) an emergency dumping permit issued under section 262A.

(2) No person may dump a New Zealand ship or a New Zealand aircraft or a New Zealand structure into the sea or onto or into the seabed beyond New Zealand continental waters, unless the dumping is authorised by—

(a) a permit issued under section 262; or

(b) a permit issued by a Convention State; or

(c) an emergency dumping permit issued under section 262A.

(3) No person may incinerate waste or other matter at sea—

(a) in the internal waters of New Zealand; or

(b) beyond New Zealand continental waters on a New Zealand ship, a New Zealand structure, or a New Zealand aircraft.

(4) No person may export waste or other matter to another country for dumping at sea or incineration at sea.

(5) No person may take waste or other matter on board a ship or an aircraft in New Zealand, or within the internal waters of New Zealand or New Zealand continental waters, for the purpose of dumping that waste or other matter within any of those waters unless the dumping is authorised by—

(a) a resource consent granted under the Resource Management Act 1991; or

(b) a marine consent granted under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; or

(c) a permit granted under section 262.

(6) This section does not—

(a) require the Director to obtain a permit under section 262 or 262A before he or she exercises a power conferred by section 248 or 249; or

(b) apply to the exercise of any of those powers by the Director.

Section 261: replaced, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 261(5)(b): amended on 1 June 2017, by section 286(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

262 Permits for dumping waste or other matter

The Director may, in accordance with section 270 and the marine protection rules, issue permits authorising the dumping of any waste or other matter (including ships, aircraft, or offshore installations) from a New Zealand ship, or a New Zealand aircraft, beyond New Zealand continental waters.

Section 262: replaced, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

262A Emergency dumping permit

(1) This section and section 262B apply if a situation arises which poses an unacceptable risk to human health, human safety, or the marine environment (**an emergency**).

(2) Any person may apply to the Director, in an emergency, for an emergency dumping permit to dump waste or other matter into the sea beyond New Zealand continental waters (which would otherwise contravene section 261).

(3) The Director may issue the permit in accordance with section 270 and the marine protection rules, if he or she is satisfied that—

(a) an emergency exists; and

(b) the dumping of the waste or other matter is necessary to remove or reduce the risk; and

(c) there is no practical alternative to the dumping of the waste or other matter.

(4) Before the Director issues a permit under subsection (3), the Director must—

(a) consult with the appropriate competent authority of any country that is likely to be affected by the dumping of the waste or other matter; and

(b) notify the International Maritime Organization that he or she has received an application for an emergency dumping permit.

Section 262A: inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

262B Conditions of emergency dumping permit

(1) An emergency dumping permit may be granted subject to conditions.

(2) The Director must include as a condition on an emergency dumping permit a requirement that the person granted the permit complies with any procedures for dumping recommended by the International Maritime Organization and specified on the permit.

(3) Subsection (2) applies only to the extent that the Director considers the conditions practicable after taking into account the urgency of the situation.

(4) The Director may include any conditions that he or she considers appropriate to deal with the effects of the dumping of waste or other matter on the environment or on human health or safety, including conditions that require the person issued with the permit to—

(a) monitor, and report to the Director on, the exercise of the permit and the effects of the dumping on the environment and human health and safety:

(b) keep and maintain records of the waste or other matter dumped and the location of the dumping:

(c) provide the Director with any specified information that relates to the permit or its exercise.

Section 262B: inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Offences

263 Offences in respect of radioactive waste and other radioactive matter

(1) The master and the owner of a ship each commits an offence if radioactive waste or other radioactive matter is—

(a) taken on board the ship in breach of paragraph (a) or paragraph (b) of section 258(1); or

(b) dumped from the ship in breach of section 258(1)(c); or

(c) dumped from the ship (being a New Zealand ship) in breach of section 258(1)(e).

(2) The person in possession of, and the owner of, an aircraft each commits an offence if radioactive waste or other radioactive matter is—

(a) taken on board the aircraft in breach of paragraph (a) or paragraph (b) of section 258(1); or

(b) dumped from the aircraft in breach of section 258(1)(c); or

(c) dumped from the aircraft (being a New Zealand aircraft) in breach of section 258(1)(e).

(3) The owner of a controlled offshore installation commits an offence if radioactive waste or other radioactive matter is taken on board any ship or aircraft at the offshore installation in breach of section 258(1)(b).

(4) *[Repealed]*

(5) *[Repealed]*

Section 263 heading: replaced, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 263(3): replaced, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 263(4): repealed, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 263(5): repealed, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

264 Offences in respect of dumping and incineration of waste and other matter

(1) The master and the owner of a ship each commits an offence if waste or other matter is—

(a) taken on board the ship in breach of section 261(5); or

(b) *[Repealed]*

(c) dumped from the ship (being a New Zealand ship) in breach of section 261(1).

(2) The master and owner of a ship each commits an offence if the ship (being a New Zealand ship) is dumped in breach of section 261(2).

(3) A person in possession, and the owner, of an aircraft each commits an offence if waste or other matter is—

(a) taken on board the aircraft in breach of section 261(5); or

(b) *[Repealed]*

(c) dumped from the aircraft (being a New Zealand aircraft) in breach of section 261(1).

(4) A person in possession, and the owner, of an aircraft each commits an offence if the aircraft (being a New Zealand aircraft) is dumped in breach of section 261(2).

(5) *[Repealed]*

(6) The owner and master of a ship, and the owner of a platform or other artificial structure, each commits an offence if waste or other matter is incinerated on it in breach of section 261(3).

(7) A person commits an offence if the person exports waste or other matter in breach of section 261(4).

(8) The master and the owner of a ship who are authorised to dump waste or other matter from the ship by an emergency dumping permit each commits an offence if a condition of the permit is breached.

(9) The person in possession of an aircraft and the owner of the aircraft who are authorised to dump waste or other matter from the aircraft by an emergency dumping permit each commits an offence if a condition of the permit is breached.

Section 264: substituted, on 9 June 1999, by section 30 of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 264(1)(a): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 264(1)(b): repealed, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 264(1)(c): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 264(2): replaced, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 264(3)(a): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 264(3)(b): repealed, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 264(3)(c): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 264(4): replaced, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 264(5): repealed, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 264(6): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 264(7): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 264(8): inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 264(9): inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

265 Special defences

In any prosecution for an offence against section 264, it is a defence if the defendant proves that the act or omission which is alleged to constitute the offence—

(a) was necessary—

(i) to save or prevent danger to human life; or

(ii) to avert a serious threat to the ship, aircraft, offshore installation, or marine incineration facility; or

(iii) in the case of *force majeure* caused by stress of weather, to secure the safety of the ship, aircraft, offshore installation, or marine incineration facility; and

(b) was a reasonable step to take in all the circumstances; and

(c) was likely to result in less damage than would otherwise have occurred; and

(d) was taken or omitted in such a way that the likelihood of damage to human or marine life was minimised.

Compare: 1974 No 14 s 23

Penalties

266 Penalties

Subject to section 267, every person who commits an offence against section 263 or section 264 is liable on conviction—

(a) to a fine not exceeding $200,000; and

(b) if the offence is a continuing one, to a further fine not exceeding $10,000 for every day or part of a day during which the offence is continued; and

(c) for such amount as the court may assess in respect of the costs of all or any of the following, namely, removing or dispersing, or disposing of, any waste or other matter to which the offence relates; and

(d) to an additional penalty under section 409.

Section 266: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

267 Sentence of imprisonment

(1) Subject to subsection (2), the court may sentence a person who commits an offence against section 263 to imprisonment for a term not exceeding 2 years instead of imposing a fine under section 266.

(2) The court shall not sentence to imprisonment any person who commits an offence against section 263 unless the court is satisfied,—

(a) where the person is the master or owner of a foreign ship,—

(i) that the offence was committed within the territorial sea; and

(ii) that the person intended to commit the offence, or the offence occurred as a consequence of any reckless act or omission by the person with the knowledge that that act or omission would or would be likely to cause serious damage to the marine environment within the territorial sea; and

(iii) that the commission of the offence has caused or is likely to cause serious damage to the marine environment within the territorial sea:

(b) in any other case, that the commission of the offence has caused or is likely to cause serious damage to the marine environment.

Compare: United Nations Convention on the Law of the Sea art 230

Section 267(2): substituted, on 1 August 1996, by section 3 of the Maritime Transport Amendment Act 1996 (1996 No 79).

Section 267 compare note: added, on 1 August 1996, by section 3 of the Maritime Transport Amendment Act 1996 (1996 No 79).

Part 22
Obligations and powers in relation to marine protection documents

General rule

268 Marine protection documents to be held and complied with if required by marine protection rules

(1) Every person who does anything, or uses or operates anything, for which a marine protection document is required under the marine protection rules made under this Act, shall ensure that—

(a) the appropriate document is held in accordance with the marine protection rules; and

(b) the provisions of that document and all relevant marine protection rules are complied with.

(2) Every holder of a marine protection document shall—

(a) if so required by the marine protection rules, establish and follow a management system that will ensure compliance with the relevant prescribed standards for protection of the marine environment and the conditions attached to the marine protection document; and

(b) provide training and supervision to all employees of the holder who are engaged in doing anything to which the marine protection document relates, so as to maintain compliance with the relevant prescribed standards for protection of the marine environment and the conditions attached to the marine protection document; and

(c) provide sufficient resources to ensure compliance with the relevant prescribed standards and the conditions attached to the marine protection document.

Compare: 1990 No 98 s 12; 1991 No 116 s 3

Powers of Director in relation to marine protection documents

269 Application for marine protection document

(1) Every application for the grant or renewal of a marine protection document, or for the recognition of a document as a marine protection document, shall be made to the Director in the prescribed form or, if there is no prescribed form, in such form as the Director may require.

(2) Every applicant under subsection (1) shall include in his or her application his or her address for service in New Zealand including, where applicable, telephone and facsimile numbers.

(3) It shall be the duty of every holder of a marine protection document to maintain the currency of the information provided under subsection (2) by promptly notifying the Director of any change to the address, telephone number, or facsimile number.

(4) The Director shall ensure that a record of all information provided under this section is maintained at the Maritime Registry.

(5) Service of any notice, notification, or other document under this Act on a holder of a marine protection document, or on an applicant under subsection (1), shall be effective service if served at the address last provided by that holder or applicant.

Compare: 1990 No 98 s 8; 1992 No 75 s 5

270 Issue of marine protection documents and recognition of documents

(1) After considering any application under section 269, the Director shall, as soon as practicable, grant the application if he or she is satisfied that—

(a) all things in respect of which the document is sought or, in the case of an application for recognition of a document as a marine protection document, the document, meet, meets, or will meet (as the case may be) any relevant prescribed requirements; and

(b) the applicant, and any person who is to have or is likely to have control over the exercise of the privileges under the document, meet any prescribed requirements.

(2) For the purpose of granting or renewing a marine protection document, or recognising a document as a marine protection document, the Director may, subject to any provisions in the marine protection rules, recognise such qualifications or certifications as he or she considers appropriate in each case.

(3) In no case shall the Director recognise foreign qualifications or foreign certificates where—

(a) the requirements to gain such qualifications or to obtain such certificates are less than the requirements to gain similar qualifications or to obtain similar certificates in New Zealand; and

(b) the Director believes that to recognise such qualifications or certificates might pose a risk or danger to the marine environment.

(4) Where a licence, permit, certificate, or other document is recognised by the Director under this section, the Director shall either—

(a) issue an equivalent marine protection document under this section; or

(b) notify in writing such recognition.

(5) Where the Director declines to grant an application under section 269, the applicant may appeal against that decision to the District Court under section 424.

(6) Nothing in this section applies in respect of any ship, crew, or marine protection product in respect of which section 271 applies.

Compare: 1990 No 98 s 9; 1992 No 75 s 6

Section 270(5): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

271 Acceptance of documents

(1) Subject to subsection (2), the Director shall accept every valid licence, permit, certificate, or other document issued by or approved by a State, other than New Zealand, under a marine protection convention to which that State and New Zealand are both parties, and for the purposes of this Act, such documents shall be deemed to be marine protection documents.

(2) The Director shall not accept, or may suspend acceptance of, any document referred to in subsection (1) where he or she has clear grounds for believing that—

(a) the condition of the ship or marine protection product does not correspond substantially with the particulars of any document relating to the ship or marine protection product; or

(b) the ship or marine protection product has been materially altered without the sanction of the State that issued or approved the document; or

(c) the ship is not fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment; or

(ca) for a document issued under the convention, the ship cannot discharge ballast water without presenting a threat of harm to the environment, human health, property, or resources (**convention** and **ship** having the meanings given to them in section 246A(2) and (3)(a)); or

(d) any provision or condition of the document is not being met.

(3) Sections 269, 270, 272, 273, 274, 275, 276, 277, 395, and 406(b) shall not apply to any document to which this section relates.

(4) This section applies in respect of—

(a) every ship, other than a New Zealand ship, registered in a country that is a party to any marine protection convention to which New Zealand is also a party:

(b) the crew of every ship referred to in paragraph (a):

(c) the marine protection products of every ship referred to in paragraph (a).

Section 271(2)(ca): inserted, on 8 September 2017, by section 86(6) of the Biosecurity Law Reform Act 2012 (2012 No 73).

272 Suspension of marine protection documents or imposition of conditions

(1) The Director may from time to time—

(a) suspend any marine protection document issued by the Director under this Act, or under any marine protection rules, or impose conditions in respect of any such marine protection document; or

(aa) suspend the recognition by the Director as a marine protection document of any document issued under the convention, or impose conditions on recognition, if he or she considers the action necessary in the interests of protecting the environment, human health, property, or resources (**convention** having the meaning given to it in section 246A(2)); or

(b) suspend the recognition by the Director as a marine protection document of any document issued by another person or organisation, or impose conditions in respect of such recognition,—

if he or she considers such action necessary in the interests of protecting the marine environment and if he or she—

(c) is satisfied that the holder fails or has failed to comply with any conditions of the relevant marine protection document; or

(d) is satisfied that the holder has contravened or failed to comply with section 406; or

(e) is satisfied that such action is necessary to ensure compliance with—

(i) any provision of Parts 19 to 27; or

(ii) any regulations or marine protection rules made under this Act; or

(iii) section 15A or section 15B or section 15C of the Resource Management Act 1991; or

(iv) any regulations made under any of paragraphs (ha) to (he) of section 360(1) of the Resource Management Act 1991; or

(v) section 20B or 20C of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; or

(vi) any regulations made under section 29A or 29B of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; or

(f) considers that the privileges or duties for which the marine protection document has been granted, or the relevant document has been recognised as a marine protection document, are being or have been carried out by the holder in a careless or incompetent manner.

(2) The suspension of any marine protection document, or the suspension of recognition of any document as a marine protection document, or the imposition of conditions in respect of any such document, by the Director, shall remain in force until the Director has determined, after due investigation, the action to be taken in respect of the causes requiring the suspension or imposition of conditions, but the duration of any such suspension or conditions shall not exceed 14 days unless the Director directs that a further specified period is necessary for the purposes of the investigation.

(3) If, after investigation, the Director considers such action to be warranted, he or she may suspend for a further period the marine protection document, or the recognition of a document as a marine protection document, or impose further conditions, and he or she shall cause the appropriate endorsement to be made on the marine protection document (if the document is issued under this Act or the marine protection rules) or on the notification of recognition, as the case may require.

(4) Where a marine protection document or recognition of a document as a marine protection document has been suspended or a marine protection document has been made subject to conditions under this section, the holder shall forthwith produce that document or notification of recognition of that document to the Director for appropriate endorsement.

(5) The whole or any part of a marine protection document, or the recognition of the whole or any part of a document recognised as a marine protection document, may be suspended under this section.

(6) Any person in respect of whom any decision is taken under this section may appeal against that decision to the District Court under section 424.

Compare: 1990 No 98 s 17; 1992 No 75 s 11

Section 272(1)(aa): inserted, on 8 September 2017, by section 86(7) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 272(1)(e)(v): inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 272(1)(e)(vi): inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 272(6): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

273 Revocation of marine protection documents

(1) If, after an investigation under section 272, the Director believes that a marine protection document or the recognition of a document as a marine protection document should be revoked, the Director may revoke that document or the recognition of that document.

(2) Where the Director proposes to revoke any marine protection document, or the recognition of a document as a marine protection document, the Director shall give notice to the persons specified by, and in accordance with the provisions of, the marine protection rules.

(3) Where a marine protection document or recognition of a marine protection document has been revoked under this section, the holder shall forthwith surrender that document or notification of recognition of that document to the Director.

(4) Any person in respect of whom any decision is taken under this section may appeal against that decision to the District Court under section 424.

Compare: 1990 No 98 s 18; 1992 No 75 s 12

Section 273(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

274 Suspension or revocation of marine protection document where prescribed fees or charges unpaid

(1) Where any fee or charge that is payable under this Act, or any regulations made under this Act, is not paid by the date prescribed or fixed for payment of that fee or charge, the Director may suspend the marine protection document, or suspend the recognition of the document as a marine protection document, to which the unpaid fee or charge relates.

(2) Where any fee or charge payable under this Act, or any regulations made under this Act, is not paid within 6 months after the date prescribed or fixed for payment of that fee or charge, the Director may revoke the marine protection document, or revoke the recognition of the document as a marine protection document, to which the fee or charge relates.

(3) Before undertaking any action under subsection (1) or subsection (2), the Director shall notify the holder of that document of—

(a) the Director's intention to act under subsection (1) or subsection (2); and

(b) the right of appeal available to the holder of that document in the event of the Director taking such action.

(4) Where a marine protection document or recognition of a document as a marine protection document has been revoked under this section, the holder shall forthwith surrender that document or notification of that document to the Director.

(5) Where a fee or charge is payable to the Authority or the Director in respect of an application or the provision of a service, the Authority or the Director, as the

case may be, may, unless the marine environment would as a result be put at risk, decline to process that application or provide that service until the appropriate fee or charge has been paid, or arrangements acceptable to the Authority or the Director, as the case may be, for payment of the fee or charge have been made.

(6) Any person in respect of whom any decision is taken under this section may appeal against that decision to the District Court under section 424.

Compare: 1990 No 98 s 41; 1992 No 75 s 22

Section 274(6): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

275 Amendment or revocation in other cases

(1) The Director may,—

(a) if so requested in writing by the holder of any marine protection document issued by the Director, amend or revoke the document as requested:

(b) amend any marine protection document issued by the Director to correct any clerical error or obvious mistake on the face of the document.

(2) Subject to subsection (3), the Director may—

(a) amend any marine protection document issued by the Director to reflect the fact that any privilege or duty for which the document has been granted is no longer being carried out, or is no longer able to be carried out, by the holder:

(b) revoke any marine protection document issued by the Director, or revoke the recognition of any document as a marine protection document, if none of the privileges or duties for which the document has been granted are being carried out, or are able to be carried out, by the holder.

(3) Before taking any action under subsection (2), the Director shall notify the holder in writing of the proposed action and give the holder a reasonable opportunity to comment or make submissions on the proposed action.

(4) The power to amend a marine protection document under this section includes—

(a) power to revoke the document and issue a new document in its place; and

(b) power to impose reasonable conditions.

(5) When the holder of a marine protection document is notified that specified action is proposed under this section, the holder shall forthwith produce the document to the Director.

Compare: 1990 No 98 s 20

276 Criteria for action under section 272 or section 273

(1) The provisions of this section shall apply for the purpose of determining whether a marine protection document, or recognition of a document as a marine protection document, should be suspended or made subject to conditions under section 272 or revoked under section 273.

(2) Where this section applies, the Director may have regard to, and give such weight as the Director considers appropriate to, the following matters:

(a) the person's compliance history with any regulatory requirements relating to protection of the sea from harmful substances or ballast water and the person's compliance history with the Resource Management Act 1991 or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 in respect of the discharge of harmful substances:

(b) any conviction for any offence related to the discharge of harmful substances or ballast water into the sea, whether or not—

(i) the conviction was in a New Zealand court; or

(ii) the offence was committed before the commencement of this Act:

(c) any conviction for any offence under the Resource Management Act 1991 or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 in respect of the discharge of harmful substances.

(3) The Director shall not be confined to consideration of the matters specified in subsection (2) and may take into account such other matters and evidence as may be relevant.

(4) The Director may—

(a) seek and receive such information as the Director thinks fit; or

(b) consider information obtained from any source.

(5) If the Director proposes to take into account any information that is or may be prejudicial to a person, the Director shall, subject to subsection (6), as soon as is practicable, disclose that information to that person and give that person a reasonable opportunity to refute or comment on it.

(6) Nothing in subsection (5) shall require the Director to—

(a) disclose any information the disclosure of which would be likely to endanger the safety of any person; or

(b) disclose any information before—

(i) suspending a marine protection document or suspending the recognition of a document as a marine protection document; or

(ii) imposing conditions in respect of a marine protection document under section 272.

(7) If the Director determines not to disclose any information in reliance on subsection (6), the Director must inform the person of the fact of non-disclosure and the following provisions apply:

(a) in the case of non-disclosure to an individual of information about the individual,—

(i) the Director must inform the individual that he or she may, under the Privacy Act 1993, complain to the Privacy Commissioner about that non-disclosure; and

(ii) the provisions of that Act apply to that non-disclosure as if, following a request under that Act for the information withheld, the information had been withheld under section 27(1)(d) of that Act; and

(b) in any other case,—

(i) the Director must inform the person that the person may seek a review by an Ombudsman of that non-disclosure under the Official Information Act 1982; and

(ii) the provisions of that Act apply to that non-disclosure as if, following a request under that Act for the information withheld, the information had been withheld under section 6(d) of that Act.

Compare: 1990 No 98 s 19

Section 276(2)(a): amended, on 8 September 2017, by section 86(8) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 276(2)(a): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 276(2)(b): amended, on 8 September 2017, by section 86(9) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 276(2)(c): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 276(7): substituted, on 15 December 2005, by section 10 of the Maritime Transport Amendment Act (No 2) 2005 (2005 No 108).

General offences

277 Acting without necessary marine protection document

(1) Every person commits an offence who—

(a) operates, maintains, or services; or

(b) does any other act in respect of—

any ship or marine protection product, without holding the appropriate current marine protection document.

(2) Every person commits an offence who—

(a) operates, maintains, or services; or

(b) does any other act in respect of—

any ship or marine protection product knowing that a current marine protection document is required to be held in respect of that ship or product before that act may lawfully be done and knowing that the appropriate document is not held.

(3) For the purposes of this section,—

(a) a marine protection document is not a current marine protection document if it is for the time being suspended under this Act:

(b) a marine protection document is not a current marine protection document in relation to an act if the endorsement that is required to authorise that act is for the time being suspended under this Act.

Section 277(3): added, on 9 June 1999, by section 31 of the Maritime Transport Amendment Act 1999 (1999 No 68).

278 Acting in breach of marine protection document

Every person commits an offence who—

(a) operates, maintains, or services; or

(b) does any other act in respect of—

a ship or marine protection product if the provisions and conditions of the appropriate marine protection document are not complied with.

Section 278 heading: amended, on 9 June 1999, by section 32 of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 278: amended, on 9 June 1999, by section 32 of the Maritime Transport Amendment Act 1999 (1999 No 68).

Penalties

279 Penalties for individuals

Every individual who commits an offence against section 277 or section 278 is liable on conviction—

(a) to imprisonment for a term not exceeding 12 months or to a fine not exceeding $10,000; and

(b) to an additional penalty under section 409.

Section 279: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

280 Penalties for bodies corporate

Every body corporate that commits an offence against section 277 or section 278 is liable on conviction—

(a) to a fine not exceeding $100,000; and

(b) to an additional penalty under section 409.

Section 280: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Part 23
Plans and responses to protect marine environment from marine oil spills

281 Interpretation

In this Part, unless the context otherwise requires,—

marine oil spill means an oil spill into the internal waters of New Zealand or New Zealand marine waters

marine oil spill contingency plan or **plan** means a shipboard, or site, or regional marine oil spill contingency plan or the national marine oil spill contingency plan

marine oil spill response or **response** means any action taken by or under the authority, or with the approval, of an on-scene commander in relation to a marine oil spill

national marine oil spill contingency plan or **national plan** means the plan most recently prepared or reviewed under section 297

National On-Scene Commander means the National On-Scene Commander appointed under section 319

New Zealand marine oil spill response strategy or **response strategy** means the strategy most recently prepared or reviewed under section 283

New Zealand Oil Pollution Fund means the fund established under section 330

Oil Pollution Advisory Committee or **Committee** means the committee appointed under section 282

oil spill means any actual or probable release, discharge, or escape of oil

oil transfer site or **site** means any land, site, building, structure, or facility (whether on land or above the seabed) that is used to transfer oil, or at or from which oil is transferred, to, or from, a ship, or offshore installation

on-scene commander means the National On-Scene Commander or any regional on-scene commander

regional marine oil spill contingency plan means a marine oil spill contingency plan prepared by a regional council and approved by the Director under section 292 or prepared by the Director under section 295

regional on-scene commander means a regional on-scene commander appointed under section 318

requisitioned property means any land, building, vehicle, New Zealand ship, or any other real or personal property requisitioned under section 305(1)(g)

shipboard marine oil spill contingency plan means a plan prepared under the marine protection rules in respect of a ship and providing for the measures to be taken in respect of marine oil spills from the ship

site marine oil spill contingency plan means a plan prepared under the marine protection rules in respect of an offshore installation, or oil transfer site, and providing for the measures to be taken in respect of marine oil spills from the offshore installation or oil transfer site, as the case may be.

Oil Pollution Advisory Committee

282 Oil Pollution Advisory Committee

(1) There shall continue to be a committee, to be called the Oil Pollution Advisory Committee, to give advice to the Authority on the following matters:

(a) the New Zealand Marine Oil Spill Response Strategy:

(b) the fixing and levying of oil pollution levies imposed under Part 24:

(c) the use of the New Zealand Oil Pollution Fund:

(d) any other matters related to marine oil spills that the Minister, or the Director, from time to time specifies by notice to the Committee.

(2) The Minister shall appoint to the Committee—

(a) the Director; and

(b) such other persons as the Minister from time to time determines; and

(c) a chairperson of the Committee.

(3) The Minister shall, in appointing members of the Committee, consider whether the Committee should have members who represent, or have experience relating to, the following:

(a) the shipping industry:

(b) the oil and gas exploration industry:

(c) the oil and gas production and distribution industry:

(d) the Petroleum Industry Emergency Action Committee:

(e) operators of port facilities:

(f) regional councils:

(g) Maritime New Zealand:

(h) the Ministry of Transport:

(i) the Ministry for the Environment:

(j) the Department of Conservation:

(k) Te Puni Kokiri.

(4) The Committee may, subject to any written directions of the Minister, regulate its procedure as it thinks fit.

(5) Members of the Committee shall be appointed on such terms and conditions (including travelling allowances and expenses) as the Minister from time to time determines.

(6) Any travelling allowances and expenses determined by the Minister under subsection (5) shall be paid out of the New Zealand Oil Pollution Fund.

Compare: 1974 No 14 s 29G; 1977 No 130 s 3

Section 282(3)(g): substituted, on 1 July 2005, by section 11(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

New Zealand marine oil spill response strategy

283 Preparation and review of response strategy

The Director shall prepare, by a date specified by the Minister by notice in the *Gazette*, the New Zealand marine oil spill response strategy and shall review that response strategy at least once every 5 years.

Section 283: amended, on 15 December 2005, by section 11 of the Maritime Transport Amendment Act (No 2) 2005 (2005 No 108).

284 Purpose and contents of response strategy

(1) The purpose of the New Zealand marine oil spill response strategy is to—

(a) describe the action to be taken, and by whom the action is to be undertaken, in response to a marine oil spill in New Zealand marine waters; and

(b) promote a standard response to marine oil spills in New Zealand; and

(c) promote the co-ordination of marine oil spill contingency plans and the action taken in response to marine oil spills under such plans.

(2) The New Zealand marine oil spill response strategy shall include such matters as the Director considers appropriate to achieve its purpose as specified in subsection (1) and any other matters that the marine protection rules require to be included in the response strategy.

285 Consultation in respect of response strategy

In preparing and reviewing the New Zealand Marine Oil Spill Response Strategy, the Director shall consult with the Oil Pollution Advisory Committee and such other persons as the Director considers appropriate.

Marine oil spill contingency plans

286 Purpose of marine oil spill contingency plans

The purpose of marine oil spill contingency plans is to—

(a) promote in New Zealand planned responses to marine oil spills at shipboard, site, regional, and national levels; and

(b) specify the functions and responsibilities of persons at shipboard, site, regional, and national levels, with respect to responses to marine oil spills.

Shipboard and site marine oil spill contingency plans

287 Preparation, review, and keeping of shipboard and site marine oil spill contingency plans

Shipboard and site marine oil spill contingency plans shall be prepared, reviewed, and kept in accordance with the provisions of the marine protection rules.

Regional marine oil spill contingency plans

288 Purpose of regional marine oil spill contingency plan

The purpose of a regional marine oil spill contingency plan is to promote a planned and regionally co-ordinated response to any marine oil spill within a region that is beyond the resources of the persons who have caused the marine oil spill or that has not been appropriately responded to by such persons.

289 Initial regional marine oil spill contingency plans

(1) Every regional council whose region includes any coastline shall, by a date specified by the Director for the purpose, submit to the Director for his or her approval a draft regional marine oil spill contingency plan for its region.

(2) Any date or dates specified by the Director for the purposes of subsection (1) shall not be earlier than 12 months after all of the following have been prepared or issued, as the case may be, under this Act:

(a) the first New Zealand marine oil spill response strategy:

(b) the first national marine oil spill contingency plan:

(c) marine protection rules prescribing requirements for regional marine oil spill contingency plans.

290 Regular review of regional marine oil spill contingency plans

Every regional council shall review its regional marine oil spill contingency plan and submit a draft regional marine oil spill contingency plan after such review to the Director for his or her approval, not less frequently than every 3 years after its preparation, or its most recent review under this section, as the case may be.

291 Preparation and consultation in respect of, and matters to be included in, regional marine oil spill contingency plans

(1) In preparing its draft regional marine oil spill contingency plan, a regional council shall ensure that,—

(a) the draft plan is consistent with the New Zealand marine oil spill response strategy and the national marine oil spill contingency plan; and

(b) the draft plan complies with any relevant requirements of the marine protection rules.

(2) In preparing, under section 289, or reviewing, under section 290, its draft regional marine oil spill contingency plan, a regional council shall consider the following matters:

(a) the regional marine oil spill contingency plans of regional councils with adjacent regions:

(b) such other marine oil spill contingency plans as it considers appropriate:

(c) any regional coastal plan applying to that region and prepared under the Resource Management Act 1991:

(d) any conservation management strategies and conservation management plans approved under section 17F or section 17G of the Conservation Act 1987 in respect of the coastal resources in its region:

(e) the harmful effects that marine oil spills may have on the marine environment and measures that can be taken to limit these effects:

(f) the substances that are suitable to contain and clean up marine oil spills:

(g) such other matters as it considers appropriate.

(3) In preparing, under section 289, or reviewing, under section 290, its draft regional marine oil spill contingency plan, a regional council shall consult—

(a) the Department of Conservation; and

(b) representatives of the tangata whenua within its region; and

(c) such persons who use the coastal resources within its region as the regional council considers appropriate; and

(d) any other persons whom the regional council considers appropriate.

292 Approval of draft regional marine oil spill contingency plan

(1) A regional council shall, forthwith upon being required by the Director to do so, include in, or omit from, its draft regional marine oil spill contingency plan submitted to the Director under section 289 or section 290 such provisions as the Director may specify.

(2) The Director may, in his or her sole discretion, determine what provisions (if any) he or she requires under subsection (1) to be included in or omitted from a draft regional marine oil spill contingency plan, except that the Director shall not require any inclusion or omission of a provision that will result in the plan being inconsistent with any relevant requirements of the marine protection rules.

(3) The Director shall, once his or her requirements (if any) under subsection (1) have been complied with, approve the relevant regional marine oil spill contingency plan.

293 Amendment of regional marine oil spill contingency plans

(1) The Director may from time to time, by written notice to a regional council, require the inclusion or omission of any provision in a regional marine oil spill contingency plan if, in the opinion of the Director, it is necessary or desirable to ensure an appropriate response by the regional council to a marine oil spill within its region.

(2) A regional council may from time to time amend its regional marine oil spill contingency plan if such amendment is approved in writing by the Director.

294 Regional marine oil spill contingency plan overridden in certain cases

Where any regional marine oil spill contingency plan is inconsistent with the New Zealand marine oil spill response strategy, the national marine oil spill contingency plan, or the marine protection rules, that response strategy, national plan, or those marine protection rules shall override that regional marine oil spill contingency plan to the extent of the inconsistency.

295 Power of Director to prepare regional marine oil spill contingency plan

(1) The Director may prepare the regional marine oil spill contingency plan for a region where a regional council has not submitted a draft regional marine oil spill contingency plan in accordance with section 289 or section 290.

(2) Where a regional marine oil spill contingency plan is prepared by the Director under subsection (1), the regional council responsible for the plan shall meet out of its own resources the costs of the Director in preparing the regional marine oil spill contingency plan, and shall not be entitled under any provision of this Act to reimbursement from the New Zealand Oil Pollution Fund for those costs.

National marine oil spill contingency plan

296 Purpose of national marine oil spill contingency plan

The purpose of the national marine oil spill contingency plan is to promote a planned and nationally co-ordinated response to any marine oil spill that—

(a) is beyond the resources of the regional council within whose region it is located; or

(b) is outside the region of any regional council, but within the exclusive economic zone of New Zealand, and is an oil spill for which the Director considers that a national response is required.

297 Preparation and review of national marine oil spill contingency plan

By a date specified by the Minister for the purpose by notice in the *Gazette*, the Director shall prepare the national marine oil spill contingency plan and shall review that plan at least once every 3 years.

298 Consultation in respect of and matters to be included in national plan

(1) In preparing or reviewing the national marine oil spill contingency plan, the Director shall consult with such persons as the Director considers appropriate.

(2) The national plan shall contain such matters as the Director considers appropriate but shall be consistent with the New Zealand marine oil spill response strategy.

(3) In preparing or reviewing the national plan under section 297, the Director shall consider the following matters:

(a) New Zealand's obligations under international conventions and agreements in relation to responses to marine oil spills in the internal waters of New Zealand or New Zealand marine waters:

(b) the New Zealand marine oil spill response strategy:

(c) any other matters the Director considers appropriate.

Marine oil spill responses

299 Duty to notify if unable to contain and clean up marine oil spills

(1) If, in the event of an oil spill into the internal waters of New Zealand or New Zealand marine waters from a ship, the master of that ship considers that the oil spill cannot be contained and cleaned up using the resources available to that person for that purpose, he or she shall forthwith notify the Director or, where the spill has occurred within the territorial sea, the Director or the regional council within whose region the spill is located, of his or her inability to contain and clean up the oil spill.

(2) If, in the event of an oil spill into the internal waters of New Zealand or New Zealand marine waters from an offshore installation or an oil transfer site in respect of which there is required to be a site marine oil spill contingency plan under the marine protection rules, the person responsible for implementing the marine oil spill contingency plan in respect of that installation or site considers that the oil spill cannot be contained and cleaned up by the resources available to that person for that purpose, he or she shall forthwith notify—

(a) the regional council within whose region the oil spill is located; or

(b) the Director, if the spill is not located within the region of a regional council.

(3) Nothing in this section shall derogate from any other duty under this Act, or any other enactment, or any marine protection rules, to give notice to the Director or any other person of an oil spill into New Zealand marine waters.

300 Function of regional on-scene commanders after notification

(1) Subject to section 313, if a regional on-scene commander is notified, or otherwise becomes aware, of a marine oil spill within the region of the council by whom that on-scene commander is appointed, he or she shall decide whether or not it is appropriate for any action to be taken in response to that marine oil spill, including the taking of any measures under the regional marine oil spill contingency plan or the exercise of any powers under this Act.

(2) Subject to section 313, if, in the opinion of any regional on-scene commander, containing and cleaning up any marine oil spill within the region of that regional council is or may be beyond the capacity of the resources available to that regional council, that regional on-scene commander shall forthwith notify the Director that assistance is or may be sought from the Authority.

(3) Notification by the regional on-scene commander of the Director under subsection (2) shall not relieve a regional council from its obligations under section 313 to comply with its regional marine oil spill contingency plan.

301 Function of National On-Scene Commander after notification

(1) If a National On-Scene Commander is notified by the Director or otherwise becomes aware of a marine oil spill, he or she shall decide whether or not it is appropriate for any action to be taken in response to that marine oil spill, including the taking of any measures under the national marine oil spill contingency plan or the exercise of any powers under this Act.

(2) If, in the opinion of the Director, containing and cleaning up any marine oil spill is beyond the capacity of the Authority, the Director may seek assistance from other States or persons in accordance with the national marine oil spill contingency plan.

302 National On-Scene Commander to take precedence

Notwithstanding any other provisions of this Act or any other enactment, a National On-Scene Commander may give directions to any regional council or its regional on-scene commander in relation to any marine oil spill within the region of that council and the regional council, and the regional on-scene commander shall comply with any such directions.

303 Objective of on-scene commanders

If a regional on-scene commander or the National On-Scene Commander decides that it is appropriate for a regional council or the Authority, as the case may be, to take action in respect of a marine oil spill, the principal objective of that on-scene commander shall be to—

(a) prevent further pollution from the marine oil spill; and

(b) contain and clean up the oil spill in accordance with the relevant regional marine oil spill contingency plan or the National Oil Spill Contingency Plan, as the case may be,—

in such a way that does not cause any unreasonable danger to human life or cause an unreasonable risk of injury to any person.

304 Termination of marine oil spill response

(1) The National On-Scene Commander may, with the consent of the Director, terminate any marine oil spill response by the Authority.

(2) A regional on-scene commander may terminate any marine oil spill response by the regional council by whom he or she has been appointed.

305 Powers of on-scene commander

(1) If a regional on-scene commander or the National On-Scene Commander decides that it is appropriate for a regional council or the Authority, as the case may be, to take action in respect of a marine oil spill, he or she may do all or any of the following:

(a) direct the master or owner of any New Zealand ship, or the owner of any offshore installation, or the owner of any oil transfer site that is the subject of a marine oil spill response to do anything, or refrain from doing anything, that the on-scene commander considers necessary or desirable to control or clean up the marine oil spill, or both:

(b) remove any person obstructing a marine oil spill response from an area, or any part of an area, where a marine oil spill response is being carried out:

(c) require the evacuation or the exclusion of persons, vehicles, or New Zealand ships from any area, or any part of an area, where a marine oil spill response is being carried out:

(d) totally or partially prohibit, or restrict, public access on any road or to any public area or any part of the sea, that is within an area where a marine oil spill response is being carried out:

(e) remove from any road, public place, or from the sea, in an area where a marine oil spill response is being carried out, any New Zealand ship, any vehicle, or other thing impeding that response, and where reasonably necessary for the purpose, may enter forcibly any such ship, vehicle, or other thing:

(f) carry out such inspections as he or she thinks appropriate in respect of any New Zealand ship, any vehicle, or other thing in an area where a marine oil spill response is being carried out:

(g) subject to the provisions of section 306, require the owner or person for the time being in control of any land, building, vehicle, New Zealand ship, or any other real or personal property to place that property under his or her control and direction.

(2) The powers under subsection (1) may be exercised by any on-scene commander, any person authorised by him or her, and any constable.

(3) Nothing in subsection (1)(g) applies to any land, building, ship, vehicle, or other real or personal property under the control of the New Zealand Defence Force.

Compare: 1983 No 46 ss 58–64(1)

Section 305(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

306 Matters to be complied with in requisitioning

(1) Any person exercising any power conferred by section 305(1)(g) shall give to the owner or person in charge of the requisitioned property a written statement specifying the property being requisitioned and the person under whose control the property is to be placed.

(2) Where the owner or person for the time being in control of any property that may be requisitioned under section 305(1)(g) cannot immediately be found, an on-scene commander, constable, or person so authorised by an on-scene commander may assume forthwith the control and direction of the requisitioned property.

(3) Where any person assumes the control and direction of requisitioned property under subsection (2), that person shall ensure that, as soon as is reasonably practicable in all the circumstances, a written statement specifying the property that has been requisitioned and the person under whose control it has been placed is given to the owner or person formerly in charge of the requisitioned property.

Compare: 1983 No 46 s 64(2)–(4)

Section 306(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

307 Compensation payable where property requisitioned

(1) Where any requisitioned property has come under the control of any person acting under section 305, any person having an interest in the requisitioned property may recover from the New Zealand Oil Pollution Fund reasonable compensation for—

(a) the use of that requisitioned property while under that control; and

(b) any loss of or damage or injury to that requisitioned property suffered or incurred while under that control.

(2) Where the New Zealand Oil Pollution Fund does not have sufficient resources to pay the whole or any part of any compensation payable under subsection (1), the Crown may, but is not obliged to, pay the compensation that the Fund is unable to pay.

(3) The Crown, and the Authority on behalf of the New Zealand Oil Pollution Fund, may recover as pollution damages under section 345 or section 385C any compensation paid under this section.

Compare: 1983 No 46 s 65

Section 307(3): amended, on 23 October 2013, by section 52 of the Maritime Transport Amendment Act 2013 (2013 No 84).

308 Compensation for loss or damage to personal property

(1) Every person who carries out a marine oil spill response and who suffers loss of or damage to his or her personal property in the course of carrying out that marine oil spill response shall be entitled to receive from the New Zealand Oil Pollution Fund compensation equal to—

(a) the value of any personal property that has been so lost; or

(b) the reduction in value of any property that has been so damaged.

(2) Where the New Zealand Oil Pollution Fund does not have sufficient resources to pay the whole or any part of any compensation payable under subsection (1), the Crown may, but is not obliged to, pay the amount of compensation that the Fund is unable to pay.

(3) The Crown, and the Authority on behalf of the New Zealand Oil Pollution Fund, may recover as damages for pollution damage under section 345 or section 385C, as the case may be, any compensation paid under this section.

(4) Subsection (1) shall not apply in respect of any loss or damage to property to the extent to which a person is indemnified for that loss or damage by a contract of insurance.

(5) To the extent to which, in respect of any loss or damage to personal property, any person has recovered or, having regard to the circumstances of the case, may reasonably be expected to recover any damages, compensation, or *ex gratia* payment, he or she shall not be entitled to receive any compensation under subsection (1).

Compare: 1983 No 46 s 75(1), (4), (5)

Section 308(3): amended, on 23 October 2013, by section 53 of the Maritime Transport Amendment Act 2013 (2013 No 84).

309 Absence from duty not to affect employment rights

(1) No person who is absent from his or her usual employment as a result of carrying out any instructions or directions under section 305 shall be liable to dismissal from his or her employment by reason only of such absence, whether or not the employer has consented to such absence.

(2) Nothing in this section shall impose on the employer of any person any obligation to pay any remuneration in respect of any period of absence in carrying out any instructions or directions under section 305.

Compare: 1983 No 46 s 74

310 Minister's power of direction

(1) The Minister may, if he or she considers that having regard to all the circumstances it is expedient to do so, give any directions to the Authority, a regional council, or an on-scene commander in respect of the performance of any func-

tions or duties or the exercise of any powers under this Part, and that person shall comply with those directions.

(2) Where any direction has been made by the Minister under subsection (1), the Minister shall, as soon as practicable, lay before the House of Representatives a copy of the direction in written form.

(3) The Minister is not required to comply with section 115 of the Crown Entities Act 2004 in relation to a direction to the Authority under this section.

Compare: 1990 No 98 s 72C; 1992 No 75 s 31

Section 310(3): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

311 Additional powers of on-scene commander

If a regional on-scene commander or the National On-Scene Commander decides that it is appropriate for a regional council or the Authority, as the case may be, to take action in respect of a marine oil spill, he or she may, without limiting anything else that person may do,—

(a) disseminate information and advice to the public relating to the marine oil spill:

(b) carry out such works as will control and clean up the marine oil spill:

(c) provide any item, equipment, or facility to assist with the control and clean up of the marine oil spill.

312 Limits on powers of on-scene commander

(1) No power conferred by section 305 or section 311 may be exercised so as to conflict with the exercise of a power by—

(a) a person under Part 5 of the Civil Defence Emergency Management Act 2002; or

(b) the person who is serving as the National Recovery Manager under the Civil Defence Emergency Management Act 2002; or

(c) any constable under section 10 of the International Terrorism (Emergency Powers) Act 1987.

(2) No power conferred by section 305 or section 311 shall be exercised so as to be inconsistent with any power exercised by the Director or the Minister under Part 20.

Section 312(1): substituted, on 1 December 2002, by section 117 of the Civil Defence Emergency Management Act 2002 (2002 No 33).

Section 312(1)(b): replaced, at 9.59 pm on 29 November 2016, by section 42 of the Civil Defence Emergency Management Amendment Act 2016 (2016 No 88).

Section 312(1)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Obligations and offences in respect of marine oil spill contingency plans

313 Compliance with marine oil spill contingency plans

(1) In the event of a marine oil spill from a ship, an offshore installation, or an oil transfer site in respect of which there has been prepared under the marine protection rules a shipboard or site marine oil spill contingency plan, as the case may be, the provisions of the relevant shipboard or site marine oil spill contingency plan shall be complied with except to the extent that a person is directed otherwise by an on-scene commander.

(2) In the event of a marine oil spill within the region of a regional council, the regional marine oil spill contingency plan shall be complied with except to the extent that a person is directed otherwise by the National On-Scene Commander.

314 Offences in respect of marine oil spill contingency plans

The master and the owner of a ship, the owner of an offshore installation, and the owner of an oil transfer site, each commits an offence if there has been without reasonable excuse, in respect of that ship, offshore installation, or oil transfer site, as the case may be, a breach of the duty under section 313 (in respect of compliance with shipboard or site marine oil spill contingency plans).

315 Offences in respect of notification of inability to contain and clean up marine oil spills

Every person (being a master of a ship or a person who is responsible for implementing a marine oil spill contingency plan in respect of an offshore installation or an oil transfer site) commits an offence who breaches his or her duty under subsection (1) or subsection (2) of section 299 to notify the Director or a regional council, as the case may be, of an inability to contain or clean up a marine oil spill.

316 Failure to comply with prohibition, restriction, or direction

Every person commits an offence who, without reasonable excuse, fails to comply with any prohibition, restriction, or direction under section 305.

317 Penalties

Every person who commits an offence against section 314 or section 315 or section 316 is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $10,000:

(b) in any other case, to a fine not exceeding $100,000.

Section 317: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Miscellaneous provisions relating to responses to marine oil spills

318 Appointment of regional on-scene commanders

(1) Every regional council shall from time to time appoint—

(a) a regional on-scene commander for its region; and

(b) a person or persons, who shall perform the functions and duties and may exercise the powers of a regional on-scene commander, if the office of regional on-scene commander is vacant or the regional on-scene commander is absent, for so long as that vacancy or absence continues.

(2) Any person appointed under subsection (1)(b) shall, subject to the terms of appointment, be deemed to be a regional on-scene commander during any vacancy or absence.

(3) The regional on-scene commander of a regional council shall manage and co-ordinate the response of, and direct the use of the resources available to, that regional council, in relation to any marine oil spill in respect of which the council is taking action.

(4) A regional council shall, in appointing any person or persons under paragraph (a) or paragraph (b) of subsection (1), appoint only such person or persons as are qualified under the marine protection rules to act as regional on-scene commanders.

(5) If the marine protection rules do not prescribe qualifications for a regional on-scene commander, a regional council shall appoint, under paragraph (a) or paragraph (b) of subsection (1), only those persons who are approved by the Director.

Compare: 1983 No 46 s 30; 1989 No 33 s 5

319 Appointment of National On-Scene Commander

(1) The Director shall from time to time appoint—

(a) a National On-Scene Commander; and

(b) a person or persons, who shall perform the functions and duties and may exercise the powers of the National On-Scene Commander if the office of National On-Scene Commander is vacant or the National On-Scene Commander is absent, for so long as that vacancy or absence continues.

(2) Any person appointed under subsection (1)(b) shall, during any vacancy or absence, be deemed to be a National On-Scene Commander.

(3) The National On-Scene Commander shall manage and co-ordinate the response of, and direct the use of resources available to, the Authority in relation to any marine oil spill in respect of which the Authority is taking action.

Compare: 1983 No 46 s 30; 1989 No 33 s 5

Section 319(3): amended, on 1 July 2005, by section 11(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

320 Appointments under section 318 or section 319

Any appointment under section 318 or section 319 shall be made by name and on such terms and conditions (including the revocation of the appointment) as the regional council or the Director, as the case may be, thinks appropriate.

321 Purchases by Authority to prepare for and implement responses to marine oil spills

(1) The Authority may purchase anything it considers necessary or desirable to make preparations for, or to implement, or assist in implementing, any response by the Authority or by any regional council, and as contemplated by the New Zealand marine oil spill response strategy, to a marine oil spill in New Zealand waters.

(2) The Authority shall be entitled to be reimbursed for any expenditure under subsection (1) out of the New Zealand Oil Pollution Fund if such expenditure is provided for in the annual plan of expenditure approved by the Minister under section 332.

322 Distribution and responsibility for maintenance of purchases under section 321

(1) Where it considers appropriate, the Authority may distribute anything purchased under section 321 to regional councils or other persons in accordance with the New Zealand marine oil spill response strategy.

(2) Where anything is distributed to a regional council or another person under subsection (1), it shall remain the property of the Authority and the regional council or that person, as the case may be, shall maintain it in good order in accordance with any instructions issued by the Authority.

(3) The Authority shall meet the reasonable costs incurred by a regional authority or another person in maintaining anything in accordance with the Authority's instructions under subsection (2).

323 Authority may inspect

The Authority may, at any time, inspect anything distributed to a regional council or another person under section 322.

324 Director responsible for training

The Director shall be responsible for the development and co-ordination of training necessary to successfully implement a marine oil spill response under the New Zealand marine oil spill response strategy.

325 Director may review responses

The Director may, at any time within 2 years of a marine oil spill response being carried out, review that response with a view to improving such respon-

ses in the future rather than assigning blame to any person for any errors or omissions with respect to that response.

326 Proof of identity

Any person exercising any power conferred by section 305 shall—

(a) carry, and produce if requested to do so, evidence of his or her identity; and

(b) if requested to do so, produce evidence of, or give a general explanation of, the authority under which he or she is acting and the powers he or she is exercising.

327 Protection from liability

(1) Except as provided in sections 307 and 308, no action or proceeding shall be brought against the Crown, or any organisation, the Authority, any regional council, or any officer or employee of any of them, or any member of a regional council, any on-scene commander, or against any other person, to recover damages for any loss of or damage to property that is due directly or indirectly to a marine oil spill response having been taken, where the loss or damage is caused by any person acting in good faith who takes or fails to take any action in the exercise or performance of his or her functions, duties, or powers under this Part.

(2) Section 121 of the Crown Entities Act 2004 does not limit this section.

Compare: 1983 No 46 s 66

Section 327(2): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

328 Contracts

(1) Notwithstanding anything in the Public Bodies Contracts Act 1959, the Local Government Act 2002, or any other enactment, the chairperson, deputy chairperson, chief executive, treasurer, engineer, or any other employee of a regional council specified in the regional marine oil spill contingency plan, or any regional on-scene commander, may from time to time, when a marine oil spill response is determined to be needed, enter into any contract on behalf of the regional council for any of the purposes of this Part.

(2) Any person who exercises the power conferred by this section shall report the full circumstances of its exercise to the regional council at its next ordinary meeting, or where that is not practicable, at its next succeeding ordinary meeting.

Compare: 1983 No 46 s 68(1), (3)

Section 328(1): amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Part 24
Financing plans and responses to protect the marine environment from marine oil spills

329 Interpretation

In this Part, unless the context otherwise requires,—

contributing oil means any oil carried as cargo by sea and loaded onto or discharged from a ship in New Zealand

contributing oil site means any oil transfer site in New Zealand or in New Zealand continental waters, or any offshore oil installation or oil pipeline in New Zealand continental waters

contributing ship means a ship in excess of 100 gross tons, whose principal means of propulsion is mechanical

New Zealand Oil Pollution Fund or **Fund** means the fund established under section 330

offshore oil installation means any offshore installation that is used or constructed for the purposes of exploring for or producing oil

oil pipeline means any pipeline constructed or used to convey oil

Oil Pollution Advisory Committee means the Oil Pollution Advisory Committee established by section 282

oil pollution levy or **levy** means an oil pollution levy under this Part

oil transfer site has the meaning given to it by section 281.

New Zealand Oil Pollution Fund

330 New Zealand Oil Pollution Fund

(1) The Authority shall establish and administer a fund to be known as the New Zealand Oil Pollution Fund.

(2) The oil pollution levies payable under section 333, and any other money that is lawfully payable to the Fund, shall be paid into the Fund.

(3) All money payable to the Fund shall be paid to the credit of a bank account established under section 158(1) of the Crown Entities Act 2004 for the purpose.

(4) The Authority shall invest the Fund in accordance with its investment powers, but subject to the restrictions in section 161 of the Crown Entities Act 2004.

(5) All income of the Fund shall be added to and form part of the Fund.

(6) There may from time to time be paid out of the Fund any money that may lawfully be paid out of the Fund under this Act or any other enactment.

(7) The financial statements of the Fund shall form part of the financial reports of the Authority.

Section 330(3): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 330(4): amended, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

331 Application of money in New Zealand Oil Pollution Fund

(1) Subject to the provisions of this Act, the Authority shall apply the New Zealand Oil Pollution Fund only for the following purposes:

(a) to meet the costs of the Oil Pollution Advisory Committee:

(b) to purchase plant, equipment, or any other thing to make preparations for, or to implement, or assist in implementing, any responses to marine oil spills:

(c) to meet the reasonable costs of the Authority (including the costs incurred by the Director and the National On-Scene Commander) in controlling, dispersing, and cleaning up any marine oil spill:

(ca) to meet the costs of services associated with planning and responses for marine oil spills that are services provided under a contract or arrangement with the Authority or the Director:

(d) to meet the costs of the Authority in—

(i) the performance of the other functions and duties and the exercise of other powers of the Authority, the Director, and the National On-Scene Commander under Part 23; and

(ii) taking measures to avoid marine oil spills:

(e) to meet the reasonable costs of a regional council (including the costs of its regional on-scene commander) in investigating a suspected marine oil spill and in controlling, dispersing, and cleaning up any marine oil spill:

(f) to meet the reasonable costs of any regional council in—

(i) the performance of the other functions and duties and the exercise of the powers of the regional council and its regional on-scene commander under Part 23; and

(ii) taking steps to avoid marine oil spills:

(g) to meet the reasonable costs incurred by any person, in assisting any animal or plant life affected by any marine oil spill, with the consent or in accordance with the requirements of an on-scene commander:

(h) to meet any other expenditure for which this Act contemplates that reimbursement may be made from the Fund:

(i) such other expenditure, or classes of expenditure, related to marine oil spills, as may from time to time be approved by the Governor-General by Order in Council.

(2) The following provisions apply to payments made under either or both of paragraphs (c) and (e) of subsection (1), and to payments made under paragraph (g) of that subsection for the purpose of assisting any wildlife:

(a) the payments may be made if, and to the extent that, the costs for which the payments may be made have not been recovered from the person who caused the oil spill:

(b) the recipient must make all reasonable efforts to recover those costs from that person:

(c) payments may be made on an interim or periodic basis; and each time it recovers money from the person who caused the oil spill, the recipient must pay the Fund a proportionate amount.

Section 331(1)(c): substituted, on 9 June 1999, by section 33(1) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 331(1)(ca): inserted, on 9 June 1999, by section 33(1) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 331(1)(e): substituted, on 9 June 1999, by section 33(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 331(2): added, on 9 June 1999, by section 33(3) of the Maritime Transport Amendment Act 1999 (1999 No 68).

332 Expenditure budgets required before certain money paid from Fund

(1) Payment shall not be made under paragraph (a) or paragraph (b) or paragraph (d) of section 331 from the New Zealand Oil Pollution Fund to the Authority in any financial year unless such payment is in accordance with an expenditure budget submitted by the Authority from time to time and approved by the Minister in his or her sole discretion.

(2) Payment shall not be made under section 331(f) from the Fund to any regional council in any financial year unless such payment is in accordance with an expenditure budget submitted from time to time by the regional council to the Authority and approved by the Authority in its sole discretion.

(3) The Authority shall, before submitting a budget under subsection (1) to the Minister for approval, consult the Oil Pollution Advisory Committee about that budget and shall consider the budgets received by the Authority from regional councils under subsection (2).

(4) The obligations of the Authority under this Act in respect of its expenditure budget shall be in addition to its obligations under the Crown Entities Act 2004.

(5) Expenditure budgets are not required under this section in respect of the application of the Fund for the purposes provided in paragraph (c) or paragraph (e) or paragraph (g) of section 331 or for any purposes specified by regulations under section 394(a).

(6) The Minister shall from time to time, after consultation with the Minister of Finance, determine what financial reserves it is desirable for the Fund to hold.

Section 332(4): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Oil pollution levies

333 Oil pollution levies

(1) Subject to subsections (3) and (4), the Governor-General may from time to time, by Order in Council, impose on all or any of the persons referred to in subsection (2) oil pollution levies for the purposes of providing money for the New Zealand Oil Pollution Fund.

(2) Levies may be imposed under subsection (1) on all or any of the following:

(a) the owners and masters of contributing ships:

(b) the owners of contributing oil sites:

(c) the owners of contributing oil.

(3) Any Order in Council made under this section shall be made only on the recommendation of the Minister.

(4) The Minister shall not make any recommendation under subsection (3) unless—

(a) the recommendation has been made at the request and with the concurrence of the Authority; and

(b) he or she is satisfied that the planned expenditure from the Fund is reasonable and the levies recommended will enable that expenditure to be met without reducing the level of reserves referred to in section 332(6); and

(c) he or she is satisfied that the Authority has consulted the Oil Pollution Advisory Committee as required by section 334.

(5) An Order in Council made under this section may—

(a) require returns to be made by the persons by whom any levy is payable; and

(b) prescribe requirements and conditions relating to the making of such returns.

Compare: 1974 No 14 s 29B; 1977 No 130 s 3; 1990 No 98 ss 42A, 42D(2); 1992 No 75 s 22

334 Consultation on oil pollution levies

The Authority shall consult the Oil Pollution Advisory Committee before advising the Minister on the imposition of and the rate or rates of any oil pollution levies.

335 Rates and basis of oil pollution levies

(1) Oil pollution levies are not required to be at a uniform rate and, in particular, different rates may be imposed—

(a) on different classes of person; and

(b) in respect of different classes of contributing ships, contributing oil sites, and contributing oil; and

(c) in respect of contributing ships, contributing oil sites, and contributing oil of the same class if different circumstances (which may include different levels of marine oil pollution risk) apply.

(2) An Order in Council under section 333 may fix different rates of levy in respect of contributing ships, contributing oil sites, and contributing oil, of the same class if different circumstances (which may include different levels of marine oil pollution risk) apply.

(3) Any such Order in Council may provide that the rate of any levy shall be calculated—

(a) at a specified flat annual rate per gross ton of the contributing ship:

(b) at a specified rate in respect of each entry of a contributing ship into a port in New Zealand:

(c) at a specified flat annual rate per tonne of oil:

(d) on any other specified basis whatever.

(4) Any such Order in Council may—

(a) require levies to be paid in advance or otherwise:

(b) prescribe dates for payment of levies:

(c) prescribe the periods in respect of which the levies shall be payable:

(d) provide for the refund of the whole or any part of a levy paid in advance or otherwise, in circumstances specified in the Order in Council:

(e) make the owners and masters of contributing ships, and the owners of contributing oil sites, and contributing oil, as the case may be, jointly and severally liable for levies.

(5) No such Order in Council shall apply to a contributing ship in respect of its entry into a port in New Zealand—

(a) solely for the purpose of saving or preventing danger to human life, or of obtaining medical treatment for any person; or

(b) solely because of weather conditions or any other circumstances that neither the owner nor the master of the ship could have prevented or forestalled.

Compare: 1974 No 14 s 29B(2), (5); 1977 No 130 s 3; 1990 No 98 s 42B; 1992 No 75 s 22

336 Incurring of levies

(1) Where any oil pollution levy is imposed in respect of a contributing ship, the liability to pay that levy shall arise,—

(a) where that levy is assessed on an annual basis, on the first entry of that ship into a port in New Zealand during the period for which the levy is assessed; and

(b) in any other case, on the entry of that ship into a port in New Zealand.

(2) Where any levy is imposed in respect of a contributing oil site or contributing oil, the liability to pay that levy shall arise at the date or time specified in the levy order relating to that contributing oil site or contributing oil, as the case may be.

Compare: 1974 No 14 s 29C; 1977 No 130 s 3

337 Payment of levies

(1) Oil pollution levies shall be paid—

(a) where the levy is assessed on an annual basis, to the Authority:

(b) in any other case, to the Authority or to such other person approved by the Authority for the purpose.

(2) All levies so received shall be paid by the persons who receive them into the New Zealand Oil Pollution Fund.

Compare: 1974 No 14 s 29D(2), (3); 1977 No 130 s 3

338 Ships not entitled to certificate of clearance until levies paid

(1) A receipt shall, if requested, be given to any person paying any oil pollution levy.

(2) Where any levy is payable in respect of a contributing ship, the ship is not entitled to a certificate of clearance under section 37 of the Customs and Excise Act 2018 until payment is made or evidence of earlier payment of the levy is produced to the chief executive of the New Zealand Customs Service.

(3) If the chief executive of the New Zealand Customs Service refuses to issue a certificate of clearance where evidence of payment of any levy payable in respect of the ship concerned is not produced, he or she must, upon request, provide reasons in writing for the decision.

(4) Any person in respect of whom any decision is taken under this section may appeal against that decision to the District Court under section 424.

Compare: 1974 No 14 s 29E; 1977 No 130 s 3

Section 338(2): substituted, on 15 November 2000, by section 3 of the Maritime Transport Amendment Act 2000 (2000 No 71).

Section 338(2): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 338(3): substituted, on 15 November 2000, by section 3 of the Maritime Transport Amendment Act 2000 (2000 No 71).

Section 338(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

339 Evidence of nature and change of use

(1) Every person, being the owner or master of a contributing ship, or the owner of a contributing oil site, in respect of which an oil pollution levy is payable, shall, forthwith on the occurrence of any change in the use of the ship or site that would render the person liable to the payment of a levy at a different rate, notify the Authority in writing of that change.

(2) Where the Director has reasonable cause to suspect that a change specified in subsection (1) has occurred in respect of a contributing ship, or contributing oil site, for which a levy is payable under this Part, the Director may, by notice in writing to the owner or master of the ship or the owner of the contributing oil site, require that person to deliver to the Director within 14 days after service of the notice a statutory declaration by that person verifying the nature of the use of the ship or site, as the case may be.

Compare: 1974 No 14 s 29H; 1977 No 130 s 3

340 Offences against this Part

(1) Every person commits an offence who contravenes or fails to comply with any obligation or requirement imposed on him or her by this Part or by any order made under section 333.

(2) Every person who commits an offence under this section is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $10,000:

(b) in any other case, to a fine not exceeding $50,000.

Compare: 1974 No 14 s 29I; 1977 No 130 s 3

Section 340(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

341 Recovery of levies

(1) If any person who is liable under this Part to pay an oil pollution levy to the Oil Pollution Fund fails to do so, the amount of the levy may be recovered from that person as a debt due to the Authority.

(2) Where a person fails to pay on demand any oil pollution levy under subsection (1), the provisions of section 197 shall apply as if the levy were a marine safety charge and with any other necessary modifications.

Compare: 1974 No 14 s 29J; 1977 No 130 s 3

Part 25
Civil liability for pollution of marine environment

342 Interpretation

(1) In this Part, unless the context otherwise requires,—

bunker oil means—

(a) any hydrocarbon mineral oil used, or intended to be used, for the operation or propulsion of a ship; and

(b) any residues of that oil

Bunker Oil Convention—

(a) means the International Convention on Civil Liability for Bunker Oil Pollution Damage done at London on 23 March 2001; and

(b) includes any subsequent protocol or amendment to, or revision of, that convention accepted or ratified by New Zealand

Bunker Oil Convention ship means a ship registered in, or (if unregistered) flying the flag of, a Bunker Oil Convention State

Bunker Oil Convention State means any State that is a party to the Bunker Oil Convention

Civil Liability Convention or **CLC** means the International Convention on Civil Liability for Oil Pollution Damage, 1969; and includes any subsequent protocol or amendment to, or revision of, that convention accepted or ratified by New Zealand

CLC owner means,—

(a) in the case of a registered CLC ship, the person registered as the owner of that ship; or

(b) in the case of an unregistered CLC ship, the person who owns the ship; or

(c) in the case of a CLC ship owned by a State and operated by a person registered as the ship's operator, the person registered as its operator

CLC ship has the same meaning as ship has in the Civil Liability Convention

CLC State means any State that is a party to the Civil Liability Convention

harmful substance means—

(a) any substance specified as a harmful substance for the purposes of section 225 by the marine protection rules:

(b) oil:

(c) bunker oil

insurance means public liability insurance

marine agency means the Authority, a regional council, or the operator of a port facility

marine structure means an offshore installation, a pipeline, or any facility, site, structure, or thing used to transfer a harmful substance to or from a ship or offshore installation

oil means any persistent hydrocarbon mineral oil

oil tanker means a ship carrying oil in bulk as cargo

pollution damage means damage or loss of any kind caused by or resulting from the escape or discharge of a harmful substance from a ship 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)

regulated foreign oil tanker means a regulated oil tanker that is not a New Zealand ship

regulated New Zealand oil tanker means a regulated oil tanker that is a New Zealand ship

regulated New Zealand ship means a regulated oil tanker or a regulated ship that is a New Zealand ship

regulated oil tanker means an oil tanker, wherever registered and of whatever nationality, carrying a quantity of oil in bulk in excess of 2 000 tonnes or such other quantity as may be fixed for the purpose from time to time by the Governor-General by Order in Council

regulated ship means a New Zealand or foreign ship of 400 gross tonnage or more other than a regulated oil tanker

tonnage, in relation to any ship,—

(a) has the meaning defined in any regulations or maritime rules made under this Act that apply to the ship, unless the term is defined differently for different purposes, or is not defined, by such regulations or rules:

(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.

(2) In the Civil Liability Convention, **ship** means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

Section 342(1) **bunker oil**: inserted, on 1 October 2014, by section 92(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 342(1) **Bunker Oil Convention**: inserted, on 1 October 2014, by section 92(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 342(1) **Bunker Oil Convention ship**: inserted, on 1 October 2014, by section 92(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 342(1) **Bunker Oil Convention State**: inserted, on 1 October 2014, by section 92(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 342(1) **Civil Liability Convention**: amended, on 23 October 2013, by section 54(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 342(1) **CLC ship**: replaced, on 15 June 2018, by section 10(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 342(1) **harmful substance**: replaced, on 1 October 2014, by section 92(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 342(1) **oil**: substituted, on 25 June 1999, by section 3(3) of the Maritime Transport Amendment Act 1998 (1998 No 53).

Section 342(1) **pollution damage**: substituted, on 25 June 1999, by section 3(4) of the Maritime Transport Amendment Act 1998 (1998 No 53).

Section 342(1) **pollution damage**: amended, on 23 October 2013, by section 54(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 342(1) **regulated offshore installation**: repealed, on 23 October 2013, by section 54(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 342(1) **regulated ship**: replaced, on 23 October 2013, by section 54(4) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 342(1) **tonnage** paragraph (b): substituted, on 25 June 1999, by section 3(5) of the Maritime Transport Amendment Act 1998 (1998 No 53).

Section 342(2): inserted, on 15 June 2018, by section 10(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

343 Ownership of CLC Ship

Notwithstanding any other provision of this Act, for the purposes of this Part, in respect of any discharge or escape of oil from a CLC ship, the owner of that ship shall be deemed to be the CLC owner of that ship at the time of an event giving rise to liability under this Part or (where such event consists of a series of occurrences) at the time of the first such occurrence, as the case may be.

Liability for pollution from ships

344 Liability to the Crown and marine agencies for costs of cleaning up pollution

(1) Subject to subsection (2), section 348, and Part 7, the owner of a ship must pay to the Crown (or marine agency) the cost, including goods and services tax (if any), reasonably incurred by or on behalf of the Crown (or marine agency) in dealing with—

(a) a harmful substance that is discharged or escapes, or any waste or other matter that is dumped, from that ship into the internal waters of New Zealand or into New Zealand marine waters or on to the beds below those internal or marine waters; or

(b) a harmful substance, if that harmful substance poses a grave and imminent threat of being discharged or escaping from that ship into the inter-

nal waters of New Zealand or into New Zealand marine waters or on to the beds below those internal or marine waters.

(2) Nothing in this section shall apply to the discharge or escape of oil from a CLC ship.

(3) The amounts payable under subsection (1) shall—

(a) be payable as a debt due to the Crown or the marine agency, as the case may be; and

(b) be payable only to the extent that those amounts have not been otherwise paid by the owner of the ship.

(4) For the purposes of subsection (1), **dealing with** means any reasonable action taken in relation to the discharge or escape of a harmful substance, or the dumping of any waste or other matter, including (but not limited to)—

(a) the removing, containing, and rendering harmless the harmful substance, or the waste or other matter, or doing any of those things; and

(b) any reasonable measures taken to prevent or minimise the discharge or escape of a harmful substance.

Compare: 1974 No 14 s 30

Section 344(1): substituted, on 17 May 2005, by section 4(1) of the Maritime Transport Amendment Act 2005 (2005 No 59).

Section 344(4): substituted, on 17 May 2005, by section 4(2) of the Maritime Transport Amendment Act 2005 (2005 No 59).

345 Liability of shipowners for pollution damage

(1) Subject to sections 347 and 348 and Part 7, the owner of a ship is liable in damages, including goods and services tax (if any), for—

(a) all pollution damage in New Zealand or the internal waters of New Zealand or in New Zealand marine waters or on to the beds below those internal or marine waters caused by—

(i) a harmful substance that is discharged or escapes from a ship; or

(ii) any waste or other matter that is dumped from a ship; and

(b) the costs reasonably incurred for any reasonable preventive measures taken by the Crown (or marine agency) to eliminate or reduce a grave and imminent threat that a harmful substance may be discharged or escape from that ship into the internal waters of New Zealand or into New Zealand marine waters or on to the beds below those internal or marine waters.

(2) The recovery of costs by the Crown (or marine agency) under section 344(1) does not preclude a claim for costs under subsection (1) if that claim relates to matters that are different from the matters for which costs were recovered under section 344(1).

Section 345: substituted, on 17 May 2005, by section 5 of the Maritime Transport Amendment Act 2005 (2005 No 59).

346 Liability for unattributable pollution damage from ships

(1) Where the owner of a ship is liable in damages for pollution damage under section 345, but the pollution damage for which that owner is liable cannot reasonably be separated from the pollution damage for which any owner of another ship is liable under section 345, each of the owners shall be jointly and severally liable for all the pollution damage for which the owners together would be liable under section 345.

(2) Any liability under subsection (1) shall be subject to the provisions of sections 347 and 348.

Compare: 1974 No 14 ss 31(7), 32(7)

347 Limits of liability of CLC shipowners for oil pollution damage

(1) If—

(a) oil is discharged or escapes, or there is a grave and imminent threat of discharge or escape of oil, from a CLC ship; and

(b) the discharge or escape is not the result of the personal act or omission of the owner of the CLC ship, 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) 3 million units of account for a ship not exceeding 5 000 units of tonnage; and

(b) for a ship with a tonnage exceeding 5 000 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.

(3) The owner of a ship shall be liable for the costs of any proceedings that may be awarded against that owner in addition to any other liabilities which are subject to a maximum amount determined under this section.

(4) The maximum amount of liability of an owner of a ship determined under this section shall relate to all pollution damage that arises on any one occasion and whether or not the pollution damage arising from that occasion is sustained by more than 1 person.

(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 affect the maximum amount of liability.

(6) The liability limits for pollution damage, other than oil pollution damage from CLC ships, are specified in Part 7.

Compare: 1974 No 14 ss 31(3), (4), 32(3), (4)

Section 347 heading: replaced, on 23 October 2013, by section 55(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 347(1): substituted, on 25 June 1999, by section 4(1) of the Maritime Transport Amendment Act 1998 (1998 No 53).

Section 347(1)(a): replaced, on 23 October 2013, by section 55(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 347(1)(b): amended, on 23 October 2013, by section 55(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 347(1)(b): amended, on 17 May 2005, by section 6(2) of the Maritime Transport Amendment Act 2005 (2005 No 59).

Section 347(2): substituted, on 25 June 1999, by section 4(1) of the Maritime Transport Amendment Act 1998 (1998 No 53).

Section 347(5): substituted, on 25 June 1999, by section 4(2) of the Maritime Transport Amendment Act 1998 (1998 No 53).

Section 347(5): amended, on 23 October 2013, by section 55(4) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 347(6): replaced, on 23 October 2013, by section 55(5) of the Maritime Transport Amendment Act 2013 (2013 No 84).

348 Defences to shipowner's liability for pollution damage

(1) The owner of a ship shall not be liable under section 344, section 345, or section 346 if the owner proves that the discharge or escape, or the grave and imminent threat of the discharge or escape,—

(a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable, and irresistible character; or

(b) was wholly caused by the act or omission of a third person, other than the employee or agent of the owner, with intent to cause damage; or

(c) was wholly caused by the negligence or other wrongful act of any government or other authority, or of any person, responsible for the maintenance of lights or other navigational aids in the exercise of its functions in relation to those lights or aids.

(2) The owner of a ship shall not be liable in damages to a claimant under section 344, section 345, or section 346 if it is proved that the discharge or escape, or the grave and imminent threat of the discharge or escape, was wholly caused by the act or omission of that claimant, or the employee or agent of that claim-

ant, with intent to cause damage, or was wholly caused by the negligence of that claimant or the employee or agent of that claimant.

Compare: 1974 No 14 s 33(1), (3)

Section 348(1): amended, on 17 May 2005, by section 7(1)(a) of the Maritime Transport Amendment Act 2005 (2005 No 59).

Section 348(1): amended, on 17 May 2005, by section 7(1)(b) of the Maritime Transport Amendment Act 2005 (2005 No 59).

Section 348(1): amended, on 17 May 2005, by section 7(1)(c) of the Maritime Transport Amendment Act 2005 (2005 No 59).

Section 348(2): amended, on 17 May 2005, by section 7(2)(a) of the Maritime Transport Amendment Act 2005 (2005 No 59).

Section 348(2): amended, on 17 May 2005, by section 7(2)(b) of the Maritime Transport Amendment Act 2005 (2005 No 59).

349 Reduction of shipowner's liability for pollution damage where contributory negligence

(1) A court may reduce, to such extent as it thinks just and equitable, the damages for which the owner of a ship is liable to a claimant under section 345 or section 346 if it is proved that the pollution damage suffered by that claimant was partly caused either by the act or omission of that claimant with intent to cause damage or by the negligence of that claimant.

(2) For the purposes of subsection (1), the term **claimant** includes any employee or agent of the claimant.

Compare: 1974 No 14 s 33(4)

350 Proceedings against third parties in respect of pollution from ships

(1) Subject to subsection (3), where the owner of a ship avoids liability under section 344 or section 345 or section 346 by proving any of the matters specified in paragraph (b) or paragraph (c) of section 348(1), proceedings may be brought under this section against the person specified in the said paragraph (b) or the said paragraph (c) who has caused the discharge or escape of a harmful substance or waste or other matter, as the case may be.

(2) If proceedings have been brought under this section against a person specified in section 348(1)(c), that defendant shall be entitled to the same limitation of liability as is available under this Part to the owner of the ship from which the harmful substance or waste or other matter has been discharged or has escaped, as the case may be, and the provisions of section 351 shall apply, with the necessary modifications, to the defendant.

(3) Proceedings shall not be brought under this section against any government other than the Government of New Zealand.

Compare: 1974 No 14 s 40(1), (3)

Section 350(1): amended, on 17 May 2005, by section 8(a) of the Maritime Transport Amendment Act 2005 (2005 No 59).

Section 350(1): amended, on 17 May 2005, by section 8(b) of the Maritime Transport Amendment Act 2005 (2005 No 59).

351 Distribution of amounts paid in satisfaction of liability

(1) Where a court finds that the owner of a ship is liable in damages under section 345 or section 346, and the liability of that owner is limited under section 347, the court shall—

(a) determine the maximum amount of liability; and

(b) direct payment into court of that amount; and

(c) determine the amount to which the persons making claims in the proceedings would otherwise be entitled; and

(d) direct the distribution of the amount paid into court to each of those persons in proportion to the amount determined under paragraph (c) as the amount to which that person would otherwise be entitled.

(2) Where, prior to a court making a direction for distribution of moneys under this section, any sum has been paid to a person in or towards satisfaction of any claim in damages for pollution damage under section 345 or section 346—

(a) by the owner of the ship or any insurer; or

(b) by a person who has or is alleged to have incurred liability otherwise than under section 345 or section 346 and who is—

(i) the employee or agent of the owner of the ship; or

(ii) the charterer of the ship or the agent in New Zealand of the charterer; or

(iii) any person interested in, or in possession of, the ship,—

the person who paid the sum shall, to the extent of the amount paid, be in the same position with respect to any distribution made in accordance with this section as the person to whom it was paid would have been.

(3) Where an owner of a ship who is liable under section 345 or section 346 has voluntarily made any reasonable sacrifice, or incurred any reasonable expenses, to prevent or reduce the pollution damage for which the owner is liable or would have been liable, that owner shall be in the same position with respect to any distribution made under this section as if that owner had a claim for the cost of that sacrifice or those expenses.

(4) No claim for the distribution of any money under this section shall be admitted by a court unless it is made within such time as the court may direct or such further time as the court may allow.

(5) The court may, if it thinks fit, postpone the distribution of any money under this section having regard to any claims that may be made in the future.

Compare: 1974 No 14 s 35

352 Liability of shipowners for damages for pollution damage only under this Act

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.

Section 352: substituted, on 25 June 1999, by section 5 of the Maritime Transport Amendment Act 1998 (1998 No 53).

353 Restrictions on enforcement of claims against shipowners

(1) Where the amount directed to be paid under section 351(1) has been paid into court,—

(a) the court shall order the release of any ship or other property detained, or any security given, in connection with the claim in respect of which the amount has been paid; and

(b) no judgment for any such claim shall be enforced (except in relation to costs).

(2) In proceedings under this Part against the owner of a ship, the reasonable costs and expenses of the claimant, including costs incurred between solicitor and client, shall, unless the court otherwise orders, be taxed by the court and paid by that owner.

Compare: 1974 No 14 s 36

354 Ships owned by Convention States

(1) In any action under section 345 or 346 for damages for pollution damage in respect of a ship owned by a convention State, that State is to be taken to have waived any defence based on its status as a sovereign State, and to have submitted to the jurisdiction of the court, if the State is—

(a) a CLC State and the pollution damage is in respect of the discharge or escape of oil:

(b) a Bunker Oil Convention State and the pollution damage is in respect of the discharge or escape of bunker oil.

(2) This section does not permit enforcement against the property of any convention State.

Section 354: replaced, on 1 October 2014, by section 93 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Liability for pollution from marine structures and operations

[Repealed]

Heading: repealed, on 23 October 2013, by section 56 of the Maritime Transport Amendment Act 2013 (2013 No 84).

355 Liability to the Crown and marine agencies for costs of cleaning up pollution

[Repealed]

Section 355: repealed, on 23 October 2013, by section 56 of the Maritime Transport Amendment Act 2013 (2013 No 84).

356 Liability for pollution damage from marine operations and structures

[Repealed]

Section 356: repealed, on 23 October 2013, by section 56 of the Maritime Transport Amendment Act 2013 (2013 No 84).

357 Liability for unattributable pollution damage from marine structures and operations

[Repealed]

Section 357: repealed, on 23 October 2013, by section 56 of the Maritime Transport Amendment Act 2013 (2013 No 84).

358 Defences in respect of liability for pollution damage from marine structures and operations

[Repealed]

Section 358: repealed, on 23 October 2013, by section 56 of the Maritime Transport Amendment Act 2013 (2013 No 84).

359 Reduction of liability of owner of marine structure or person in charge of marine operations where contributory negligence

[Repealed]

Section 359: repealed, on 23 October 2013, by section 56 of the Maritime Transport Amendment Act 2013 (2013 No 84).

360 Proceedings against third parties in respect of pollution from marine structures or operations

[Repealed]

Section 360: repealed, on 23 October 2013, by section 56 of the Maritime Transport Amendment Act 2013 (2013 No 84).

General provisions in respect of liability for pollution damage

361 Time for bringing proceedings

No action under section 345 or section 346 or section 350 in respect of the discharge or escape of oil from a CLC ship, or in respect of the discharge or escape of bunker oil from a Bunker Oil Convention ship, shall be brought in any court, unless the proceedings are commenced not later than 3 years after the date on which the claim arose, nor later than 6 years after the event, or, as the case may be, the first of the events, by reason of which liability was incurred.

Compare: 1974 No 14 s 41

Section 361: amended, on 1 October 2014, by section 94 of the Maritime Transport Amendment Act 2013 (2013 No 84).

362 Part 7 not to affect liability under this Part

[Repealed]

Section 362: repealed, on 23 October 2013, by section 57 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Mandatory insurance for certain ships and offshore installations

363 Certain ships to have certificates of insurance

(1) No regulated oil tanker or regulated ship shall enter or leave any port in New Zealand or New Zealand marine waters unless a certificate of insurance issued, recognised, or accepted by the Director under section 270 or section 271 is for the time being in force in respect of, and carried on board, that tanker or ship.

(2) No regulated New Zealand oil tanker or regulated New Zealand ship shall enter or leave any port outside New Zealand unless a certificate of insurance issued or recognised by the Director under section 270 is for the time being in force in respect of, and carried on board, that tanker or ship.

(3) The Director may, in accordance with the provisions of the marine protection rules and of section 270 or section 271, as the case may require, issue, recognise, or accept certificates of insurance in respect of a regulated oil tanker or a regulated ship.

Compare: 1974 No 14 s 37(2)

Section 363(1): amended, on 9 June 1999, by section 34(a) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 363(1): amended, on 9 June 1999, by section 34(b) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 363(2): amended, on 9 June 1999, by section 34(a) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 363(2): amended, on 9 June 1999, by section 34(b) of the Maritime Transport Amendment Act 1999 (1999 No 68).

363A Certain ships to have bunker oil certificates of insurance

(1) This section applies to—

(a) every ship of 1 000 gross tonnage or more that is entering or leaving a port in New Zealand or New Zealand marine waters:

(b) every New Zealand ship of 1 000 gross tonnage or more, wherever it may be.

(2) The owner must ensure that there is for the time being in force in respect of the ship, and carried on board the ship, a certificate of insurance—

(a) issued, recognised, or accepted by the Director under section 270 or 271:

(b) confirming that the owner has provided evidence that there is insurance or other financial security covering the owner's liability under the Bunker Oil Convention.

Section 363A: inserted, on 1 October 2014, by section 95 of the Maritime Transport Amendment Act 2013 (2013 No 84).

364 Regulated offshore installations to have certificates of insurance

[Repealed]

Section 364: repealed, on 23 October 2013, by section 58 of the Maritime Transport Amendment Act 2013 (2013 No 84).

365 Production of certificate of insurance

The master of a ship must produce any certificate of insurance required by section 363 or section 364 on demand if requested by a harbourmaster, any officer of Customs, or the Director.

Compare: 1974 No 14 s 37(6)

Section 365: amended, on 23 October 2013, by section 59 of the Maritime Transport Amendment Act 2013 (2013 No 84).

366 Rights of third parties against insurers of regulated oil tankers and regulated ships

(1) If the owner of any ship is alleged to have incurred liability under any or all of sections 344, 345, and 346, proceedings to enforce a claim in respect of that liability may be brought against the insurer.

(2) In proceedings brought against the insurer under this section, it shall be a defence, in addition to any defence under this Act affecting the owner's liability, for the insurer to prove that the discharge or escape of a harmful substance, or the dumping of waste or other matter, giving rise to liability resulted from the wilful misconduct of the owner of the ship but the insurer shall not be entitled to invoke any other defence which the insurer might have been entitled to invoke in any proceedings brought against the insurer by that owner.

(3) The liability of the insurer in proceedings under this section against the owner of a regulated ship (irrespective of the actual fault or privity of that owner) is limited in like manner and to the same extent as the liability of that owner is limited under section 347.

(4) Nothing in this section shall prejudice any claim, or the enforcement of any claim, by any person against the owner of the ship in respect of pollution damage.

(5) In this section, **insurer** means any person providing insurance or other financial security for the owner's liability for pollution damage to which a certificate of insurance referred to in section 363 or 363A relates.

Compare: 1974 No 14 s 39

Section 366 heading: amended, on 23 October 2013, by section 60(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 366(1): replaced, on 23 October 2013, by section 60(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 366(2): amended, on 23 October 2013, by section 60(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 366(4): amended, on 23 October 2013, by section 60(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 366(5): inserted, on 23 October 2013, by section 60(4) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 366(5): amended, on 1 October 2014, by section 96 of the Maritime Transport Amendment Act 2013 (2013 No 84).

367 Offences

(1) The owner and the master of a ship each commits an offence and is liable to imprisonment for a term not exceeding 2 years or to a fine not exceeding $200,000 if, without reasonable excuse, the ship enters or leaves, or attempts to enter or leave, a port in New Zealand or New Zealand marine waters in breach of section 363 or 363A.

(2) The master of a ship in New Zealand marine waters commits an offence and is liable to a fine not exceeding $10,000 if, without reasonable excuse, the ship fails to carry, or the master fails to produce, the certificate of insurance required to be carried under section 363 or 363A.

(3) The owner and the master of a New Zealand ship is liable to imprisonment for a term not exceeding 2 years or to a fine not exceeding $200,000 if, without reasonable excuse, the ship enters or leaves a port outside New Zealand in breach of section 363 or 363A.

Section 367: replaced, on 23 October 2013, by section 61 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 367(1): amended, on 1 October 2014, by section 97 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 367(2): amended, on 1 October 2014, by section 97 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 367(3): amended, on 1 October 2014, by section 97 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Miscellaneous

368 Application of admiralty jurisdiction

(1) The admiralty jurisdiction of the High Court of New Zealand shall extend to any claim under this Part in respect of liability for pollution damage involving a ship, and section 4(1)(d) of the Admiralty Act 1973 (which relates to claims for damage done by a ship) shall be construed as extending to any claim to which this subsection applies, together with all the incidents of such a claim.

(2) No action shall be brought in a court to enforce any claim attributable to the discharge of oil causing damage in or to the territory, territorial sea, or exclusive economic zone of a CLC State, other than New Zealand.

Compare: 1974 No 14 s 43; 1977 No 12 s 5

Section 368(2): amended, on 25 June 1999, by section 7 of the Maritime Transport Amendment Act 1998 (1998 No 53).

369 Reciprocal enforcement of judgments

(1) Part 1 (except for section 6(3) and (4)) of the Reciprocal Enforcement of Judgments Act 1934 applies to a judgment given by a court in a country (other than Australia) in respect of which the CLC Convention is in force and to enforce a claim in respect of liability incurred under any provision corresponding to section 345 of this Act.

(2) A judgment given by a court in Australia to enforce a claim in respect of liability incurred under Part II of the Protection of the Sea (Civil Liability) Act 1981 (Aust) (or any later Australian enactments corresponding to section 345 of this Act) must be treated as a registrable Australian judgment for the purposes of subpart 5 of Part 2 of the Trans-Tasman Proceedings Act 2010.

Compare: 1974 No 14 s 44

Section 369: replaced, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Part 26
Compensation from International Oil Pollution Compensation Fund and Supplementary Fund for pollution damage

Heading: amended, on 15 June 2018, by section 11 of the Maritime Transport Amendment Act 2017 (2017 No 48).

370 Interpretation

In this Part, unless the context otherwise requires,—

Civil Liability Convention has the meaning given to it by section 342

CLC ship has the meaning given to it by section 342

CLC State has the meaning given to it by section 342

fund means the International Oil Pollution Fund or the Supplementary Fund (as the case may be)

Fund Convention means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971; and includes any subsequent protocol or amendment to, or revision of, that convention accepted or ratified by New Zealand

International Oil Pollution Fund means the International Oil Pollution Compensation Fund established under Article 2 of the Fund Convention

International Oil Pollution Supplementary Fund or **Supplementary Fund** means the International Oil Pollution Compensation Supplementary Fund established under Article 2 of the Supplementary Fund Protocol

oil means any persistent hydrocarbon mineral oil

owner, in relation to a CLC ship, has the same meaning as CLC owner in section 342

pollution damage has the meaning given to it by section 342

Supplementary Fund Protocol means the Protocol of 2003 to the Fund Convention and includes any subsequent protocol or amendment to, or revision of, that protocol accepted or ratified by New Zealand

tonnage has the meaning given to it by section 342.

Compare: 1974 No 14 s 47

Section 370 **Convention ship**: repealed, on 15 June 2018, by section 12(1)(a) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 370 **fund**: inserted, on 15 June 2018, by section 12(3) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 370 **International Oil Pollution Fund**: amended, on 15 June 2018, by section 12(1)(b) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 370 **International Oil Pollution Supplementary Fund** or **Supplementary Fund**: inserted, on 15 June 2018, by section 12(3) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 370 **oil**: substituted, on 25 June 1999, by section 8(1) of the Maritime Transport Amendment Act 1998 (1998 No 53).

Section 370 **owner**: inserted, on 15 June 2018, by section 12(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 370 **owner** (in relation to a CLC ship): repealed, on 15 June 2018, by section 12(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 370 **owner** (in relation to any convention ship): repealed, on 15 June 2018, by section 12(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 370 **pollution damage**: inserted, on 25 June 1999, by section 8(3) of the Maritime Transport Amendment Act 1998 (1998 No 53).

Section 370 **Supplementary Fund Protocol**: inserted, on 15 June 2018, by section 12(3) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Compensation and indemnity from International Oil Pollution Fund and Supplementary Fund

Heading: amended, on 15 June 2018, by section 13 of the Maritime Transport Amendment Act 2017 (2017 No 48).

371 International Oil Pollution Fund and Supplementary Fund declared to be legal entities

The International Oil Pollution Fund and the Supplementary Fund are legal entities and each fund has all the rights, powers, duties, and liabilities of a legal person.

Section 371: replaced, on 15 June 2018, by section 14 of the Maritime Transport Amendment Act 2017 (2017 No 48).

372 Compensation from International Oil Pollution Fund and Supplementary Fund for certain pollution damage

(1) Subject to the provisions of this Part, the International Oil Pollution Fund must pay compensation, up to a maximum amount determined under section 373(1), for pollution damage in New Zealand, the internal waters of New Zealand, or New Zealand marine waters, or the seabed below such waters caused by the discharge or escape of oil from a CLC ship—

(a) if the owner of the ship is not liable for the pollution damage under Part 25; or

(b) if, and to the extent that, the pollution damage exceeds the maximum amount of liability of the owner of the ship determined under section 347; or

(c) if, and to the extent that, the pollution damage exceeds the maximum amount of liability of the owner of the ship determined under any convention (other than the Civil Liability Convention) which is in force between New Zealand and a State that is not a CLC State; or

(d) if, and to the extent that, a person (after pursuing that person's legal remedies against the owner of the ship), and any insurer of the owner, does not recover payment in full of any damages and costs awarded by a court under section 345 or section 366.

(2) Subject to the provisions of this Part, the Supplementary Fund must pay compensation, up to a maximum amount determined under section 373(1A), for pollution damage if, and to the extent that, the maximum amount of compensation payable under subsection (1) is insufficient to compensate for the pollution damage.

Compare: 1974 No 14 s 49(3)

Section 372 heading: amended, on 15 June 2018, by section 15(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 372(1): amended, on 15 June 2018, by section 15(2)(a) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 372(1): amended, on 15 June 2018, by section 15(2)(b) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 372(1): amended, on 15 June 2018, by section 15(2)(c) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 372(1): amended, on 25 June 1999, by section 9 of the Maritime Transport Amendment Act 1998 (1998 No 53).

Section 372(2): inserted, on 15 June 2018, by section 15(3) of the Maritime Transport Amendment Act 2017 (2017 No 48).

373 Maximum amount of liability of International Oil Pollution Fund and Supplementary Fund

(1) The maximum amount for which the International Oil Pollution Fund is liable for pollution damage under section 372(1) must be fixed by Order in Council and, until that maximum amount is fixed, is,—

(a) where the pollution damage resulted from a natural phenomenon of an exceptional, inevitable, and irresistible character, the amount of 135 million units of account:

(b) where no liability arises because of the provisions of section 348 giving effect to the Civil Liability Convention, the amount of 135 million units of account:

(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.

(1A) The maximum amount for which the Supplementary Fund is liable for pollution damage under section 372(2) must be fixed by Order in Council and, until that maximum amount is fixed, is the amount of 750 million units of account less any amount paid by the International Oil Pollution Fund under section 372(1).

(2) A maximum amount of liability fixed by this section applies to the total liability incurred on each distinct occasion, and applies in respect of each distinct occasion without regard to any liability incurred on another occasion.

Compare: 1974 No 14 s 49(6)–(8)

Section 373 heading: amended, on 15 June 2018, by section 16(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 373(1): amended, on 15 June 2018, by section 16(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 373(1)(a): amended, on 25 June 1999, by section 10(1) of the Maritime Transport Amendment Act 1998 (1998 No 53).

Section 373(1)(b): amended, on 25 June 1999, by section 10(1) of the Maritime Transport Amendment Act 1998 (1998 No 53).

Section 373(1)(c): substituted, on 25 June 1999, by section 10(2) of the Maritime Transport Amendment Act 1998 (1998 No 53).

Section 373(1A): inserted, on 15 June 2018, by section 16(3) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 373(2): amended, on 15 June 2018, by section 16(4)(a) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 373(2): amended, on 15 June 2018, by section 16(4)(b) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 373(2): amended, on 15 June 2018, by section 16(4)(c) of the Maritime Transport Amendment Act 2017 (2017 No 48).

374 International Oil Pollution Fund's liability for compensation avoided or limited in certain cases

(1) The provisions of this section apply only in respect of a CLC ship carrying persistent hydrocarbon mineral oil in bulk as cargo.

(2) The International Oil Pollution Fund is not liable under section 372(1) to pay compensation for pollution damage in the following circumstances:

(a) if it is proved that the pollution damage resulted from an act of war, hostilities, civil war, or insurrection, or was caused by oil which had been discharged from a warship, or from any other ship owned or operated by a State, and which at the time of the discharge was being used by the Government of that State for purposes other than commercial purposes:

(b) if the person making the claim in respect of the pollution damage is unable to prove that the pollution damage was the result of the discharge of oil from 1 or more ships.

(3) Where the International Oil Pollution Fund proves that the damages suffered by any person are a result in part of—

(a) that person's own negligence; or

(b) any act or omission by that person done or omitted with intent to cause pollution damage,—

the compensation recoverable from the International Oil Pollution Fund under section 372 is reduced to the extent that the court thinks just and equitable having regard to that person's share in the responsibility for the damage suffered.

(4) Nothing in subsection (3) applies to any claim against the International Oil Pollution Fund that relates to—

(a) expenses reasonably incurred or sacrifices reasonably made by the owner of a ship voluntarily to prevent or reduce pollution damage; or

(b) expenses relating to measures carried out by the owner of a ship pursuant to an instruction of the Director under Part 20.

Compare: 1974 No 14 s 49(4), (5)

Section 374(2): amended, on 15 June 2018, by section 17(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 374(3): amended, on 15 June 2018, by section 17(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 374(4): amended, on 15 June 2018, by section 17(3) of the Maritime Transport Amendment Act 2017 (2017 No 48).

375 Several claims for compensation from International Oil Pollution Fund

(1) Subject to subsection (2), where liability to pay compensation is incurred under section 372(1) by the International Oil Pollution Fund in respect of several claims for pollution damage arising out of the same event, the court must determine the amount of the International Oil Pollution Fund's liability and apportion that amount rateably among the several claimants.

(2) Where the amount of claims for compensation established under section 372(1) against the International Oil Pollution Fund exceeds the maximum amount determined under section 373(1), the court must order the maximum amount available to be distributed in such a way that the ratio between any established claim and the amount recovered by a claimant from the owner of a CLC ship and the owner's insurer, under section 345 or section 366, and from the International Oil Pollution Fund under section 372(1), is the same for all claimants.

Compare: 1974 No 14 s 50

Section 375(1): amended, on 15 June 2018, by section 18(1)(a) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 375(1): amended, on 15 June 2018, by section 18(1)(b) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 375(2): amended, on 15 June 2018, by section 18(2)(a) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 375(2): amended, on 15 June 2018, by section 18(2)(b) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 375(2): amended, on 15 June 2018, by section 18(2)(c) of the Maritime Transport Amendment Act 2017 (2017 No 48).

376 International Oil Pollution Fund to indemnify certain shipowners

[Repealed]

Section 376: repealed, on 25 June 1999, by section 11 of the Maritime Transport Amendment Act 1998 (1998 No 53).

377 International Oil Pollution Fund's liability to indemnify limited or avoided in certain cases

[Repealed]

Section 377: repealed, on 25 June 1999, by section 11 of the Maritime Transport Amendment Act 1998 (1998 No 53).

Provisions in respect of proceedings against International Oil Pollution Fund or Supplementary Fund

Heading: amended, on 15 June 2018, by section 19 of the Maritime Transport Amendment Act 2017 (2017 No 48).

378 Time for bringing proceedings against International Oil Pollution Fund or Supplementary Fund

(1) No action to enforce a claim against the International Oil Pollution Fund or the Supplementary Fund for compensation under section 372 may be brought in any court, unless the proceedings are commenced, or a notice is served on the fund in accordance with the provisions of section 380, not later than 3 years after the claim arose; and in any case no such action may be brought later than 6 years after the occurrence of the event or, as the case may be, the first of the events giving rise to the claim.

(2) *[Repealed]*

Compare: 1974 No 14 s 53

Section 378 heading: amended, on 15 June 2018, by section 20(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 378(1): amended, on 15 June 2018, by section 20(2)(a) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 378(1): amended, on 15 June 2018, by section 20(2)(b) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 378(1): amended, on 15 June 2018, by section 20(2)(c) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 378(1): amended, on 25 June 1999, by section 12(1) of the Maritime Transport Amendment Act 1998 (1998 No 53).

Section 378(2): repealed, on 25 June 1999, by section 12(2) of the Maritime Transport Amendment Act 1998 (1998 No 53).

379 Jurisdiction of court in respect of claims against International Oil Pollution Fund or Supplementary Fund

(1) Subject to this section, no action may be brought in a court to enforce a claim against the International Oil Pollution Fund or the Supplementary 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) If an action to enforce a claim for compensation for pollution damage under the Civil Liability Convention has been brought before a court in a State that is a party to that convention but is not a party to the Fund Convention or the Supplementary Fund Protocol, an action by the claimant against the International Oil Pollution Fund for compensation under Article 4 of the Fund Convention (or against both that fund under Article 4 of the Fund Convention and the Supplementary Fund under Article 4 of the Supplementary Fund Protocol) may be brought before a court in New Zealand, and the provisions of this Part apply accordingly.

Compare: 1974 No 14 s 54(1), (2)

Section 379 heading: amended, on 15 June 2018, by section 21(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 379(1): substituted, on 25 June 1999, by section 13(1) of the Maritime Transport Amendment Act 1998 (1998 No 53).

Section 379(1): amended, on 15 June 2018, by section 21(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 379(2): replaced, on 15 June 2018, by section 21(3) of the Maritime Transport Amendment Act 2017 (2017 No 48).

380 Notice of proceedings against International Oil Pollution Fund or Supplementary Fund

If proceedings are brought against the International Oil Pollution Fund or the Supplementary Fund under section 372, the Registrar of the court in which the documents commencing the proceedings are filed must send copies of those documents to the Director.

Section 380: replaced, on 15 June 2018, by section 22 of the Maritime Transport Amendment Act 2017 (2017 No 48).

381 Notice to and joining of International Oil Pollution Fund and Supplementary Fund in certain proceedings

(1) In proceedings brought in a court against the owner of a CLC ship, or the owner's insurer, to enforce a claim in respect of any liability incurred under section 372,—

(a) either party to the proceedings may serve a notice on the International Oil Pollution Fund or on the Supplementary Fund; and

(b) either party may join the fund served in the action; and

(c) the fund served may apply to the court to be joined in the action.

(2) A notice served under subsection (1)(a) must—

(a) give sufficient details of the cause of action to allow the fund served to decide whether to apply to be joined in the action; and

(b) specify a period of 30 days, or a lesser period ordered by the court, for the fund served to apply to be joined in the action.

(3) If the fund served applies to be joined in the action, the court must join the fund in the proceedings.

(4) If a fund has been served under subsection (1)(a) but has not been joined in the proceedings, the judgment of the court is final and binding on the fund to the extent that the fund may not challenge the findings of the court in any proceedings relating to the same cause of action.

Section 381: replaced, on 15 June 2018, by section 23 of the Maritime Transport Amendment Act 2017 (2017 No 48).

382 Reciprocal enforcement of judgments against International Oil Pollution Fund or Supplementary Fund

(1) Part 1 of the Reciprocal Enforcement of Judgments Act 1934 applies to any judgment given by a court against the International Oil Pollution Fund or the Supplementary Fund in a country in respect of which the Fund Convention or the Supplementary Fund Protocol (as the case may be) is in force.

(2) Subsections (3) and (4) of section 6 of the Reciprocal Enforcement of Judgments Act 1934 have no effect in the case of any such judgment.

(3) Where a court in a country in respect of which the Fund Convention or the Supplementary Fund Protocol is in force has directed the distribution of the amounts available for distribution in accordance with the provisions of paragraph 5 of Article 4 of that convention or paragraph 3 of Article 4 of that protocol (as the case may be), then, for the purpose of enforcing the judgment of that court in New Zealand, the judgment to be enforced is the judgment of that court as modified by that direction as to distribution.

Compare: 1974 No 14 s 55

Section 382 heading: amended, on 15 June 2018, by section 24(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 382(1): amended, on 15 June 2018, by section 24(2)(a) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 382(1): amended, on 15 June 2018, by section 24(2)(b) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 382(2): amended, on 15 June 2018, by section 24(3) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 382(3): amended, on 15 June 2018, by section 24(4)(a) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 382(3): amended, on 15 June 2018, by section 24(4)(b) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 382(3): amended, on 15 June 2018, by section 24(4)(c) of the Maritime Transport Amendment Act 2017 (2017 No 48).

383 Rights of subrogation of International Oil Pollution Fund or Supplementary Fund

Where any person has received compensation from the International Oil Pollution Fund or the Supplementary Fund under section 372, the fund is (up to the amount of compensation paid) subrogated to the rights and remedies of that person against—

(a) the owner of any CLC ship, or the owner's insurer, in respect of the liability incurred by that owner or that owner's insurer under section 345 or section 366:

(b) any other person in respect of the pollution damage for which compensation has been paid and the rights of the fund against any person referred to in this paragraph must be as favourable as any right or remedy that the insurer of any person referred to in paragraph (a) would have by way of subrogation.

Compare: 1974 No 14 s 56

Section 383 heading: amended, on 15 June 2018, by section 25(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 383: amended, on 15 June 2018, by section 25(2)(a) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 383: amended, on 15 June 2018, by section 25(2)(b) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 383(a): amended, on 25 June 1999, by section 16 of the Maritime Transport Amendment Act 1998 (1998 No 53).

Section 383(b): amended, on 15 June 2018, by section 25(3)(a) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 383(b): amended, on 15 June 2018, by section 25(3)(b) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Miscellaneous provisions relating to International Oil Pollution Fund

[Repealed]

Heading: repealed, on 25 June 1999, pursuant to section 17 of the Maritime Transport Amendment Act 1998 (1998 No 53).

384 International Oil Pollution Fund as insurer

[Repealed]

Section 384: repealed, on 25 June 1999, by section 17 of the Maritime Transport Amendment Act 1998 (1998 No 53).

Levies on oil imports

385 Levies on oil imports

(1) For the purpose of complying with the requirements of Articles 10, 12, 13, 14, and 15 of the Fund Convention, the Governor-General may, by Order in Council, impose a levy on oil carried by sea and landed from a ship in any port or oil

transfer site in New Zealand (whether or not landed from a country outside New Zealand).

(1A) For the purpose of complying with the requirements of Articles 10 to 15 of the Supplementary Fund Protocol, the Governor-General may, by Order in Council, impose a levy on oil carried by sea and landed from a ship in any port or oil transfer site in New Zealand (whether or not landed from a country outside New Zealand).

(2) Without limiting anything in subsections (1) and (1A), an Order in Council under this section may prescribe all or any of the following matters:

(a) the rate of the levy, and the basis on which it is to be assessed in any one calendar year, whether for that year or the preceding calendar year or for any other calendar year:

(b) any additional rate of levy, and the basis on which it is to be assessed:

(c) the persons liable to pay the levy, the due date for payment, and the persons to whom the levy is to be paid:

(d) penalties and interest for non-payment and for late payment of levies:

(e) the taking of legal proceedings to recover any levy or any penalty or amount of interest.

(3) In this section, the term **oil** means—

(a) crude oil, namely, any liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation; and includes crude oils from which certain distillate fractions have been removed (topped crudes) or to which certain distillate fractions have been added (spiked or reconstituted crudes):

(b) fuel oil, namely, heavy distillates or residues from crude oil, or blends of such materials, intended for use as a fuel for the production of heat or power of a quality equivalent to or heavier than the American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D396-69).

Section 385(1): amended, on 15 June 2018, by section 26(1)(a) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 385(1): amended, on 15 June 2018, by section 26(1)(b) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 385(1A): inserted, on 15 June 2018, by section 26(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 385(2): amended, on 15 June 2018, by section 26(3) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Part 26A
Civil liability for pollution of marine environment from marine structures

Part 26A: inserted, on 23 October 2013, by section 62 of the Maritime Transport Amendment Act 2013 (2013 No 84).

385A Interpretation

In this Part, unless the context otherwise requires,—

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

insurance means public liability insurance

marine agency means the Authority, a regional council, or the operator of a port facility

marine structure means an offshore installation, a pipeline, or any facility, site, structure, or thing used to transfer a harmful substance to or from a ship, or an offshore installation

oil means any persistent hydrocarbon mineral oil

pollution damage means damage or loss of any kind and—

(a) includes the costs 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)

port facility means—

(a) a port; and

(b) the buildings, installations, other structures, or equipment on or adjacent to a port and used in connection with the port's operation or administration

regulated offshore installation—

(a) means an offshore installation within New Zealand continental waters; and

(b) includes any pipeline connected to that installation.

Compare: 1994 No 104 s 342

Section 385A: inserted, on 23 October 2013, by section 62 of the Maritime Transport Amendment Act 2013 (2013 No 84).

385B Liability to the Crown and marine agencies for costs of cleaning up pollution

(1) Subject to section 385E and Part 7, the person in charge of a marine operation or the owner of a marine structure must pay to the Crown (or marine agency) the cost, including goods and services tax (if any), reasonably incurred by or on behalf of the Crown (or marine agency) in dealing with—

(a) a harmful substance that is discharged or escapes, or any waste or other matter that is dumped, from that marine operation or marine structure into the internal waters of New Zealand or into New Zealand continental waters or on to the beds below those internal or continental waters; or

(b) a harmful substance, if that harmful substance poses a grave and imminent threat of being discharged or escaping from that marine operation or marine structure into the internal waters of New Zealand or into New Zealand continental waters or on to the beds below those internal or continental waters.

(2) The amounts payable under subsection (1) are payable—

(a) as a debt due to the Crown or the marine agency, as the case may be; and

(b) only to the extent that those amounts have not otherwise been paid by the owner of the marine structure or the person in charge of that marine operation.

(3) For the purposes of subsection (1), **dealing with** means any reasonable action taken in relation to the discharge or escape of a harmful substance, or the dumping of any waste or other matter, including (but not limited to)—

(a) removing, containing, and rendering harmless the harmful substance, or the waste or other matter, or doing any of those things; and

(b) any reasonable measures taken to prevent or minimise the discharge or escape of a harmful substance.

Compare: 1974 No 14 s 30; 1994 No 104 s 355

Section 385B: inserted, on 23 October 2013, by section 62 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Liability for pollution from marine structures and operations

Heading: inserted, on 23 October 2013, by section 62 of the Maritime Transport Amendment Act 2013 (2013 No 84).

385C Liability for pollution damage from marine structures and operations

(1) Subject to sections 385D and 385E and Part 7, the owner of a marine structure or the person in charge of a marine operation is liable in damages, including goods and services tax (if any), for—

(a) all pollution damage in New Zealand or the internal waters of New Zealand or New Zealand continental waters or the beds below those internal or continental waters caused by—

(i) a harmful substance that is discharged or escapes from that structure or operation; or

(ii) any waste or other matter that is dumped from that structure or operation; and

(b) the costs reasonably incurred for any reasonable preventive measures taken by the Crown (or marine agency) to eliminate or reduce a grave and imminent threat that a harmful substance may be discharged or escape from that structure or operation into the internal waters of New Zealand or into New Zealand continental waters or on to the beds below those internal or continental waters.

(2) The recovery of costs by the Crown (or marine agency) under section 385B(1) does not preclude a claim for costs under subsection (1) if that claim relates to matters that are different from the matters for which costs were recovered under section 385B(1).

Compare: 1994 No 104 s 356

Section 385C: inserted, on 23 October 2013, by section 62 of the Maritime Transport Amendment Act 2013 (2013 No 84).

385D Liability for unattributable pollution damage from marine structures and operations

(1) Where the owner of a marine structure or the person in charge of any marine operations is liable in damages for pollution damage under section 385C, but the pollution damage for which that owner or person in charge is liable cannot reasonably be separated from the pollution damage for which any other owner of a marine structure or person in charge of any marine operations, or both, is liable under section 385C, each of the owners and persons in charge is liable, jointly and severally with the others, for the whole of the pollution damage for which the owners and persons in charge together would be liable under section 385C.

(2) Any liability under subsection (1) is subject to the provisions of section 385E.

Compare: 1994 No 104 s 357

Section 385D: inserted, on 23 October 2013, by section 62 of the Maritime Transport Amendment Act 2013 (2013 No 84).

385E Defences in respect of liability for pollution damage from marine structures and operations

(1) The owner of a marine structure, or the person in charge of any marine operations, is not liable under section 385B, 385C, or 385D if the owner or person in charge, as the case may be, proves that the discharge or escape, or the grave and imminent threat of the discharge or escape, or dumping—

(a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable, and irresistible character; or

(b) was wholly caused by the act or omission of a third person, other than the employee or agent of the owner or the person in charge, as the case may be, with intent to cause damage; or

(c) was wholly caused by the negligence or other wrongful act of any government or other authority, or of any person, responsible for the maintenance of lights or other navigational aids in the performance of its functions in relation to those lights or aids.

(2) The owner of a marine structure and the person in charge of marine operations is not liable to a claimant under section 385B, 385C, or 385D if it is proved that the discharge or escape, or the grave and imminent threat of the discharge or escape, was wholly caused by the act or omission of that claimant, or the employee or agent of that claimant, with intent to cause damage, or was wholly caused by the negligence of that claimant or the employee or agent of that claimant.

Compare: 1974 No 14 s 33(2), (3); 1994 No 104 s 358

Section 385E: inserted, on 23 October 2013, by section 62 of the Maritime Transport Amendment Act 2013 (2013 No 84).

385F Reduction of liability of owner of marine structure or person in charge of marine operations where contributory negligence

(1) A court may reduce to such extent as it thinks just and equitable, the damages for which the owner of a marine structure, or the person in charge of any marine operations, is liable to a claimant under section 385C or 385D if it is proved that the pollution damage suffered by that claimant was partly caused either by the act or omission of that claimant with intent to cause damage or by the negligence of that claimant.

(2) For the purposes of subsection (1), **claimant** includes any employee or agent of the claimant.

Compare: 1974 No 14 s 33(4); 1994 No 104 s 359

Section 385F: inserted, on 23 October 2013, by section 62 of the Maritime Transport Amendment Act 2013 (2013 No 84).

385G Proceedings against third parties in respect of pollution damage from marine structures or operations

Where the owner of a marine structure or the person in charge of any marine operations avoids liability in damages for pollution damage under section 385C or 385D by proving any of the matters specified in section 385E(1)(b) or (c), proceedings for pollution damage may be brought under this section against the person specified in section 385E(1)(b) or (c) who has caused the discharge,

escape, or dumping of a harmful substance or waste or other matter, as the case may be.

Compare: 1974 No 14 s 40(2); 1994 No 104 s 360

Section 385G: inserted, on 23 October 2013, by section 62 of the Maritime Transport Amendment Act 2013 (2013 No 84).

385H Regulated offshore installations to have certificates of insurance

(1) A current certificate of insurance issued, recognised, or accepted by the Director under section 270 or 271 is required to be for the time being in force in respect of every regulated offshore installation.

(2) The Director may, in accordance with section 270 or 271, as the case may require, issue, recognise, or accept certificates of insurance in respect of a regulated offshore installation.

Compare: 1994 No 104 ss 363, 364

Section 385H: inserted, on 23 October 2013, by section 62 of the Maritime Transport Amendment Act 2013 (2013 No 84).

385I Production of certificate of insurance

The person in charge of a regulated offshore installation must produce any certificate of insurance required by section 385H on demand if requested by a harbourmaster, any officer of Customs, or the Director.

Compare: 1974 No 14 s 37(6); 1994 No 104 s 365

Section 385I: inserted, on 23 October 2013, by section 62 of the Maritime Transport Amendment Act 2013 (2013 No 84).

385J Rights of third parties against insurers of regulated offshore installations

(1) Where the owner of a regulated offshore installation is alleged to have incurred liability under any of sections 385B, 385C, and 385D, or all of those sections, as the case may be, proceedings to enforce a claim in respect of that liability may be brought against any person (in this section, the **insurer**) providing insurance or other financial security for the owner's liability for pollution damage to which any certificate of insurance referred to in section 385H relates.

(2) In proceedings brought against the insurer under this section, it is a defence, in addition to any defence under this Act affecting the owner's liability, for the insurer to prove that the discharge or escape of a harmful substance, or the dumping of waste or other matter, giving rise to liability resulted from the wilful misconduct of the owner of the regulated offshore installation, but the insurer is not entitled to invoke any other defence that the insurer might have been entitled to invoke in any proceedings brought against the insurer by that owner.

(3) Nothing in this section prejudices any claim, or the enforcement of any claim, by any person against the owner of a regulated offshore installation in respect of pollution damage.

Compare: 1974 No 14 s 39; 1994 No 104 s 366

Section 385J: inserted, on 23 October 2013, by section 62 of the Maritime Transport Amendment Act 2013 (2013 No 84).

385K Offence

The owner and person in charge of a regulated offshore installation each commits an offence and is liable to imprisonment for a term not exceeding 2 years or to a fine of $200,000 if, without reasonable excuse, a current certificate of insurance issued under the marine protection rules is not for the time being in force in respect of the regulated offshore installation.

Compare: 1994 No 104 s 367(3)

Section 385K: inserted, on 23 October 2013, by section 62 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Part 27
Making of marine protection rules and regulations and taking of other measures to protect marine environment

Marine protection rules

386 Marine protection rules to implement international standards

(1) The Minister may from time to time make marine protection rules for all or any of the following purposes:

(a) to implement New Zealand's obligations under any marine protection convention:

(b) to make such rules as may be necessary to enable New Zealand to become a party to any international convention, protocol, or agreement relating to the protection of the marine environment:

(c) to implement such international practices or standards relating to the protection of the marine environment as may from time to time be recommended by the International Maritime Organisation.

(2) Nothing in subsection (1) limits any other provision of this Act that empowers the making of marine protection rules.

Compare: 1990 No 98 s 28; 1992 No 75 s 18

387 Marine protection rules relating to marine protection documents

(1) The Minister may from time to time make marine protection rules requiring that a marine protection document be held by or in respect of all or any of the following:

(a) New Zealand ships:

(b) foreign ships:

(c) offshore installations:

(d) *[Repealed]*

(e) marine incineration facilities:

(f) oil transfer sites:

(g) cargo loading and unloading terminals:

(h) marine protection products:

(i) reception facilities:

(j) persons or organisations that provide—

(i) maritime training; or

(ii) the testing, inspection, audit, or certification of ships or marine protection products; or

(iii) the design, manufacture, or maintenance of ships or marine protection products:

(k) any other vessel, equipment, person, or organisation engaged or used in maritime activities or activities that, in the opinion of the Minister, relate to maritime activities.

(2) Marine protection rules may provide for the recognition in writing by the Director of licences, permits, certificates, or other documents.

(3) The requirements, standards, and application procedure for each marine protection document and the maximum period for which each document may be issued or recognised, as the case may be, shall be prescribed by the marine protection rules.

(4) The marine protection rules may specify the requirements and criteria that must be satisfied in respect of the relevant insurance policy, bond, or other form of financial security for the Director to issue a certificate of insurance under section 363, 363A, or 385H.

(5) Subject to any marine protection rules, a marine protection document may be issued or a document may be recognised as a marine protection document, as the case may be, by the Director for such specified period and subject to such conditions as the Director considers appropriate in each particular case.

(6) Any person in respect of whom any decision is taken under this section may appeal against that decision to the District Court under section 424.

Compare: 1990 No 98 s 7

Section 387(1)(d): repealed, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 387(4): amended, on 1 October 2014, by section 98 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 387(6): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

388 Marine protection rules in relation to harmful and other substances

The Minister may from time to time make marine protection rules for all or any of the following purposes:

(a) the substances that are harmful substances for the purposes of section 225:

(b) the substances that are noxious liquid substances for the purposes of section 225:

(c) the substances that are not to be noxious liquid substances for the purposes of section 225:

(ca) the substances that are hazardous substances other than oil for the purposes of section 247:

(d) things and substances that are to be included as marine protection products for the purposes of section 225:

(e) requirements for the design and construction of ships and other real or personal property for which a marine protection document is required:

(f) areas of ships where harmful substances, or any specified harmful substance, or ballast water, may not be held:

(g) the maximum quantities of harmful substances, or any specified harmful substance, that may be held on ships or any class of ship:

(h) standards and requirements in respect of marine protection products and reception facilities:

(i) regulating or prohibiting, in relation to ships, all or any of the following:

(i) the discharge of harmful substances or any specified harmful substance, whether generally or in any specified area:

(ii) the removal or retention on board of harmful substances:

(iii) the stowage, packaging, containment, marking, labelling, documentation, and notification of harmful substances carried in packaged form:

(iv) plans for emergencies involving harmful substances or any specified harmful substance:

(j) the requirements (and, in particular, in the case of any notice, the time periods to be complied with and the form and manner in which the notice is to be given) in respect of ships, offshore installations, pipelines, transfer facilities, reception facilities, and marine operations for the following:

(i) giving notice under section 227 of the discharge or escape of any harmful substance:

(ii) giving notice under section 228 of any pollution incident:

(iii) giving notice under section 229 or section 230 of the prospective arrival of any ship carrying oil or a noxious liquid substance or the transfer of oil or any such substance to or from a ship:

(iv) surveys and inspections:

(v) records to be kept in respect of activities involving harmful substances or any specified harmful substance:

(k) shipping exclusion zones and navigation and shipping lanes within the territorial sea of New Zealand:

(l) the requirements and procedures for the discharge or escape of water produced from geologic formations by marine operations in the high seas:

(m) the requirements and procedures for the transfer of oil or noxious liquid substances to or from transfer facilities or ships:

(n) prescribing requirements and procedures relating to the control and management of ballast water for the purposes of the convention, including, but not limited to, provision for the Director to issue guidelines that allow for exemptions from the requirements and procedures for ships complying with the guidelines.

Section 388(a): amended, on 16 December 2017, by section 37(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 388(b): amended, on 16 December 2017, by section 37(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 388(c): amended, on 16 December 2017, by section 37(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 388(ca): inserted, on 23 October 2013, by section 64 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 388(ca): amended, on 16 December 2017, by section 37(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 388(d): amended, on 16 December 2017, by section 37(1) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 388(e): amended, on 16 December 2017, by section 37(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 388(f): amended, on 16 December 2017, by section 37(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 388(g): amended, on 16 December 2017, by section 37(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 388(h): amended, on 16 December 2017, by section 37(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 388(i): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 388(j): amended, on 16 December 2017, by section 37(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 388(k): amended, on 16 December 2017, by section 37(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 388(l): amended, on 16 December 2017, by section 37(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 388(l): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 388(m): amended, on 16 December 2017, by section 37(2) of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 388(n): inserted, on 8 September 2017, by section 86(10) of the Biosecurity Law Reform Act 2012 (2012 No 73).

389 Marine protection rules in relation to waste or other matter

(1) The Minister may from time to time make marine protection rules for all or any of the following purposes:

(a) to specify the types of waste or other matter that are toxic or hazardous wastes for the purposes of section 257:

(b) to specify the types of waste or other matter for which permits, or any class of permit, may not be granted under section 262 or 262A:

(c) to specify the types of waste or other matter for which permits, or any class of permit, may be granted under section 262 or 262A:

(d) to specify the application procedure for permits, or any class of permit, under section 262 or 262A, including the persons (if any) who are to receive notice of the application:

(e) to specify the procedure for the persons (if any) who are to receive notice of an application for a permit under section 262 or 262A to make submissions:

(f) to specify the requirements to be satisfied for a permit, or any class of permit, under section 262 to be issued:

(g) to specify the terms and conditions of permits or any class of permit granted under section 262:

(ga) to specify the maximum duration of permits or any class of permit granted under section 262 or 262A:

(gb) to authorise the Director to specify the duration of a permit granted under section 262 or 262A by reference to—

(i) a period of time that must be no longer than the maximum duration specified for the permit under paragraph (ga) (if one is specified); or

(ii) the duration of the dumping operation authorised by the permit:

(h) to specify the persons (if any) with whom the Director must consult before granting a permit or any class of permit under section 262:

(i) to provide for the issue or renewal of permits or any class of permit granted under section 262:

(j) to provide for the operational requirements in respect of, and for the survey, testing, and monitoring of, marine incineration facilities.

(2) The Minister shall, before making any marine protection rules under subsection (1), consult with such other Ministers as he or she considers appropriate having regard to the particular subject matter of the proposed rules.

Section 389(1)(b): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 389(1)(c): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 389(1)(d): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 389(1)(e): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 389(1)(g): replaced, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 389(1)(ga): inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 389(1)(gb): inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

390 Marine protection rules in relation to marine oil spills and other matters

(1) The Minister may from time to time make marine protection rules for all or any of the following purposes:

(a) specifying the matters that must be contained in—

(i) shipboard or site marine oil spill contingency plans:

(ii) regional marine oil spill contingency plans:

(b) specifying the qualifications to be held by on-scene commanders, or any class of on-scene commander:

(c) specifying the form and contents of the certificate to be issued by the Director under section 363, 363A, or 385H:

(d) specifying the manner in which any notice, notification, or instruction under this Act, or any regulation or marine protection rules made under this Act, may be given by the Director:

(e) requiring the Director to notify any person or persons in respect of any action taken by the Director under this Act or any regulations or marine protection rules made under this Act and, in particular, requiring the Director to comply with any obligations to notify any persons under any international conventions binding on New Zealand:

(f) prescribing or providing for such matters as may be necessary to enable New Zealand to become a party to any international convention, protocol, or agreement relating to protection of the marine environment.

(2) The Minister may from time to time make marine protection rules to provide for such other matters as are contemplated by or necessary for giving full effect to the provisions of Parts 18 to 26A and for the due administration thereof.

Section 390(1)(c): amended, on 1 October 2014, by section 99 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 390(2): amended, on 23 October 2013, by section 65(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

390A Power of Governor-General to make marine protection rules

(1) The Governor-General may, by Order in Council, on the recommendation of the Minister, make marine protection rules for any purpose for which the Minister may make marine protection rules under this Part.

(2) An Order in Council made under subsection (1)—

(a) is a regulation or an instrument for the purposes of the Regulations (Disallowance) Act 1989; but

(b) is not a regulation or an instrument for the purposes of the Acts and Regulations Publication Act 1989.

(3) To avoid doubt,—

(a) the Governor-General may amend or revoke any marine protection rule made by the Minister (as if the Governor-General had made the rule):

(b) the Minister may amend or revoke any marine protection rule made by the Governor-General (as if the Minister had made the rule).

Section 390A: inserted, on 23 October 2013, by section 66 of the Maritime Transport Amendment Act 2013 (2013 No 84).

391 Power of Director to make emergency marine protection rules

(1) The Director may from time to time make rules (to be called emergency marine protection rules) for any of the purposes for which the Minister may make rules under this Part, if the Director considers that—

(a) such rules are necessary to alleviate or minimise any damage to the marine environment or threat of imminent damage to the marine environment; and

(b) it is not practicable in the circumstances of the particular case for the Minister to make rules to effectively eliminate or alleviate the damage or threat of damage to the marine environment.

(2) The Minister may revoke any emergency marine protection rule and the revocation shall be notified as if it were an emergency rule.

Compare: 1990 No 98 s 31

392 Matters to be taken into account in making marine protection rules

In making any marine protection rules, the Minister or the Director, as the case may be, shall have regard to, and shall give such weight as he or she considers appropriate in each case to, the following:

(a) the need to—

(i) protect the marine environment:

(ii) maintain and improve maritime safety:

(ab) whether the proposed rule—

(i) assists economic development:

(ii) improves access and mobility:

(iii) promotes and protects public health:

(iv) ensures environmental sustainability:

(b) the recommended international practices of the International Maritime Organisation relating to protection of the marine environment:

(c) the costs of implementing measures for which the rule is being proposed:

(d) the risk to the marine environment if the proposed rule is not made:

(e) such other matters as the Minister or the Director, as the case may be, considers appropriate in the circumstances.

Compare: 1990 No 98 s 33

Section 392(a): substituted, on 1 December 2004, by section 7(1) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 392(ab): inserted, on 1 December 2004, by section 7(1) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 392(c): substituted, on 1 December 2004, by section 7(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

393 Further provisions relating to marine protection rules

The provisions of sections 446 to 452 apply in relation to marine protection rules.

Regulations

394 Regulations

(1) Without limiting any other provision of this Act, the Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

(a) prescribing purposes for which expenditure budgets are not required under section 332:

(b) requiring insurance and other financial guarantees, and certification relating to the same, in respect of offshore installations and classes of offshore installations:

(c) requiring insurance and other financial guarantees, and certification relating to the same in respect of ships, or classes of ships, other than regulated oil tankers (as defined in section 342):

(d) prescribing those breaches of marine protection rules that constitute offences against this Act:

(e) prescribing those breaches of marine protection rules that constitute infringement offences against this Act:

(f) prescribing the penalty for each offence prescribed under paragraph (d) which,—

(i) in the case of an individual, shall be a fine not exceeding $5,000; or

(ii) in the case of any other person, shall be a fine not exceeding $30,000:

(g) prescribing the infringement fee for each offence prescribed under paragraph (e) which,—

(i) in the case of an individual, shall be a fine not exceeding $2,000; or

(ii) in the case of any other person, shall be a fine not exceeding $12,000:

(h) prescribing offences for breaches of any regulations made under this section and, except where some other penalty is prescribed by this Act, prescribing the penalty for each such offence which,—

(i) in the case of an individual, shall be a fine not exceeding $5,000; or

(ii) in the case of any other person, shall be a fine not exceeding $30,000:

(i) such other matters as are contemplated by or necessary for giving full effect to the provisions of Parts 18 to 27 and for their due administration.

(2) Regulations made under subsection (1) may, in addition to any other penalty imposed under this section, where the offence is a continuing one, impose further fines not exceeding $1,000 for each day or part of a day on which the offence is continued.

(3) Any regulations made under this Act may be so made that different regulations shall apply with respect to different classes of persons, ships, offshore installations, pipelines, marine protection products, or other property or with respect to the same class of person, ship, offshore installation, pipeline, marine protection product, or other property in different circumstances.

General powers of Director in relation to protection of marine environment

395 Exemptions

(1) The Director may, if he or she considers it appropriate, and upon such conditions as he or she considers appropriate, exempt any person, ship, marine protection product, offshore installation, pipeline, reception facility, or any real or personal property, from any specified requirement in any marine protection rule.

(2) The Director shall not grant an exemption under subsection (1) unless he or she is satisfied in the circumstances of each case that—

(a) the granting of the exemption will not breach New Zealand's obligations under any convention; and

(b) either—

(i) the requirement has been substantially complied with and that further compliance is unnecessary; or

(ii) the action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement; or

(iii) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or

(iv) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case; and

(ba) the risk to safety will not be significantly increased by the granting of the exemption; and

(c) the granting of the exemption will not significantly increase the risk of harm,—

(i) for a marine protection rule on ballast water, to the environment, human health, property, or resources; or

(ii) for any other marine protection rule, to the marine environment.

(3) The number and nature of exemptions granted under subsection (1) shall be notified as soon as practicable in the *Gazette*.

(4) Nothing in this section shall apply in any case where any marine protection rule specifically provides that no exemptions are to be granted.

Compare: 1990 No 98 s 37

Section 395(2)(a): amended, on 23 October 2013, by section 67(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 395(2)(ba): inserted, on 23 October 2013, by section 67(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 395(2)(c): replaced, on 8 September 2017, by section 86(11) of the Biosecurity Law Reform Act 2012 (2012 No 73).

396 Inspections and audits

(1) The Director may from time to time, in writing, require any person who—

(a) holds any marine protection document; or

(b) is required to hold any marine protection document by this Act or any regulations or marine protection rules made under this Act; or

(c) operates, maintains, or services, or does any other act in respect of any ship, marine protection product, offshore installation, pipeline, transfer or reception facility—

to undergo, or carry out, such inspections or audits, or both, as the Director considers necessary in the interests of protecting the marine environment from harm or protecting the environment, human health, property, or resources from harm from ballast water.

(2) The Director may in respect of any person described in subsection (1) carry out such inspections or audits, or both, as the Director considers necessary in the interests of protecting the marine environment from harm or protecting the environment, human health, property, or resources from harm from ballast water.

(3) For the purposes of any inspection or audit carried out in respect of any person under subsection (2), the Director may, in writing,—

(a) require that person to provide to the Director such information as the Director considers relevant to the inspection or audit:

(aa) for a ship, as defined in section 246A(3)(a), require the person to—

(i) allow the Director to take a sample of the ship's ballast water:

(ii) demonstrate to the Director the familiarity of the master or crew with essential procedures for the prevention of harm to the environment, human health, property, or resources from ballast water:

(b) require that person to demonstrate to the Director the familiarity of the master or crew with essential shipboard procedures for the prevention of marine pollution:

(c) require that person to demonstrate to the Director that any operational, maintenance, or servicing procedure in respect of a ship or marine protection product is capable of being carried out in a competent manner.

Compare: 1990 No 98 s 15; 1992 No 75 s 10

Section 396(1): amended, on 8 September 2017, by section 86(12) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 396(2): amended, on 8 September 2017, by section 86(13) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 396(3)(aa): inserted, on 8 September 2017, by section 86(14) of the Biosecurity Law Reform Act 2012 (2012 No 73).

397 Detention, etc, of ships and seizure of marine protection products

(1) The Director may from time to time do all or any of the following:

(a) detain any ship:

(b) prohibit, or impose conditions on, the use or operation of any ship or any ship of a particular class or the use of a marine protection product:

(c) seize any marine protection product or any marine protection product of a particular class:

(d) impose conditions on the release from detention of the ship or the release from seizure of a marine protection product:

(e) prohibit a ship from entering a port or calling at an offshore terminal.

(2) The powers under subsection (1) may be exercised where the Director believes on clear grounds that—

(a) there is an existing discharge from the ship of a harmful substance in breach of this Act, the Resource Management Act 1991, or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; or

(b) there is likely to be a discharge from the ship of a harmful substance in breach of this Act, the Resource Management Act 1991, or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; or

(c) ships of a particular class are likely to give rise to a discharge of a harmful substance in breach of this Act, the Resource Management Act 1991, or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; or

(ca) in relation to ballast water, and ships as defined in section 246A(3)(a),—

(i) there is an existing discharge from the ship of ballast water in breach of this Act; or

(ii) there is likely to be a discharge from the ship of ballast water in breach of this Act; or

(iii) ships of a particular class are likely to give rise to a discharge of ballast water in breach of this Act; or

(d) there has not been issued in respect of the ship or the marine protection product, as the case may be, a marine protection document as required by this Act or any regulations or marine protection rules made under this Act; or

(e) a marine protection document in respect of the ship or marine protection product, as the case may be, has expired; or

(f) any provision or condition of a marine protection document in respect of the ship, or marine protection product, as the case may be, is not being met; or

(g) the ship or the marine protection product presents an unreasonable threat of harm to the marine environment; or

(h) any conditions imposed under paragraph (b) or paragraph (d) of subsection (1) have not been complied with.

(3) The powers under subsection (1) may also be exercised where the Director believes on clear grounds that the master or crew are not familiar with essential shipboard procedures for the prevention of marine pollution or essential procedures on a ship, as defined in section 246A(3)(a), for the prevention of harm to the environment, human health, property, or resources from ballast water.

(4) Without limiting the generality of subsection (2), the Director may detain any ship to which section 232 applies if the owner of that ship has not provided a contract of insurance or other financial security in accordance with the provisions of that section.

(5) Nothing in this section shall permit the Director to detain a foreign ship where that detention would constitute a breach of any marine protection convention.

(6) Subject to subsections (7) and (8), any detention or seizure under subsection (1) shall be maintained for only such time as the grounds under subsection (2) which gave rise to the detention or seizure continue.

(7) If ships, marine protection products, or parts thereof are required for the purpose of evidence in any prosecution under a provision in this Act, the Resource Management Act 1991, or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, those ships, products, or parts thereof may be retained by the Director for such period as the Director considers necessary for that purpose.

(8) Any detention under subsection (4) shall be maintained until the Director is satisfied that either—

(a) the owner of the ship has complied with the obligation under section 232 to provide a contract of insurance or financial security; or

(b) such obligation to provide a contract of insurance or financial security is no longer appropriate as it has been determined that there is no liability to pay the amounts in respect of which the security was sought or all such amounts have been paid.

(9) The Director shall, if requested by the owner of a ship detained or a marine protection product seized under subsection (1), provide in writing to the owner the reasons for the detention or seizure.

(10) For the purpose of subsection (1), the Director shall notify any prohibitions or conditions to such persons as he or she considers necessary by such means of communication, whether or not of a permanent nature, as the Director considers appropriate in the circumstances.

(11) Any person in respect of whom any decision is taken under this section may appeal against that decision to the District Court under section 424.

Compare: 1990 No 98 s 21; 1992 No 75 s 14

Section 397(2)(a): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 397(2)(b): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 397(2)(c): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 397(2)(ca): inserted, on 8 September 2017, by section 86(15) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 397(3): amended, on 8 September 2017, by section 86(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 397(7): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 397(11): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

398 Costs of detention under section 397

(1) Where the Director acts under section 397 to detain a ship, the provisions of section 462 shall apply to the costs of and incidental to the detention.

(2) Where the Director acts under section 397 to seize a marine protection product, the Authority may recover from the owner of such marine protection product all reasonable costs of and incidental to such seizure.

(3) The Authority is liable to pay to the owner of a ship or a marine protection product compensation for any loss resulting from the Director unduly detaining the ship or maintaining the seizure of the marine protection product.

(4) The Authority is liable to pay to the owner of a ship or marine protection product compensation for any loss resulting from the Director unduly delaying the ship or the use of the marine protection product.

(5) Where the Director has taken action under section 397 on the information of a complainant and the information is subsequently found to be frivolous or vexatious, the complainant is liable to indemnify the Authority for all costs for which the Authority is liable under this section.

Offences

399 Failure to comply with Director's inspection or audit requirements

Every person commits an offence who, without reasonable excuse, fails to comply with any requirement of the Director under subsection (1) or subsection (3) of section 396.

Compare: 1990 No 98 s 44A; 1992 No 75 s 23

400 Contravention of prohibition or conditions

Every person commits an offence who, without reasonable excuse, acts in contravention of or fails to comply with any prohibition or condition under section 397.

Compare: 1990 No 98 s 53

401 Contravention of emergency marine protection rule

Every person commits an offence who, without reasonable excuse, acts in contravention of any emergency marine protection rule made by the Director under section 391.

Compare: 1990 No 98 s 53

Penalties

402 Penalties in respect of section 399

Every person who commits an offence against section 399 is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $10,000 and, if the offence is a continuing one, to a further fine not exceeding $2,000 for every day or part of a day during which the offence is continued:

(b) in the case of a body corporate, to a fine not exceeding $100,000 and, if the offence is a continuing one, to a further fine not exceeding $20,000 for every day or part of a day during which the offence is continued.

Section 402: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

403 Penalties in respect of sections 400 and 401

(1) Every person who commits an offence against section 400 is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000:

(c) in any case, to an additional penalty under section 409.

(2) Every person who commits an offence against section 401 is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $5,000:

(b) in the case of a body corporate, to a fine not exceeding $30,000.

Section 403(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 403(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Part 28
General offences and provisions in relation to offences and appeals under this Act

General offences

404 Obstruction of persons duly authorised by Director

(1) Every person commits an offence who obstructs, impedes, delays, hinders, or deceives or causes to be obstructed, impeded, delayed, hindered, or deceived, the Authority, its employees, the Director, or any other person who is duly authorised by the Authority or the Director, while the Authority, employee, Director, or other person is acting in the performance or exercise of any functions, duties, or powers conferred on it or him or her by or under this Act or any rules made under this Act.

(2) Subsection (1) shall apply only where the person obstructed or impeded produces evidence of his or her authority.

Compare: 1990 No 98 s 50

405 Failure to maintain accurate records

Every person commits an offence who contravenes any provision of this Act or of any regulation or rule made under this Act that requires that person—

(a) to make accurate entries in a record; or

(b) to maintain an accurate record; or

(c) to produce to the Authority or the Director an accurate record.

Compare: 1990 No 98 s 52; 1992 No 75 s 40

406 Communicating fraudulent, misleading, or false information

Every person commits an offence who,—

(a) by any means, provides to the Authority or to the Director information relevant to the Authority's or the Director's exercise of powers under this Act, or under regulations or rules made under this Act, knowing the information to be fraudulent, misleading, or false; or

(b) being an applicant for a maritime document, or a marine protection document, or an applicant for recognition of a document as a maritime document or a marine protection document, fails, without reasonable excuse, to provide to the Authority or the Director information known to that person which is relevant to the Authority's or the Director's exercise of powers under this Act, or under regulations or rules made under this Act; or

(c) being the holder of a maritime document, or the holder of a document recognised as a maritime document, fails, without reasonable excuse, to provide to the Authority or the Director information known to that person which is relevant to the condition specified in section 41(5).

Compare: 1990 No 98 s 49; 1992 No 75 s 26

Section 406 heading: amended, on 23 October 2013, by section 68(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 406(a): amended, on 23 October 2013, by section 68(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

407 Penalties

(1) Every person who commits an offence against section 404 is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $2,000:

(b) in the case of a body corporate, to a fine not exceeding $10,000.

(2) Every person who commits an offence against section 405 is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $5,000:

(b) in the case of a body corporate, to a fine not exceeding $30,000.

(3) Every person who commits an offence against section 406 is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $50,000.

Section 407(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 407(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 407(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 407(3)(a): amended, on 23 October 2013, by section 69(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 407(3)(b): amended, on 23 October 2013, by section 69(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

General provisions in respect of offences

408 Offences to be punishable on summary conviction

[Repealed]

Section 408: repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

409 Additional penalty for offence involving commercial gain

(1) In addition to any other penalty the court may impose under this Act, the court may, on convicting any person of an offence against section 33F, 33T, 33V, 64, 65, 67A, 67B, 68, 69A, 69B, 70, 237, 238, 263, 264, 277, 278, or 400, order that person to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of that offence if the court is satisfied that the offence was committed in the course of producing a commercial gain.

(2) For the purpose of subsection (1), the value of any gain shall be assessed by the court, and any amount ordered to be paid shall be recoverable in the same manner as a fine.

Compare: 1990 No 98 s 47

Section 409(1): amended, on 23 October 2013, by section 70 of the Maritime Transport Amendment Act 2013 (2013 No 84).

410 Liability of principal for acts of agents

(1) Where an offence is committed against this Act by any person acting as the agent or employee of another person, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under this Act in the same manner and to the same extent as if he, she, or it had personally committed the offence.

(2) Notwithstanding anything in subsection (1), where any proceedings are brought by virtue of that subsection, it shall be a good defence if the defendant proves,—

(a) in the case of a natural person (including a partner in a firm), that—

(i) he or she did not know nor could reasonably be expected to have known that the offence was to be or was being committed; or

(ii) he or she took all reasonable steps to prevent the commission of the offence:

(b) in the case of a body corporate, that—

(i) neither the directors nor any person involved in the management of the body corporate knew or could reasonably be expected to have known that the offence was to be or was being committed; or

(ii) the body corporate took all reasonable steps to prevent the commission of the offence:

(c) in all cases, that the defendant took all reasonable steps to remedy any effects of the act or omission giving rise to the offence.

(3) Where any body corporate is convicted of an offence against this Act, every director and every person concerned in the management of the body corporate shall be guilty of the like offence if it is proved—

(a) that the act that constituted the offence took place with his or her authority, permission, or consent; and

(b) that he or she knew or could reasonably be expected to have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

Compare: 1991 No 69 s 340

411 Limitation of proceedings

(1) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against this Act ends on the date that is 12 months after the date on which the offence was committed.

(2) The period of 12 months does not run while the person charged is beyond the limits and territorial sea of New Zealand.

(3) Subsection (1) is subject to subsection (2) and to any special provisions of this Act.

Section 411: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 411(1): amended, on 23 October 2013, by section 71 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 411(2): amended, on 23 October 2013, by section 71 of the Maritime Transport Amendment Act 2013 (2013 No 84).

412 Proof of exemption, etc

Any exception, exemption, proviso, excuse, or qualification in relation to any offence against this Act or any rules or regulations under this Act, whether it does or does not accompany in the same section the description of the offence, may be proved by the defendant, but need not be specified or negatived in any charge and, if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the prosecutor.

Compare: 1952 No 49 s 482

Section 412: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

413 Place where offences deemed to be committed

For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed either in the place in which the same actually was committed or in any place in which the offender may be.

Compare: 1952 No 49 s 483

414 Presumption as to master of ship

(1) Where, in any proceedings for an offence against this Act or any regulations made under this Act, the prosecutor alleges in any charge that any person was, or was not, the master of any ship at any specified time, the allegation shall be presumed to be true in the absence of proof to the contrary.

(2) The presumption in subsection (1) shall apply whether or not separate or further evidence is adduced by or on behalf of the prosecutor in support of the relevant allegation or presumption.

Compare: 1983 No 14 ss 106B, 106C; 1990 No 29 s 51

Section 414(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 414(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

415 Offences committed in foreign ports or on high seas by seafarers of New Zealand ships

(1) Whenever any complaint is made to any proper officer in a foreign country—

(a) that any person who is employed as a seafarer on any New Zealand ship has committed an offence against property or persons at any place outside New Zealand, whether on shore or afloat; or

(b) that any seafarer belonging to a New Zealand ship has committed an offence on the high seas,—

that proper officer may inquire into the case upon oath or affirmation, and may, if the case so requires, take any measures in his or her power for the purpose of placing the person alleged to have committed the offence under the necessary restraint and of sending that person as soon as practicable in safe custody to

New Zealand or, if any court in a country other than New Zealand is capable of taking cognisance of that offence, to that country.

(2) Any master of a New Zealand ship or pilot in command of a New Zealand aircraft in whose charge any person alleged to have committed an offence has been so placed shall, on the arrival of the ship or aircraft in New Zealand or, as the case may be, in the other country to which the ship or aircraft is bound, give the alleged offender into the custody of some member of the Police.

(3) The expense of placing any person referred to in subsection (1) under restraint, and of conveying him or her and any witnesses to New Zealand or any other country in any manner other than on board the ships to which they respectively belong, shall, where not paid as part of the costs of the prosecution, be paid by the Authority out of money appropriated by Parliament.

Compare: 1952 No 49 s 485

416 Compliance with rules

Compliance with any rule or regulation made under this Act shall not excuse the commission of an offence against this Act.

417 Evidence and proof

(1) In any proceedings for an offence against this Act, the following provisions shall apply:

(a) a copy of any maritime document or marine protection document or permit which is certified correct by the Director or any other employee of the Authority authorised in that behalf by the Director shall be sufficient, in the absence of proof to the contrary, to prove that document:

(b) the production of a certificate signed by the Director or any other employee of the Authority authorised in that behalf by the Director to the effect that on a specified date a person or organisation was or was not the holder of any maritime document or marine protection document or any permit or any specified type of maritime document or marine protection document shall be sufficient evidence of the matter certified until the contrary is proved:

(c) until the contrary is proved, it shall be presumed that every certificate purporting to have been certified or given under this section has been certified or given by the Director or any other employee of the Authority authorised in that behalf by the Director to certify documents or give certificates under this section.

(2) Without limiting any other method of proof, the production in any proceedings of a copy of—

(a) any rule purporting to have been made by the Minister under this Act; or

(b) any rule purporting to have been made by the Director under section 37 or section 391—

shall, in the absence of proof to the contrary, be sufficient evidence of the rule and the fact that it has been made in accordance with the relevant provisions of this Act.

Compare: 1990 No 98 s 71; 1992 No 75 s 30; 1993 No 90 s 6

418 Mode of service of summons on master or owner

(1) Where the master or owner of a ship is a defendant in any prosecution for an offence against any provision of this Act, then, notwithstanding any enactment, service on the defendant of any summons or other document shall be deemed to be effected for the purposes of the Criminal Procedure Act 2011—

(a) by being delivered personally to the agent of the ship on behalf of the defendant or being brought to the notice of that agent if that agent refuses to accept it on behalf of the defendant; or

(b) by being sent to the agent of the ship, by registered letter addressed to that agent on behalf of the defendant at that agent's last known or usual place of residence or that agent's place of business.

(2) A District Court Judge or Justice or Community Magistrate or the Registrar may direct that the summons or other document shall be served on the defendant in accordance with rules made under the Criminal Procedure Act 2011, where he or she is satisfied that it would not be impracticable to do so in the particular circumstances.

(3) Unless the contrary is shown, the time at which service shall be deemed to have been effected on the defendant shall be,—

(a) where service is effected in accordance with subsection (1)(a), the time when the summons or other document is personally delivered to the agent of the ship or brought to that agent's attention, as the case may be; or

(b) where service is effected in accordance with subsection (1)(b), the time when the letter would have been delivered to the agent of the ship in the ordinary course of post; and in proving service it shall be sufficient to prove that the letter was properly addressed and posted.

(4) *[Repealed]*

(5) Nothing in this section limits anything in section 458.

Section 418(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 418(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 418(2): amended, on 30 June 1998, by section 7 of the District Courts Amendment Act 1998 (1998 No 76).

Section 418(4): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

419 Proceedings for offences

(1) Proceedings for an offence against this Act or any regulations made under this Act may be brought by the Director.

(2) *[Repealed]*

(3) Where any fine imposed by the court in proceedings under this Act or regulations made under this Act is not paid on time, the court may direct the amount unpaid to be levied by distress and sale of any real or personal property involved in the committing of the offence.

Compare: 1974 No 14 s 60(1), (2), (6)

Section 419(2): repealed, on 19 December 1998, by section 4 of the Maritime Transport Amendment Act (No 2) 1998 (1998 No 116).

420 Offence under more than 1 enactment

(1) Where an act or omission constitutes an offence under this Act and under any other Act, the offender may be prosecuted and punished either under this Act or under that other Act.

(2) Where an act or omission constitutes an offence under 2 or more provisions of this Act, the offender may be prosecuted and punished under any of those provisions.

Compare: 1961 No 43 s 10

421 Application of fines

Notwithstanding any other enactment, where a person is convicted of an offence against section 237 or section 263 or section 264, the court before which that person is convicted may order that the whole or part of the fine, or other monetary penalty, imposed under this Act in respect of that offence be paid to such person or persons as the court thinks fit, to be applied towards meeting costs of—

(a) the removal, containment, rendering harmless, or dispersal of the harmful substance or waste or other matter; or

(b) the damage resulting from the discharge of the harmful substance or dumping of waste or matter; or

(c) both.

Compare: 1974 No 14 s 63; 1989 No 44 s 86

Infringement offences

422 Infringement offences

(1) In this Act, **infringement offence** means an offence specified as such in this Act or regulations made under this Act.

(2) Where any person is alleged to have committed an infringement offence, that person may either—

(a) be proceeded against by filing a charging document under section 14 of the Criminal Procedure Act 2011; or

(b) be served with an infringement notice as provided in section 423.

Compare: 1990 No 98 s 57

Section 422(1): amended, on 19 December 1998, by section 5 of the Maritime Transport Amendment Act (No 2) 1998 (1998 No 116).

Section 422(2)(a): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

423 Infringement notices

(1) The Director, any person duly authorised by the Director, any harbourmaster, or any enforcement officer appointed under section 33G, may issue an infringement notice to any person if he or she—

(a) observes the person committing an infringement offence; or

(b) has reasonable cause to believe the person is committing or has committed an infringement offence.

(1A) An infringement notice for an infringement offence against section 200B may be issued by the Director, a person duly authorised by the Director, a constable, a harbourmaster, or a person duly authorised by the regional council or other local authority in whose region or district the offence was committed.

(2) An infringement notice may be served—

(a) by delivering it personally to the person who appears to have committed the infringement offence; or

(b) by sending it by post addressed to him or her at his or her last known place of residence or business; or

(c) where the person is a holder of a maritime document or marine protection document, by serving it by post on that person at his or her last address for service provided under section 35 or section 269.

(3) An infringement notice sent to a person by post under paragraph (b) or paragraph (c) of subsection (2) shall be deemed to have been served on the person when it would have been delivered in the ordinary course of post.

(4) Every infringement notice shall be in the prescribed form and shall contain the following particulars:

(a) such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence:

(b) the amount of the infringement fee for that offence:

(c) the address at which the infringement fee may be paid:

(d) the time within which the infringement fee shall be paid:

(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957:

(f) a statement of the right of the person served with the notice to request a hearing:

(g) a statement of the consequences if the person served with the notice does not pay the infringement fee and does not make a request for a hearing:

(h) such other particulars as are prescribed in regulations made under this Act.

(5) Different forms of infringement notices may be prescribed in regulations made under this Act in respect of different kinds of infringement offences.

(6) Where an infringement notice has been issued under this section, proceedings in respect of the offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957, and in that case the provisions of that section shall, with the necessary modifications, apply.

Compare: 1990 No 98 s 58

Section 423(1): replaced, on 23 October 2013, by section 72(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 423(1A): inserted, on 19 December 1998, by section 6 of the Maritime Transport Amendment Act (No 2) 1998 (1998 No 116).

Section 423(1A): amended, on 23 October 2013, by section 72(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 423(1A): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 423(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Rights of appeal

424 Rights of appeal

(1) Where any other section of this Act provides that any person has a right of appeal under this section against a decision in respect of that person, that person may appeal to the District Court against that decision in accordance with this Part.

(2) It is hereby declared that the exercise of any power conferred on the Director by any section that confers a right of appeal of the kind referred to in subsection (1) is, except where that section specifies that the right of appeal applies to a particular decision or decisions, a decision in respect of a person within the meaning of that section and may be appealed against under this section.

(3) The owner of a ship, offshore installation, pipeline, maritime product, marine protection product, or other real or personal property shall, for the purposes of exercising a right of appeal under this section, be the person who is the owner of the ship, offshore installation, pipeline, maritime product, marine protection

product, or other real or personal property for the purposes of that Part which contains the section giving rise to the right of appeal.

Compare: 1990 No 98 s 66; 1991 No 116 s 5(1); 1992 No 75 s 29

Section 424(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

425 Procedure

(1) Every appeal under section 424 shall be brought, by originating application, not more than 28 days after the date on which the appellant is notified of the decision appealed against, or within such further period as the District Court may allow.

(2) In determining an appeal under section 424 the District Court may—

(a) hear all evidence tendered and representations made by or on behalf of any party to the appeal, whether or not that evidence would be otherwise admissible in that court; and

(b) either—

(i) confirm, reverse, or modify the decision appealed against, and make such orders and give such directions to the Authority, the Director, or the harbourmaster, as the case may require, as may be necessary to give effect to the court's decision; or

(ii) refer the matter back to the Authority, the Director, or the harbourmaster, as the case may require, with directions to reconsider the whole or any specified part of the matter.

(3) Any appeal under this section shall be by way of rehearing.

(4) Subject to this section, every such appeal shall be made and determined in accordance with the District Court Act 2016 and the rules of court made under that Act.

(5) Subject to section 427, the decision of the District Court shall be final.

Compare: 1990 No 98 s 67

Section 425(2)(b)(i): amended, on 23 October 2013, by section 73 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 425(2)(b)(ii): amended, on 23 October 2013, by section 73 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 425(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

426 Decision of Director or harbourmaster to continue in force pending appeal

(1) Every decision of the Director or the harbourmaster that is appealed against under section 52 or section 424 shall continue in force pending the determination of the appeal, and no person shall be excused from complying with any of the provisions of the Act or the decision on the ground that any appeal is pending.

(2) Notwithstanding that any appeal under section 52 or section 424 may have been determined in favour of the appellant, the Director may, subject to the same right of appeal, refuse to grant, revoke, suspend, disqualify, or otherwise deal with in accordance with the provisions of this Act any maritime document or marine protection document or any permit, any person to which or to whom the appeal related, or any maritime document or marine protection document or any permit or approval granted or restored in compliance with the decision of the District Court on the appeal, on any sufficient grounds supported by facts or evidence discovered since the hearing of the appeal.

Compare: 1990 No 98 s 68

Section 426 heading: amended, on 23 October 2013, by section 74(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 426(1): amended, on 23 October 2013, by section 74(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

427 Appeal to High Court on question of law

(1) Every party to an appeal under section 424 may appeal to the High Court on a question of law.

(2) Every appeal under this section shall be heard and determined in accordance with the rules of court.

Compare: 1990 No 98 s 69

428 Further appeal to Court of Appeal

(1) Every party to an appeal under section 427 may, with the leave of the High Court or (if that leave is declined) with special leave of the Court of Appeal, appeal to the Court of Appeal on that question of law.

(2) On any appeal under subsection (1), the Court of Appeal may make such order or determination as it thinks fit.

(3) The decision of the Court of Appeal on an appeal under this section, or on any application for leave to appeal to the court, shall be final.

(4) Subject to this section, the procedure in respect of any appeal under this section shall be in accordance with the rules of court.

Compare: 1990 No 98 s 70

Part 29
Maritime New Zealand

Part 29 heading: amended, on 1 July 2005, by section 11(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Provisions relating to Authority

429 Maritime New Zealand continued

(1) There shall continue to be an authority known as Maritime New Zealand.

(2) The Authority is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.

(3) The Crown Entities Act 2004 applies to the Authority except to the extent that this Act expressly provides otherwise.

(4) The Authority is owned by the Crown.

(5) *[Repealed]*

(6) *[Repealed]*

(7) *[Repealed]*

(8) *[Repealed]*

(9) *[Repealed]*

(10) *[Repealed]*

(11) The provisions of Schedule 1 shall apply in relation to the Authority.

Compare: 1993 No 89 s 3

Section 429 heading: amended, on 1 July 2005, by section 11(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 429(1): amended, on 23 October 2013, by section 75 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 429(1): amended, on 1 July 2005, by section 11(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 429(2): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 429(3): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 429(4): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 429(5): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 429(6): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 429(7): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 429(8): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 429(9): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 429(10): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

429A Membership of Authority

(1) The Authority must have 5 members appointed under section 28(1)(a) of the Crown Entities Act 2004.

(2) Members of the Authority are the board for the purposes of the Crown Entities Act 2004.

(3) The Minister may only appoint as members persons who—

(a) are New Zealand citizens or permanent residents of New Zealand; and

(b) the Minister considers will represent the public interest in maritime matters.

(4) Before appointing 2 of the members, the Minister must request, from such organisation or organisations as the Minister considers represent those who have a substantial interest in the maritime industry in New Zealand, the names of persons such organisation considers or organisations consider proper candidates for appointment to the Authority.

(5) A person may not hold office as a member concurrently with any office or appointment under the Transport Accident Investigation Commission Act 1990.

(6) Neither the Director nor any other employee of the Authority may be a member of the Authority.

(7) This section does not limit sections 29 and 30 of the Crown Entities Act 2004.

Section 429A: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

430 Objective of Authority

The objective of the Authority is to undertake its safety, security, marine protection, and other functions in a way that contributes to the aim of achieving an integrated, safe, responsive, and sustainable transport system.

Section 430: substituted, on 1 December 2004, by section 8 of the Maritime Transport Amendment Act 2004 (2004 No 98).

431 Functions of Authority

(1) The Authority has the following functions:

(a) to promote maritime safety and security, and protection of the marine environment in New Zealand:

(b) to promote maritime safety and security, and protection of the marine environment beyond New Zealand in accordance with New Zealand's international obligations:

(c) *[Repealed]*

(d) *[Repealed]*

(e) to ensure the provision of appropriate distress and safety radio communication systems and navigational aids for shipping:

(f) to ensure New Zealand's preparedness for, and ability to respond to, marine oil pollution spills:

(g) to license ships, their operation, and their crews:

(h) *[Repealed]*

(i) to co-operate with, or to provide advice and assistance to, any government agency or local government agency when requested to do so by the Minister, but only if the Minister and the Authority are satisfied that the performance of the Authority's functions and duties will not be compromised:

(ia) to provide information and advice with respect to maritime transport and marine protection, and to foster appropriate information education programmes with respect to maritime transport and marine protection, that promote its objective:

(j) to investigate and review maritime transport accidents and incidents and maritime security breaches and incidents:

(k) to maintain the New Zealand Register of Ships:

(l) to maintain and preserve records and documents relating to the Authority's functions:

(m) to advise the Minister on technical maritime safety policy:

(n) to perform such other functions as are conferred on it by this Act or any other Act.

(2) The Authority shall carry out such other maritime functions, and such maritime duties, as the Minister may from time to time direct in accordance with section 112 of the Crown Entities Act 2004.

(3) The Authority must, if directed by the Minister under section 14C of the Civil Aviation Act 1990, do any or all of the following:

(a) maintain and operate the search and rescue co-ordination centre established under section 14B(1)(a) of the Civil Aviation Act 1990:

(b) co-ordinate, or participate in the co-ordination of, any search and rescue operation specified in section 14B(1)(a) of the Civil Aviation Act 1990:

(c) perform, or participate in the performance of, any search and rescue operation specified in section 14B(1)(a) of the Civil Aviation Act 1990:

(d) exercise any or all of the powers of the Minister under section 14B(1)(b) and (c) and section 14B(2) of the Civil Aviation Act 1990.

Compare: 1993 No 89 s 5

Section 431(1): amended, on 1 December 2004, by section 9(1) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 431(1)(a): substituted, on 1 December 2004, by section 9(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 431(1)(b): substituted, on 1 December 2004, by section 9(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 431(1)(c): repealed, on 1 December 2004, by section 9(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 431(1)(d): repealed, on 1 December 2004, by section 9(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 431(1)(h): repealed, on 5 May 2003, by section 35(3) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 431(1)(i): substituted, on 1 December 2004, by section 9(3) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 431(1)(ia): inserted, on 1 December 2004, by section 9(3) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 431(1)(j): amended, on 6 April 2004, by section 81(8) of the Maritime Security Act 2004 (2004 No 16).

Section 431(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 431(3): added, on 1 December 2004, by section 9(4) of the Maritime Transport Amendment Act 2004 (2004 No 98).

432 Authority to comply with policy directions

[Repealed]

Section 432: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

433 Authority to have powers of natural person

[Repealed]

Section 433: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

434 Powers of entry in respect of existing works

(1) Subject to subsection (3), the Authority may—

(a) enter upon any land for the purpose of gaining access to cables, wires, navigational aids, or other equipment owned by the Authority, being equipment installed before the date of commencement of this section; and

(b) perform any act or operation necessary for the purpose of inspecting, maintaining, operating, repairing, or replacing such equipment.

(2) A certificate given under the hand of the Director containing a statement that any equipment of the type referred to in subsection (1) was installed before the date of commencement of this section shall be admissible in any proceedings and shall, in the absence of proof to the contrary, constitute proof of that statement.

(3) The power to enter land conferred by subsection (1) shall be subject to the following conditions:

(a) entry to the land shall be made only by an officer, employee, or agent of the Authority authorised by it in writing, or by persons under the immediate control of such an officer, employee, or agent:

(b) reasonable notice of the intention to enter the land shall be given, and the provisions of Part 10 of Te Ture Whenua Maori Act 1993 shall apply in respect of notices served in the circumstances set out in that Part:

(c) entry shall be made at reasonable times:

(d) the officer, employee, or agent shall have with him or her, and shall produce on initial entry and subsequently if required to do so, evidence of his or her identity and authority.

(4) Subsection (3) shall not apply where the entry is necessary in circumstances of probable danger to life or property.

(5) Any equipment owned by the Authority that is fixed to or installed over or under land not owned by the Authority shall be deemed to be lawfully fixed or installed and shall continue to be fixed or installed until the Authority otherwise decides, and no person other than the Authority shall have any interest in any such equipment by reason only of having an interest in the land.

Compare: 1993 No 89 s 8

435 Authority to consider delegating or contracting out of functions and powers

Subject to this Act, the Authority shall, in the course of performing its functions and powers, consider whether it could most efficiently and effectively perform those functions and powers by means of its own operations or by delegating or contracting out those operations to appropriate persons selected after an appropriate competitive process.

Compare: 1993 No 89 s 9

436 Restriction applying to statement of intent

(1) *[Repealed]*

(2) *[Repealed]*

(3) No provision specifying any liabilities the Authority intends to incur may be included in a statement of intent without the concurrence of the Minister of Finance.

Section 436: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 436 heading: replaced, on 1 July 2014, by section 72 of the Crown Entities Amendment Act 2013 (2013 No 51).

Section 436(1): repealed, on 1 July 2014, by section 72 of the Crown Entities Amendment Act 2013 (2013 No 51).

Section 436(2): repealed, on 1 July 2014, by section 72 of the Crown Entities Amendment Act 2013 (2013 No 51).

437 Service charter

(1) The Authority shall prepare and make available to the public a service charter including (but not limited to)—

(a) a statement by the Authority of the standards of service which the public can expect to apply to the carrying out of functions of the Authority and

the Director under this Act and any regulations or rules made under this Act; and

(b) details of the procedures to be followed under the service charter by a person who alleges that the standards were not met; and

(c) details of the remedies that are available under the service charter to the person affected, where it is established by that person, to the satisfaction of the Authority, that the standards were not met; and

(d) provision for the appointment by the Authority of an appropriate independent person to assist in the resolution of disputes arising in respect of alleged failures to meet the standards of service specified in the service charter.

(2) The service charter may make provision for a person to be appointed as a deputy to the person appointed under the provision referred to in subsection (1)(d), and for the functions, duties, and powers of the deputy.

(3) The Authority, the Director, any employee or agent of the Authority, and any agent of the Director shall have a public duty to observe the provisions of the service charter.

(4) If the Authority fails to comply with subsection (1), the Minister shall prepare the service charter and shall make it available to the public.

(5) The Authority (in any case except where the Minister has prepared it) and the Minister (where the Minister has prepared it) may from time to time, in writing, amend the service charter, and shall make such amendments available to the public.

(6) The Authority shall not amend the service charter under subsection (5) if the service charter is prepared by the Minister under subsection (4).

(7) Nothing in the service charter shall limit or restrict any right to make any complaint or to bring any proceedings under any Act or rule of law.

Compare: 1993 No 89 s 11

438 Use of words "Maritime Safety Authority" and "Maritime New Zealand"

(1) No company or other body shall be incorporated or registered under a name that contains the words "Maritime Safety Authority" or "Maritime New Zealand" or under any name that, in the opinion of the Registrar of Companies, or the appropriate registering authority within the meaning of section 2 of the Flags, Emblems, and Names Protection Act 1981, so resembles such a name as to be likely to deceive.

(2) Nothing in subsection (1) shall apply to the Authority or to any person who is appropriately authorised by the Authority.

Compare: 1993 No 89 s 12

Section 438 heading: amended, on 1 July 2005, by section 11(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 438(1): amended, on 1 July 2005, by section 11(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

439 Director of Maritime New Zealand

(1) The Authority shall from time to time appoint a chief executive of the Authority, who shall be known as the Director of Maritime New Zealand.

(2) The Director shall have and may exercise such functions and powers as may be conferred or imposed on the Director by this Act or any other Act, or regulations or rules made under this Act or any other Act, and such functions and powers as may be delegated to the Director by the Authority under section 73 of the Crown Entities Act 2004 or any other Act.

(3) Without limiting subsection (2), the Director shall—

(a) exercise control over entry into the maritime transport system through the granting of maritime documents and marine protection documents under this Act or any other Act; and

(b) take such action as may be appropriate in the public interest to enforce the provisions of this Act or any other Act, and of regulations and rules made under this Act or any other Act, including the carrying out or requiring of inspections and audits; and

(c) monitor adherence, within the maritime transport system, to any regulatory requirements relating to—

(i) safety and security, including (but not limited to) personal security:

(ii) access and mobility:

(iii) public health:

(iv) environmental sustainability:

(v) any other matter; and

(d) ensure regular reviews of the maritime transport system to promote the improvement and development of its safety and security; and

(e) promote compliance with safety and maritime pollution standards in the maritime transport system.

(4) In performing or exercising any functions or powers in relation to—

(a) the granting of maritime or marine protection documents; or

(b) the suspension of maritime or marine protection documents; or

(c) the revocation of maritime or marine protection documents; or

(d) the granting of exemptions; or

(e) the enforcement of the provisions of this Act or any other Act, or of rules or regulations made under any such Act,—

in respect of any particular case, the Director shall act independently and shall not be responsible to the Minister or the Authority for the performance or exercise of such functions or powers.

Compare: 1993 No 89 s 13

Section 439 heading: amended, on 1 July 2005, by section 11(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 439(1): amended, on 1 July 2005, by section 11(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 439(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 439(3)(b): amended, on 1 December 2004, by section 10 of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 439(3)(c): added, on 1 December 2004, by section 10 of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 439(3)(d): added, on 1 December 2004, by section 10 of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 439(3)(e): added, on 1 December 2004, by section 10 of the Maritime Transport Amendment Act 2004 (2004 No 98).

440 Acting Director of Maritime New Zealand

(1) In the case of absence from duty of the Director (from whatever cause arising) or on the occurrence from any cause of a vacancy in that position (whether by reason of death, resignation, or otherwise) and from time to time while the absence or vacancy continues, all or any of the powers and duties of the Director or pertaining to the position may be exercised and performed by—

(a) any other employee for the time being directed by the Authority to exercise and perform them; or

(b) any other person for the time being appointed by the Authority to exercise and perform them,—

whether the direction has been given or the appointment has been made before the absence or vacancy occurs or while the absence or vacancy continues.

(2) No such direction or appointment, and no acts done by any employee or other person acting pursuant to any such direction or appointment, shall in any proceedings be questioned on the ground that the occasion for the direction or appointment had not arisen or had ceased, or on the ground that the employee or other person has not been appointed to any position to which the direction or appointment relates.

Compare: 1993 No 89 s 14

Section 440 heading: amended, on 1 July 2005, by section 11(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

General provisions

441 Delegation of Minister's functions or powers to Authority

(1) The Minister may from time to time, either generally or particularly, delegate to the Authority all or any of the Minister's functions and powers under this Act or any other Act, or under any regulations or rules made under this Act or any other Act.

(2) Every delegation under this section shall be in writing.

(3) No delegation under this section shall include the power to delegate under this section.

(4) The power of the Minister to delegate under this section—

(a) is subject to section 451(8) and to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the Minister's functions or powers; but

(b) does not limit any power of delegation conferred on the Minister by any other Act.

(5) Subject to any general or special directions given or conditions imposed by the Minister, the Authority may exercise any functions or powers so delegated to the Authority in the same manner and with the same effect as if they had been conferred on the Authority directly by this section and not by delegation.

(6) Where the Authority purports to act pursuant to any delegation under this section, the Authority shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(7) No such delegation shall affect or prevent the performance of any function or the exercise of any power by the Minister, nor shall any such delegation affect the responsibility of the appropriate Minister for the actions of any person acting under the delegation.

Compare: 1993 No 89 s 15

442 Restriction on delegation of functions and powers by Authority

(1) The Authority must not delegate any powers or functions delegated to the Authority by the Minister without the written consent of the Minister.

(2) Sections 73 to 76 of the Crown Entities Act 2004 otherwise apply.

Section 442: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

443 Delegation of Director's functions or powers to employees of Authority

(1) The Director may from time to time, either generally or particularly, delegate to any employee of the Authority any of the Director's functions and powers under this Act or any other Act, or under any regulations or rules made under this Act or any other Act, including functions or powers delegated to the Director under this Act or any other Act.

(2) *[Repealed]*

(3) No delegation under this section shall include the power to delegate under this section.

(4) Notwithstanding subsection (1), the Director shall not delegate—

(a) *[Repealed]*

(b) the power under section 44 or section 273 to revoke a maritime document or a marine protection document.

(5) The provisions of sections 73(4) and 74 to 76 of the Crown Entities Act 2004 apply as if references to the board were references to the Director, with all necessary modifications.

(6) Any delegation under this section may be made to a specified employee of the Authority or to employees of a specified class, or to the holder or holders for the time being of a specified office or specified class of offices of the Authority.

(7) Every delegation under this section, until it is revoked, continues in force according to its tenor, despite the fact that the employee of the Authority by whom it was made may cease to hold office, and continues in effect as if made by the employee for the time being holding that office.

Compare: 1993 No 89 s 17

Section 443(2): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 443(4)(a): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 443(5): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 443(6): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 443(7): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

444 Delegation of Director's functions or powers to persons outside Authority

(1) *[Repealed]*

(2) Subject to this section, the Director may from time to time, either generally or particularly, delegate to any person who is not an employee of the Authority any of the Director's functions and powers under this Act or any other Act, or under any regulations or rules made under this Act or any other Act, other than—

(a) the power under section 44 or section 273 to revoke maritime documents or marine protection documents; or

(b) the power under section 46 or section 274 to suspend or revoke maritime documents or marine protection documents; or

(c) the power under section 52 to suspend seafarers; or

(d) the power under section 55 or section 197 or section 397 to detain ships or maritime products or marine protection products; or

(e) the power under section 423 to issue infringement notices.

(3) Every delegation under this section shall be in writing.

(4) No delegation shall be made under this section without the written consent of the Minister.

(5) In any case where the Director has delegated any functions or powers to any person under this section, that person may, with the prior approval in writing of the Minister, delegate to any other person such of those functions or powers as are so approved.

(6) The provisions of sections 73(4) and 74 to 76 of the Crown Entities Act 2004 apply as if references to the board were references to the Director, and with all necessary modifications.

(7) Any delegation under this section may be made to a specified person or persons of a specified class or to the holder or holders for the time being of a specified office or specified class of office.

(8) Every delegation under this section shall be given for a specified period but in any event shall be revocable at will.

(9) *[Repealed]*

(10) *[Repealed]*

(11) Every person purporting to act under any delegation under this section shall, when reasonably requested to do so, produce evidence of his or her authority to so act.

(12) Any person who exercises any function or power under a delegation made under this section or under section 73 of the Crown Entities Act 2004 may charge the person in respect of whom the function or power is exercised a reasonable fee in respect of the exercise of that function or power.

Compare: 1993 No 89 s 18

Section 444 heading: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 444(1): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 444(5): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 444(6): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 444(9): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 444(10): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 444(12): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Part 30
Miscellaneous provisions applying to this Act generally

Regulations

445 Regulations for fees and charges

(1) Without limiting the power to make regulations conferred by any other section of this Act, but subject to the provisions of this Act, the Governor-General may from time to time make regulations prescribing, or providing for the fixing of, fees or charges, or both, for the following purposes:

(a) to provide funds for the establishment, maintenance, and operation of facilities, works, goods, and services under this Act:

(b) to meet, or assist in meeting, the costs and expenses incurred by the Authority, the Director, the Maritime Appeal Authority, or the Crown in the exercise of functions or powers, or in the performance of duties, or the provision of services under this Act:

(c) to meet, or assist in meeting, the costs and expenses incurred by the Authority, the Director, or the Crown in providing goods, services, facilities, or works for maritime purposes or for the purposes of protecting the marine environment.

(2) Different rates of fees or charges, or both, may be so prescribed or fixed in respect of different classes of persons, ships, offshore installations, pipelines, maritime products, marine protection products, or any other property or item, or on the basis of different times of use, or on any other differential basis.

(3) Any regulation made under subsection (1) may—

(a) specify the persons by whom, and to whom, any fees or charges, or both, are payable:

(b) prescribe, or provide for the fixing of, additional fees or charges, or both, for services or work carried out outside normal working hours, at weekends, or on statutory holidays:

(c) prescribe, or provide for the fixing of, charges for reimbursement of travelling time, accommodation and other expenses:

(d) provide for the refund, waiver, or rebate or enable the refund, waiver, or rebate, of any fee or charge, or both:

(e) fix, or allow the fixing, of a date by which any fee or charge is to be paid:

(f) provide for, or allow the fixing of, a discount for early payment of any fee or charge as a penalty for late payment, or both:

(g) prescribe any returns, and the conditions relating to such returns, to be made by persons by whom any fees or charges are payable.

Compare: 1990 No 98 s 38; 1992 No 75 s 20

Section 445(3)(d): amended, on 23 October 2013, by section 76(1)(a) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 445(3)(d): amended, on 23 October 2013, by section 76(1)(b) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 445(3)(e): amended, on 23 October 2013, by section 76(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 445(3)(f): amended, on 23 October 2013, by section 76(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 445(3)(g): amended, on 23 October 2013, by section 76(4) of the Maritime Transport Amendment Act 2013 (2013 No 84).

445A Text of certain marine protection conventions

The Governor-General may by Order in Council—

(a) set out the English texts of the following agreements as adopted by New Zealand:

(i) International Convention on Civil Liability for Bunker Oil Pollution Damage done at London on 23 March 2001 (**Bunker Oil Convention**):

(ii) International Convention on Civil Liability for Oil Pollution Damage done at Brussels on 29 November 1969 (**CLC Convention**):

(iii) International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties done at Brussels on 29 November 1969 (**Intervention Convention**):

(iv) Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil done at London on 2 November 1973 (**Intervention Protocol**):

(b) keep the texts of those agreements up to date.

Section 445A: inserted, on 23 October 2013, by section 77 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Provisions in respect of rules under this Act

446 Procedure for making of rules by Minister

Before making any rule under this Act, the Minister shall—

(a) publish a notice of his or her intention to make the rule in the *Gazette*, and any other media the Minister considers appropriate; and

(b) give interested persons a reasonable time, which shall be specified in the notice published under paragraph (a), to make submissions on the proposal; and

(c) consult with such persons, representative groups within the maritime industry or elsewhere, government departments, Crown entities, and in the case of rules made under Part 4 (to the extent that the rules relate to pilotage or harbourmasters) or Part 27 with such regional councils or

other local authorities, as the Minister in each case considers appropriate.

Compare: 1990 No 98 s 34(1)

Section 446(a): replaced, on 23 October 2013, by section 78 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 446(c): amended, on 9 June 1999, by section 35 of the Maritime Transport Amendment Act 1999 (1999 No 68).

446A Procedure for making of rules by Governor-General

Before recommending the making of any rule under this Act by the Governor-General, the Minister must have regard to the matters set out in section 39(2).

Section 446A: inserted, on 23 October 2013, by section 79 of the Maritime Transport Amendment Act 2013 (2013 No 84).

447 Procedure for making of emergency rules by Director

Before making any emergency rule under section 37 or section 391, the Director shall consult with such persons, representative groups within the maritime industry or elsewhere, government departments, Crown entities, and, in the case of rules made under Part 27, with such regional councils, as the Director in each case considers appropriate.

Compare: 1990 No 98 s 35(1)

448 Provisions in respect of rules generally

(1) Every rule made under this Act shall—

(a) be signed by the Minister, Governor-General, or Director (as appropriate); and

(b) contain a statement specifying the objective of the rule and the extent of any consultation under this Act; and

(c) set out fully the requirements of the rule, except where by reason of size or length certain information is incorporated in the rule by reference under section 452.

(2) Subject to section 449, notice of the making of a rule under this Act shall be given in the *Gazette* and the rule shall be made available by the Authority for purchase by members of the public at a reasonable price, and the notification shall specify a place where the rule is available for inspection free of charge and for purchase.

(3) *[Repealed]*

(4) Subject to section 449, every rule made under section 37 or section 391 by the Director shall come into force on the date of its notification in the *Gazette*.

Compare: 1990 No 98 s 32

Section 448(1)(a): replaced, on 23 October 2013, by section 80(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 448(3): repealed, on 23 October 2013, by section 80(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

449 Notification of emergency rules in certain circumstances

(1) Where for reasons of safety, or because of the imminence of the threat to the marine environment, as the case may be, it is in the opinion of the Director impracticable to give notice in the *Gazette* under section 448(2) of a rule made under section 37 or section 391 by the Director, the Director may notify such persons as he or she considers appropriate of the making of the rule and such rule shall immediately upon such notification come into force in respect of any person or persons notified and in respect of that person or those persons only.

(2) Notification may be given by the Director under subsection (1) by telephone, facsimile, or such other manner as the Director considers appropriate.

Compare: 1990 No 98 s 35(3), (4)

450 Other provisions in respect of emergency rules

(1) A rule made under section 37 or section 391 by the Director shall be in force for such period as is specified in the rule which shall not exceed 90 days, and may be renewed once only for a further period not exceeding 30 days.

(2) If any rule made under section 37 or section 391 by the Director is inconsistent with or repugnant to any rule made by the Minister under this Act, the rule made by the Director shall prevail.

Compare: 1990 No 98 s 35(5), (6)

451 Further general provisions in respect of rules

(1) Any rules made under this Act may be made so that different rules shall apply with respect to different classes of persons, organisations, ships, offshore installations, pipelines, maritime products, maritime-related services, marine protection products, or of any other real or personal property, or with respect to the same class of person, organisation, ship, offshore installation, pipeline, maritime product, maritime-related service, marine protection product, or of any other property or item in different circumstances.

(2) Any rule made under this Act may apply—

(a) generally throughout New Zealand, New Zealand waters, or New Zealand continental waters (as defined in section 222(1)):

(b) within any specified part or parts of New Zealand, New Zealand waters, or New Zealand continental waters:

(c) in respect of New Zealand ships, wherever they may be.

(2A) Except as otherwise expressly provided, where a rule applies to ships, it applies to New Zealand ships wherever they may be.

(3) The commencement of any rule may be wholly suspended until it is applied by the Minister by notice in the *Gazette*.

(4) A rule made under this Act may—

(a) require or provide for a matter to be determined, undertaken, or approved by the Authority, the Director, or any other person; and

(b) empower the Agency, the Director, or any other person to impose requirements or conditions as to the performance of an activity or activities.

(5) No breach of any rule made under this Act shall constitute an offence against this Act unless that offence is prescribed in regulations made under this Act or is expressly specified by this Act to be an offence against this Act.

(5A) A rule made by the Governor-General under this Act is a legislative instrument for the purposes of the Legislation Act 2012.

(6) Any other rule made under this Act is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

(7) So far as the bylaws of any local authority are inconsistent with or repugnant to any rule in force in the same locality, the bylaws shall be construed subject to the rule.

(8) Notwithstanding section 28 of the State Sector Act 1988, the Minister shall not delegate his or her power to make rules under this Act.

Compare: 1990 No 98 s 28(2)–(9)

Section 451(1): amended, on 23 October 2013, by section 81(1) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 451(2): replaced, on 23 October 2013, by section 81(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 451(2A): inserted, on 23 October 2013, by section 81(2) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 451(4): replaced, on 23 October 2013, by section 81(3) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 451(5): amended, on 9 June 1999, by section 36(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 451(5A): inserted, on 23 October 2013, by section 81(4) of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 451(6): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 451(6): amended, on 23 October 2013, by section 81(5) of the Maritime Transport Amendment Act 2013 (2013 No 84).

452 Incorporation by reference

(1) The following, whether in written or electronic form, may be incorporated by reference in a rule made by the Minister, the Governor-General, or the Director:

(a) standards, requirements, or recommended practices of an international or national organisation:

(b) standards, requirements, or rules in force in any other jurisdiction:

(c) standards, requirements, or rules—

(i) of any classification society or similar organisation; or

(ii) of any maritime sporting or maritime recreational organisation; or

(iii) of the NZ Standards Organisation, or a body or organisation outside New Zealand that has functions corresponding to the functions of the NZ Standards Organisation; or

(iv) of a specialist body or organisation:

(d) any other material or document that, in the opinion of the Minister or the Director, is too large or impractical to be printed as part of the rule.

(2) Material may be incorporated by reference in a rule—

(a) in whole or in part; and

(b) with modifications, additions, or variations specified in the rule.

(3) A copy of any material incorporated by reference in rules, including any amendment to, or replacement of, the material, must be—

(a) certified as a correct copy of the material by the Minister or the Director (as the case may be); and

(b) retained by the Authority.

(4) Any material incorporated in a rule by reference under subsection (1) is to be treated for all purposes as forming part of the rule; and, unless otherwise provided in the rules, every amendment to any material incorporated by reference under subsection (1) that is made by the person or organisation originating the material is, subject to subsections (5) and (6), to be treated as being a part of the rule.

(5) All material incorporated by reference under subsection (1) or (2) must be made available at the head office of the Authority for inspection by the public free of charge.

(6) The Authority must give notice in the *Gazette* and on the Authority's Internet site stating—

(a) that the material is incorporated in the rule and the date on which the rule was made; and

(b) that the material is available for inspection during working hours, free of charge; and

(c) the place where the material can be inspected; and

(d) that copies of the material can be purchased; and

(e) the place where, or the person from whom, the material can be purchased; and

(f) if copies of the material are available in other ways, the details of where or how the material can be accessed or obtained.

(7) Part 2 of the Legislation Act 2012 does not apply to material incorporated by reference in a rule or to an amendment to, or a replacement of, that material.

(8) Nothing in section 41 of the Legislation Act 2012 requires material that is incorporated by reference in a rule to be presented to the House of Representatives.

(9) Subsections (1) to (8) do not affect the application of sections 29 to 32 of the Standards and Accreditation Act 2015.

Compare: 1990 No 98 s 36

Section 452: replaced, on 23 October 2013, by section 82 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 452(1)(c)(iii): amended, on 1 March 2016, by section 45(1) of the Standards and Accreditation Act 2015 (2015 No 91).

Section 452(5): amended, on 16 December 2017, by section 38 of the Maritime Transport Amendment Act 2017 (2017 No 48).

Section 452(9): amended, on 1 March 2016, by section 45(1) of the Standards and Accreditation Act 2015 (2015 No 91).

Powers of entry

453 General power of entry

(1) Subject to subsections (3) and (4), every person duly authorised by the Director may, at any reasonable time or times, go on board any ship or enter any building or place for the purpose of carrying out his or her functions, duties, or powers under this Act or any regulations or rules made under this Act.

(2) Subject to subsections (3) and (4), but without limiting the power conferred by subsection (1), every person duly authorised by the Director who has reasonable grounds to believe that—

(a) any breach of this Act or of any regulations or rules made under this Act is being or about to be committed; or

(b) a condition imposed under any maritime document or marine protection document is not being complied with; or

(c) a situation exists within the maritime system or is about to exist that constitutes a danger to persons or property or a threat to the marine environment—

may at any reasonable time go on board any ship, or enter any building or place, and carry out an inspection to determine whether or not a matter referred to in paragraphs (a) to (c) exists.

(3) No such duly authorised person shall enter a dwellinghouse, a marae, or a building associated with a marae under subsection (1), except with—

(a) the consent of an occupier; or

(b) a warrant issued under section 454.

(4) Where a warrant under section 454 has been issued to a duly authorised person subject to conditions, the duly authorised person—

(a) shall not enter the dwellinghouse, marae, or building associated with a marae, specified in the warrant otherwise than in accordance with the conditions; and

(b) shall in all other respects comply with the conditions.

(5) Subject to subsection (4), a duly authorised person exercising the powers of inspection conferred by subsection (1) may use such force in going on, into, or under the place concerned (whether by breaking down a door or otherwise), or in breaking open anything in the place, as is reasonable in the circumstances.

Compare: 1957 No 87 s 198(3); 1990 No 98 s 24

Section 453(5): amended, on 1 October 2012, by section 279(1) of the Search and Surveillance Act 2012 (2012 No 24).

454 Warrant to inspect dwellinghouse, marae, etc

(1) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) who, on an application made by an authorised person in the manner provided for an application for a search warrant in subpart 3 of Part 4 of that Act, is satisfied that entry is essential to enable the inspection of a place referred to in section 453(3) to be carried out, may issue a warrant to the authorised person that authorises that person to enter the place.

(2) The provisions of Part 4 of the Search and Surveillance Act 2012 (except subpart 2) apply.

(3) Despite subsection (2), sections 118 and 119 of the Search and Surveillance Act 2012 apply only in respect of a constable.

(4) In this section and section 455, **authorised person** means a person authorised by the Director.

Section 454: replaced, on 1 October 2012, by section 280 of the Search and Surveillance Act 2012 (2012 No 24).

455 Entry in respect of offences

(1) Subject to subsection (2), an issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) may issue a warrant to enter and search a place if, on an application made by an authorised person in the manner provided in subpart 3 of Part 4 of that Act, the issuing officer is satisfied that there are reasonable grounds for believing that there is on or in the place (being a place specified in the application) any thing—

(a) in respect of which an offence against this Act has been or may have been committed; or

(b) that is or may be evidence of the commission of an offence against this Act; or

(c) that is intended to be used for the commission of an offence against this Act.

(2) The provisions of Part 4 of the Search and Surveillance Act 2012 apply.

(3) Despite subsection (2), sections 118 and 119 of the Search and Surveillance Act 2012 apply only in respect of a constable.

Section 455: replaced, on 1 October 2012, by section 280 of the Search and Surveillance Act 2012 (2012 No 24).

456 Duties on exercising power of entry

[Repealed]

Section 456: repealed, on 1 October 2012, by section 279(2) of the Search and Surveillance Act 2012 (2012 No 24).

457 Additional powers

(1) A person lawfully exercising the powers conferred by section 453 may make or take copies of any document or any information recorded or stored in a computer or other device, and for that purpose may take possession of and remove any document, tape, or disk from the place where it is kept for such period of time as is reasonable in the circumstances, or may require a person to reproduce, or assist the person duly authorised by the Director to reproduce, in usable form, information recorded or stored in a computer or other device.

(2) *[Repealed]*

Section 457(1): amended, on 1 October 2012, by section 279(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 457(2): repealed, on 1 October 2012, by section 279(4) of the Search and Surveillance Act 2012 (2012 No 24).

Service of documents

458 Service of documents

Where for the purposes of this Act any document is to be served on, or any notice, notification, or instructions is or are to be given to, any person, that document may be served and any notice, notification, or instructions may be given,—

(a) in any case, by delivering a copy personally to the person concerned or by leaving a copy at his or her last known place of abode; or

(b) if the person concerned is a master of a ship, where there is a master, or a person belonging to a ship, by leaving a copy for him or her on board the ship with the person appearing to be in command or charge of the ship

and explaining to that person the nature of the document, notice, notification, or instructions; or

(c) if the person concerned is a master of a ship, where there is no master and the ship is within the limits or territorial sea of New Zealand, on the owner of the ship resident in New Zealand, on the agent of the ship in New Zealand, or, where no such agent is known or can be found, by fixing a copy to the mast of the ship or (if there is no mast) to some other conspicuous part of the ship; or

(d) in any other manner provided for service of that document, notice, notification, or instruction by this Act or by rules or regulations made under this Act.

Compare: 1952 No 49 s 498

Detention of ship and distress on ship

459 Recovery of fines, etc, by distress

(1) Where any court—

(a) adjudges any person convicted of an offence against this Act to pay any fine or other money; or

(b) adjudges any person to pay wages owing to any seafarer or master; or

(c) makes any order for payment of costs or expenses of or incidental to any such proceeding,—

and the person adjudged or ordered to pay the same is the owner or master of a ship, and the same are not paid within the time and in the manner limited by the conviction or specified in the order of the court, or, if in the case of a proceeding or the recovery of wages no time for payment is specified, within 7 days after judgment is given or the order made, the court may exercise the powers specified in subsection (2).

(2) In any such case the court may,—

(a) in addition to any other power it may have to compel payment, direct the amount remaining unpaid to be levied by distress or by the sale of the ship and the ship's equipment; and

(b) if, at any time thereafter while that fine or those wages or other money remain unpaid, that ship is found within the internal waters or the territorial sea of New Zealand, issue an order for the detention of the ship.

(3) An order for the detention of a ship under this section shall be directed to the Director, the chief executive of the New Zealand Customs Service, or other officer named in the order, requiring him or her to detain the ship until the judgment or order of the court has been satisfied.

Compare: 1952 No 49 s 489

Section 459(3): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

460 Enforcing detention of ships

(1) Where under this Act a ship is to be or may be detained, the Director, the chief executive of the New Zealand Customs Service, or any person to whom an order for detention made by any court or Judge under powers conferred by this Act is directed, may detain the ship; and if, after detention or after service on the master of any notice of or order for detention, the ship proceeds to sea before it is released by competent authority, the master and the owner, and also any person who sends the ship to sea if he or she is a party or privy to the offence, each commits an offence and shall be liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000.

(2) If a ship proceeds to sea while there is on board any person who is detaining the ship under this Act, the owner and the master of the ship each commits an offence against this Act and shall, in addition to the liability he or she incurs under subsection (1), be liable on conviction in respect of each offence,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000.

(3) Where under this Act a ship is to be detained, a Customs officer shall, and, where under this Act a ship may be detained, a Customs officer may, refuse to grant a clearance to that ship.

Compare: 1952 No 49 s 490

Section 460(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 460(1): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 460(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 460(3): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

461 Consular officer to be notified of detention of foreign ship

(1) Where pursuant to any provision of this Act any foreign ship is detained at a port in New Zealand, or any proceeding is taken against the owner of a foreign ship or any other person for the time being responsible for the navigation and management of the ship or against the master of the ship, the following provisions shall apply:

(a) in any case where the person ordering or giving notice of that detention, or, as the case may be, instituting that proceeding, is not the Director, that person shall forthwith inform the Director thereof and of the reason therefor:

(b) in every case the Director shall forthwith cause notice thereof to be served on a consular officer of the country in which the ship is registered or to which the ship belongs; and the notice shall specify the grounds on which the ship has been detained or, as the case may be, the grounds on which the proceeding has been taken.

(2) Nothing in this section shall affect the provisions of section 55 or section 397.

Compare: 1952 No 49 s 491

462 Cost of detention and inspection to be paid by owner

(1) Where any ship is detained at a port in New Zealand under or pursuant to this Act, the owner of the ship, or other person for the time being responsible for the navigation and management of the ship, shall be liable to pay to—

(a) the Authority where the ship is detained by the Director; or

(b) the Crown in any other case—

the costs of and incidental to the detention and to any inspection and audit under this Act; and those costs shall, without prejudice to any other remedy, be recoverable as a debt due to the Authority or the Crown, as the case may be, in any court of competent jurisdiction.

(2) Nothing in this section shall affect the provisions of section 56 or section 398.

Compare: 1952 No 49 s 492

463 Detention in lieu of security for civil claims

(1) For the purposes of this section, where the owner of a ship is a corporation, it shall be deemed to reside in New Zealand if it has an office in New Zealand at which service can be effected.

(2) A District Court Judge may order a Customs officer or another officer named by the Judge to detain a ship if—

(a) a person has been convicted of an offence described in subsection (2B) in relation to the ship; and

(b) property has been, or is likely to be, damaged by the discharge; and

(c) none of the owners of the ship reside in New Zealand.

(2A) The ship may be detained until security has been provided for costs, damages, or other money that may be payable as a result of civil proceedings.

(2B) The offences relate to—

(a) the discharge of a harmful substance from a ship in breach of this Act:

(b) contravening or permitting a contravention of section 15B of the Resource Management Act 1991:

(c) a breach of section 20C of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

(3) Despite subsection (2), a certificate issued under section 363 or a certificate complying with the terms of Article VII of the Civil Liability Convention shall be sufficient security for the purposes of this section.

(4) On any order being made under subsection (2), the officer to whom the order is directed shall detain the ship.

(5) Procedure on an application for an order under subsection (2) shall be as the District Court Judge considers appropriate.

(6) Any person affected by an order made under subsection (2) may appeal against that order to the High Court.

Compare: 1974 No 14 s 62

Section 463(2): replaced, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 463(2A): inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 463(2B): inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 463(3): amended, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

464 Agents' contracts of indemnity

(1) This section applies to a person (the **agent**) who enters into an agreement to act as the agent in New Zealand of the owner, charterer, manager, or operator of a ship.

(2) The agent may enter into a contract of indemnity under which the owner, charterer, manager, or operator agrees to indemnify the agent for any sum for which the agent may become liable as a result of proceedings (whether civil or criminal) against the agent, in that capacity, in any court under any provision of any 1 or more of this Act, the Resource Management Act 1991, and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

(3) A New Zealand court may enforce the contract of indemnity only if the proceedings do not result from the wilful act or neglect or default of the agent.

Section 464: replaced, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

465 Designation of parties to conventions

(1) The Minister shall keep a list of and may give a certificate stating—

(a) the Contracting Parties to any convention declared by Order in Council under section 2(2):

(b) the Contracting Parties to any marine protection convention declared by Order in Council under section 222(4).

(2) Any list or certificate under subsection (1) shall specify the date on which any such Government or State became or ceased to be a Contracting Government, a State Party, a Contracting Party, or a Contracting State, as the case may be.

(3) In the absence of proof to the contrary, a certificate issued under subsection (1) shall be conclusive evidence of the matters stated in the certificate.

Compare: 1974 No 14 s 67(1), (2), (4)

466 Other enactments not affected

Subject to section 467, and except where this Act or any other enactment otherwise provides, the provisions of Parts 19 to 28 are in addition to and not in substitution for the provisions of any other enactment, and, except as expressly provided by this Act, nothing in this Act shall derogate from the provisions of any other enactment.

467 Provisions of Resource Management Act 1991 not to apply

The provisions of sections 9, 12, 13, 14, 15, 15A, 15B, and 15C of the Resource Management Act 1991 shall not apply to—

(a) anything done by or on behalf of the Director under section 248 or section 249 or by or on behalf of any person in accordance with any instructions under either of those sections; or

(b) anything done by or on behalf of an on-scene commander—

(i) under section 305 or section 311; or

(ii) in accordance with a direction given under section 310; or

(c) anything done by or on behalf of the master or owner of any ship, or the owner or operator of any oil storage or transfer site or offshore installation or any other person in accordance with a direction given under section 305 or section 311; or

(d) anything done—

(i) by or on behalf of the Director; or

(ii) by any person in accordance with any instructions issued by the Director—

under section 305 or section 311.

467A Provisions of Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 not to apply

Section 20 and subpart 2 of Part 2 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 do not apply to—

(a) anything done by or on behalf of the Director under section 248 or 249 or by or on behalf of any person in accordance with any instructions under either of those sections; or

(b) anything done by or on behalf of an on-scene commander—

(i) under section 305 or 311; or

(ii) in accordance with a direction given under section 310; or

(c) anything done by or on behalf of the master or owner of any ship, or the owner or operator of any oil storage or transfer site or offshore installation or any other person in accordance with a direction given under section 305 or 311; or

(d) anything done by or on behalf of the Director, or by any person in accordance with any instruction issued by the Director, under section 305 or 311.

Section 467A: inserted, on 31 October 2015, by section 47(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Part 31
Consequential amendments, transitional provisions, and repeals

468 Savings relating to Shipping and Seamen Act 1952

(1) Any proceeding, action, or investigation commenced under—

(a) the Shipping and Seamen Act 1952; or

(b) any regulations, rules, or order revoked by section 202,—

that is pending or in progress immediately before the commencement of this section, may be continued, completed, or enforced, as the case may require, as if that Act had not been repealed, or those regulations or rules or that order had not been revoked, by the said section 202.

(2) Any proceeding, action, or investigation commenced under any regulations, rules, or order deemed by section 204 to have been made under this Act, that is pending or in progress immediately before the expiry of that section under section 205, may be continued, completed, or enforced, as the case may require, after the expiry of the said section 204 as if that section had not expired.

(3) Any proceeding, action, or investigation commenced under any regulations, rules, or orders deemed by section 204 to have been made under this Act, that is pending or in progress immediately before the date of the revocation of those regulations, rules, or that order under subsection (2) of that section (where such revocation takes effect before the expiry of that section), may be continued, completed, or enforced, as the case may require, as if those regulations or rules or that order had not been revoked under that section.

(4) Any proceeding, action, or investigation commenced under Part 10 or Part 11 or Part 12, that is pending or in progress immediately before the expiry of that Part under section 187, may be continued, completed, or enforced, as the case may require, as if that Part had not expired under that section.

(5) Every licence, certificate, permit, authorisation, approval, or other document issued, recognised, or accepted by or under the Shipping and Seamen Act 1952, or any regulations or rules or order made under that Act, shall,—

(a) if issued, recognised, or accepted by the Minister, the Authority, the Director, or any employee of the Authority, or by any person or organisation acting pursuant to and in accordance with authority delegated under any enactment; and

(b) if in force immediately before the repeal of that Act by section 202(1),—

be deemed to be issued, recognised, or accepted, as the case may be, as a maritime document under Part 5.

(6) Every certificate declared by Order in Council made under section 18 of the Shipping and Seamen Act 1952 to be of the same force as a certificate of a specified kind or grade under that Act shall, if in force immediately before the repeal of that Act by section 202(1), be deemed to be recognised as a maritime document under Part 5.

(7) Every licence, certificate, permit, authorisation, approval, or other document—

(a) issued, recognised, or accepted under any regulations, rules, or order deemed by section 204 to have been made under this Act; and

(b) either—

(i) in force immediately before the commencement of that section; or

(ii) issued, recognised, or accepted on or after the commencement of that section—

shall be deemed to be issued, recognised, or accepted, as the case may be, as a maritime document under Part 5 and, until revoked under this Act, shall continue to have effect accordingly after the expiry of those regulations or rules or that order under section 205 or the sooner revocation of those regulations or rules or that order.

(8) Every licence, certificate, permit, authorisation, approval, or other document issued, recognised, or accepted by or under Part 10 or Part 11 or Part 12 and in force immediately before the expiry of that Part under section 187 shall, after the expiry of that Part, have effect as a maritime document under Part 5 until revoked under this Act, as if that Part had not expired.

(9) In the case of any person who was, immediately before the commencement of this Act, a suspended person as defined in section 40A of the Shipping and Seamen Act 1952, the following provisions shall apply:

(a) if the person is required by or under this Act to hold any maritime documents, the maritime documents (if any) held by that person shall be deemed to be suspended under section 43:

(b) in any other case, the person is deemed to be suspended under section 52 and that suspension is subject to the following provisions:

(i) the person may apply to the Director for a direction lifting the suspension on the ground that the suspension under section 40A of the Shipping and Seamen Act 1952 is no longer relevant or it

would be unduly harsh to treat the person as suspended under section 52:

(ii) the Director may direct that the suspension be lifted, in which case section 52 no longer applies to that person:

(iii) if the Director does not lift the suspension under subparagraph (ii), section 52 continues to apply to that person and nothing in this paragraph affects the right of appeal conferred by that section.

(9A) A person who is deemed to be suspended under subsection (9) may apply to the Director for a direction lifting the suspension on the ground that—

(a) the suspension under section 40A of the Shipping and Seamen Act 1952 is no longer relevant; or

(b) it would be unduly harsh that the person remain suspended under section 43 or 52 of this Act.

(9B) If an application is made under subsection (9A), the Director may—

(a) direct that the suspension be lifted, in which case section 43 or 52 no longer applies to that person; or

(b) decline to lift the suspension, in which case section 43 or 52 (including any relevant right of appeal) continues to apply to that person.

(10) Notwithstanding the repeal of the Shipping and Seamen Act 1952 by section 202(1), the Minister may exercise all the powers of the Minister under that Act in relation to money received under Part 2 of that Act prior to the commencement of this Act.

Section 468(9)(b): substituted, on 9 June 1999, by section 37 of the Maritime Transport Amendment Act 1999 (1999 No 68).

Section 468(9A): inserted, on 23 October 2013, by section 83 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 468(9B): inserted, on 23 October 2013, by section 83 of the Maritime Transport Amendment Act 2013 (2013 No 84).

469 Permits and other documents issued under Marine Pollution Act 1974

(1) Except as provided in subsection (2), every permit issued in accordance with section 22B of the Marine Pollution Act 1974 and any regulations under section 22A of that Act, being a permit in force immediately before the repeal of that Act by section 481, shall be deemed to be a marine protection document issued on the same terms and conditions and shall have effect and be subject to the provisions of this Act accordingly.

(2) Every permit issued in accordance with section 22B of the Marine Pollution Act 1974 and any regulations made under section 22A of that Act that, being a permit—

(a) issued to authorise, in relation to the coastal marine area (as defined in section 2(1) of the Resource Management Act 1991),—

(i) the dumping or incineration of waste or other matter; or

(ii) the dumping of any ship, aircraft, or offshore installation; and

(b) in force immediately before the repeal of that Act by section 481,—

shall be deemed to be a coastal permit granted under the Resource Management Act 1991 on the same terms and conditions by the appropriate regional council; and the provisions of the Resource Management Act 1991 shall apply accordingly.

(3) Notwithstanding section 12(6) or section 15(3) of the Resource Management Act 1991, a coastal permit deemed by subsection (2) to have been granted does not authorise any person to do anything that would otherwise contravene section 12 or section 15 of that Act.

(4) Every document issued under the Marine Pollution Act 1974 or regulations made under that Act, other than a document referred to in subsection (1) or subsection (2), that is in force immediately before the repeal of that Act by section 481, shall, on the commencement of that section, be deemed to be a marine protection document issued under this Act on the same terms and conditions applying in respect of that document under the Marine Pollution Act 1974.

470 Proceedings under Marine Pollution Act 1974

(1) Nothing in this Part shall prevent proceedings being commenced under the Marine Pollution Act 1974 where the events to which those proceedings relate have occurred before the repeal of that Act.

(2) In any proceeding to which subsection (1) applies, the provisions of the Marine Pollution Act 1974 and any regulations and Orders in Council made under that Act shall apply as if they had not been repealed or revoked.

(3) For the purposes of subsection (1) and section 60(7) of the Marine Pollution Act 1974, the regional council within whose region the relevant harbour is located and the Director shall be deemed to be authorised to institute proceedings for an offence (other than an offence against section 12(7) of the Marine Pollution Act 1974) committed in or in relation to the waters of a harbour.

471 No liability for continuing offences after repeal

(1) No person shall be held liable for any continuing offence under the Shipping and Seamen Act 1952 in respect of any period after the repeal of the provision creating that continuing offence.

(2) No person shall be held liable for any continuing offence under the Marine Pollution Act 1974 in respect of any period after the repeal of the provision creating that continuing offence.

472 Compensation for loss in acting in respect of marine casualties

Every claim for compensation under Part 3 of the Marine Pollution Act 1974, being—

(a) a claim made before the repeal of that Act by section 481 and pending or in progress immediately before that repeal; or

(b) a claim that may be made immediately before that repeal,—

may be continued, made, or enforced, as the case may require, after that repeal as if that Act had not been repealed.

473 Instructions in relation to marine casualties unaffected

(1) Subject to subsection (2), any instructions issued under Part 3 of the Marine Pollution Act 1974 before the repeal of that Act by section 481 shall continue to have effect, according to their tenor, after that repeal.

(2) Instructions to which subsection (1) applies may be overridden or modified by the Director under Part 20.

474 Levies under Marine Pollution Act 1974

(1) Subject to subsection (2), the provisions of—

(a) Part 3A of the Marine Pollution Act 1974; and

(b) every regulation and Order in Council made under that Act relating to levies that is in force immediately before the repeal of that Act—

shall continue in force after that repeal and apply in respect of any period before that repeal as if that Act and those provisions had not been repealed or revoked.

(2) Levies to which subsection (1) applies shall be paid and receipts in respect of those levies shall be issued as if section 337 applied.

475 Ships detained under Shipping and Seamen Act 1952 or Marine Pollution Act 1974

(1) Every ship that was, immediately before the repeal of the Shipping and Seamen Act 1952 by section 202, subject to detention under that Act shall remain subject to such detention after the repeal of that Act and the provisions of that Act relating to such detention shall continue to apply in respect of that ship as if that Act had not been repealed.

(2) Every ship that is, immediately before the repeal of the Marine Pollution Act 1974 by section 481, subject to detention under that Act shall remain subject to such detention after the repeal of that Act and the provisions of that Act relating to such detention shall continue to apply in respect of that ship as if that Act had not been repealed.

476 Applications for permits under Marine Pollution Act 1974

(1) Where, before the date of the commencement of this Act, an application has been made for a permit under section 22B of the Marine Pollution Act 1974 and the application has not been granted, declined, or withdrawn before that date, the Minister shall deal with that application.

(2) Where an application to which subsection (1) applies relates to the coastal marine area (as defined in the Resource Management Act 1991),—

(a) the appropriate regional council or regional councils or territorial authority or territorial authorities shall be notified of that application:

(b) a regional council or territorial authority notified of the application may report to the Minister, in writing, on any aspect of the application:

(c) the Minister may request and receive information from any regional council or territorial authority to assist in determining the application.

(3) In determining an application that relates to the coastal marine area, the Minister may—

(a) have regard to the provisions of the Resource Management Act 1991; and

(b) in addition to any other conditions, impose conditions of the kind described in section 108 of that Act.

(4) Where any permit is issued under this section, in relation to the coastal marine area, that permit shall be deemed for all purposes (including appeals) to be a coastal permit issued by the appropriate regional council under the Resource Management Act 1991 and the provisions of that Act shall apply accordingly.

(5) Notwithstanding section 12(6) or section 15(3) of the Resource Management Act 1991, a coastal permit deemed by subsection (2) to have been granted does not authorise any person to do anything that would otherwise contravene section 12 or section 15 of that Act.

Amendments to Harbours Act 1950

477 Effect of bylaws on port company operations

Amendment(s) incorporated in the Act(s).

478 No marine pollution dues

Amendment(s) incorporated in the Act(s).

Amendment to Local Government Act 1974

[Repealed]

Heading: repealed, on 1 July 2003, by section 266 of the Local Government Act 2002 (2002 No 84).

479 Functions of regional councils

[Repealed]

Section 479: repealed, on 1 July 2003, by section 266 of the Local Government Act 2002 (2002 No 84).

Amendment to Environment Act 1986

480 Acts under which consents may be granted

Amendment(s) incorporated in the Act(s).

Repeals, savings, and transitional provisions

481 Repeals and saving

(1) The enactments specified in Schedule 7 are hereby repealed.

(2) Notwithstanding the repeal of the Marine Pollution Act 1974, every Order in Council and regulation made under that Act and in force immediately before the repeal of that Act by subsection (1) shall, until revoked, continue in force after the repeal of that Act as if that Act had not been repealed.

482 Oil Pollution Levies Order 1978

Notwithstanding anything in the Marine Pollution Act 1974, until the repeal of that Act by section 481, the Governor-General may from time to time, by Order in Council, amend the Oil Pollution Levies Order 1978 by making any provision that could be made under either or both of sections 333 and 335, if those sections were in force.

483 Transitional provisions relating to Maritime Safety Authority of New Zealand

(1) Every person who held office as a member of the Maritime Safety Authority of New Zealand immediately before the commencement of this section shall be deemed to have been appointed as a member of the Authority under section 429.

(2) The term of office of every person deemed by subsection (1) to have been appointed to the Authority shall expire on the date on which, but for the passing of this Act, his or her appointment would have expired under the provisions of the Maritime Transport Act 1993.

(3) The person holding office as the Director of Maritime Safety immediately before the commencement of this section shall be deemed to have been appointed as the Director of Maritime Safety under section 439.

484 Transitional provisions relating to Oil Pollution Advisory Committee

Notwithstanding anything in section 282,—

(a) every person who held office as a member of the Oil Pollution Advisory Committee established by section 29G of the Marine Pollution Act 1974 shall be deemed to have been appointed under subsection (2) of the said section 282 on the terms and conditions that applied to him or her immediately before the commencement of that section:

(b) the Director shall continue to be the chairperson of the committee until the Minister appoints a new chairperson under the said section 282.

485 Savings relating to Ministry, etc

(1) Where, before the repeal of the Shipping and Seamen Act 1952 by section 202, the Ministry or any officer of the Ministry had become a party to any proceedings under that Act, the proceedings may be continued, completed, and enforced after the repeal of that Act as if the Authority or the Director, as the case may require, were that party.

(2) Where, before the repeal of the Marine Pollution Act 1974 by section 481, the Ministry or any officer of the Ministry becomes a party to any proceedings under that Act, the proceedings may be continued, completed, and enforced after the repeal of that Act as if the Authority or the Director, as the case may require, were that party.

(3) Where, before the repeal of the Shipping and Seamen Act 1952 by section 202, the Ministry or any officer of the Ministry had commenced an action under that Act or regulations made under that Act, the action may be continued, completed, and enforced after the repeal of that Act as if the Authority or the Director, as the case may require, had commenced it.

(4) Where, before the repeal of the Marine Pollution Act 1974 by section 481, the Ministry or any officer of the Ministry commences an action under that Act or regulations made under that Act, the action may be continued, completed, and enforced after the repeal of that Act as if the Authority or the Director, as the case may require, had commenced it.

(5) Where, before the repeal of the Shipping and Seamen Act 1952 by section 202, the Ministry or any officer of the Ministry had commenced an investigation under that Act or regulations made under that Act, the investigation may be continued and completed after the repeal of that Act as if the Director had commenced it.

(6) References to the Maritime Safety Authority of New Zealand or the Director of Maritime Safety in any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, or other document whatever in force at the commencement of this Act shall, unless the context otherwise requires, be read as references to the Authority continued by section 429 or the

Director appointed or deemed to be appointed under section 439, as the case may require.

Schedule 1AA
Transitional, savings, and related provisions

s 2A

Schedule 1AA: inserted, on 15 June 2018, by section 27 of the Maritime Transport Amendment Act 2017 (2017 No 48).

Part 1
Maritime Transport Amendment Act 2017

1 Interpretation

In this Part, **commencement date** means the date on which Part 2 of the Maritime Transport Amendment Act 2017 comes into force under section 2(1) of that Act.

2 Amendments apply to pollution damage occurring after commencement

The amendments made by Part 2 of the Maritime Transport Amendment Act 2017 apply in relation to pollution damage only if that damage is caused by or results from an escape or a discharge of oil from a ship that occurs on or after the commencement date.

3 References to Maritime Transport (Fund Convention) Levies Order 1996

Every reference in any enactment or document to the Maritime Transport (Fund Convention) Levies Order 1996 must, unless the context otherwise requires, be read as a reference to the Maritime Transport (International Oil Pollution Compensation Levies) Order 1996.

Schedule 1
Provisions relating to Maritime New Zealand

s 429(11)

Schedule 1 heading: amended, on 1 July 2005, by section 11(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Membership

[Repealed]

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

1

[Repealed]

Schedule 1 clause 1: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

2

[Repealed]

Schedule 1 clause 2: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

3

[Repealed]

Schedule 1 clause 3: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

4

[Repealed]

Schedule 1 clause 4: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

5

[Repealed]

Schedule 1 clause 5: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

6

[Repealed]

Schedule 1 clause 6: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

7

[Repealed]

Schedule 1 clause 7: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

8

[Repealed]

Schedule 1 clause 8: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Remuneration and expenses of Authority members

[Repealed]

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

9

[Repealed]

Schedule 1 clause 9: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Meetings

[Repealed]

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

10

[Repealed]

Schedule 1 clause 10: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

11

[Repealed]

Schedule 1 clause 11: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

12

[Repealed]

Schedule 1 clause 12: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

13

[Repealed]

Schedule 1 clause 13: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

14

[Repealed]

Schedule 1 clause 14: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

15

[Repealed]

Schedule 1 clause 15: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

16

[Repealed]

Schedule 1 clause 16: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Disclosure of interest

[Repealed]

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

17

[Repealed]

Schedule 1 clause 17: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

18

[Repealed]

Schedule 1 clause 18: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

19

[Repealed]

Schedule 1 clause 19: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

20

[Repealed]

Schedule 1 clause 20: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

21

[Repealed]

Schedule 1 clause 21: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

22

[Repealed]

Schedule 1 clause 22: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

23

[Repealed]

Schedule 1 clause 23: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Committees

[Repealed]

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

24

[Repealed]

Schedule 1 clause 24: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Execution of documents

[Repealed]

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

25

[Repealed]

Schedule 1 clause 25: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

26

[Repealed]

Schedule 1 clause 26: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

27

[Repealed]

Schedule 1 clause 27: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Powers to borrow, etc

[Repealed]

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

28

[Repealed]

Schedule 1 clause 28: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Director

[Repealed]

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

29

[Repealed]

Schedule 1 clause 29: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

30

[Repealed]

Schedule 1 clause 30: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Appointment of staff

[Repealed]

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

31

[Repealed]

Schedule 1 clause 31: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

32

[Repealed]

Schedule 1 clause 32: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

33

[Repealed]

Schedule 1 clause 33: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

34

[Repealed]

Schedule 1 clause 34: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

35

[Repealed]

Schedule 1 clause 35: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

36

[Repealed]

Schedule 1 clause 36: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

37

[Repealed]

Schedule 1 clause 37: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Superannuation or retiring allowances

38

[Repealed]

Schedule 1 clause 38: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

39 Notwithstanding anything in this Act, a person who, immediately before becoming an employee of the Authority, is a contributor to the Government Superannuation Fund under Part 2 or Part 2A of the Government Superannuation Fund Act 1956 shall, for the purposes of the Government Superannuation Fund Act 1956, be deemed to be employed in the Government service so long as that person continues to be an employee of the Authority; and the Government Superannuation Fund Act 1956 shall apply to that person in all respects as if that person's service as an employee of the Authority is Government service.

40 Nothing in clause 39 entitles any person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

41 For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with clause 39, to an employee of the Authority who is a contributor to the Government Superannuation Fund, the term **controlling authority**, in relation to that employee, means the Authority.

42

[Repealed]

Schedule 1 clause 42: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Consultants, agents, etc

43 The Director may from time to time appoint consultants, agents, specialists, and advisory committees to advise it or him or her in relation to the exercise of

its or his or her functions and powers, and to exercise such functions and powers as may be delegated under this Act to such persons or committees.

Schedule 1 clause 43: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

44 The Director may—

(a) pay to any such persons or members of committees so appointed such remuneration by way of fees, salary or allowances, and such travelling allowances and expenses, as the Director thinks fit; and

(b) contribute towards the remuneration, travelling allowances, and expenses of any such persons or members of committees, whose employers provide services for the Director.

Schedule 1 clause 44: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 1 clause 44(a): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 1 clause 44(b): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

45 In making any payment under clause 44, the Director must have regard to the fees framework determined by the Government from time to time.

Schedule 1 clause 45: added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 2
Provisions applying in respect of Maritime Appeal Authority

s 82(6)

1 The person appointed as the Maritime Appeal Authority shall be a barrister or solicitor of not less than 7 years' practice of the High Court, whether that person holds or has held any judicial office.

2 The Minister may appoint a person, being a person qualified for appointment as the Maritime Appeal Authority, to be a deputy for, and to act in the absence from whatever cause of, the Maritime Appeal Authority.

3 The person appointed as the Maritime Appeal Authority shall be appointed for a term of 3 years, but may from time to time be reappointed.

4 The person appointed as the Maritime Appeal Authority shall cease to hold office if that person—

(a) is adjudged bankrupt; or

(b) is convicted of any offence punishable by imprisonment,—

(c) *[Repealed]*

and, if by reason of disability that person becomes incapable of performing the functions of the office, that person may be removed from office by the Minister.

Schedule 2 clause 4(b): amended, on 10 September 2008, by section 9(2) of the Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64).

Schedule 2 clause 4(c): repealed, on 10 September 2008, by section 9(3) of the Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64).

4A For the purposes of clause 4, **disability** has the meaning given by section 21(1)(h) of the Human Rights Act 1993.

Schedule 2 clause 4A: inserted, on 10 September 2008, by section 9(4) of the Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64).

5 The person appointed as the Maritime Appeal Authority may at any time resign by notice in writing to the Minister.

6 Any deputy of the Maritime Appeal Authority shall hold office during the pleasure of the Minister.

7 Meetings of the Maritime Appeal Authority shall be held at such times and places as the Authority considers necessary.

8 The Maritime Appeal Authority may receive as evidence any statement, document, information, or matter that may, in the opinion of the Authority, assist the Authority to deal effectually with the application being considered, whether or not the evidence would be otherwise admissible in a court of law.

9 Subject to clause 8, the Evidence Act 2006 shall apply to the Maritime Appeal Authority, and to all applications before the Authority, in the same manner as if the Maritime Appeal Authority were a court within the meaning of that Act.

Schedule 2 clause 9: amended, on 1 August 2007, by section 216 of the Evidence Act 2006 (2006 No 69).

10 The Maritime Appeal Authority shall, within the scope of the Authority's jurisdiction, be deemed to be a commission of inquiry under the Commissions of Inquiry Act 1908; and, subject to the provisions of this Act, all the provisions of that Act, except sections 2 and 4A, shall apply accordingly.

11 Every application to the Maritime Appeal Authority shall be considered at such place and at such time as the Authority considers convenient having regard to the nature of the matters to be decided, and may be adjourned from time to time and place to place.

12 The applicant shall be entitled to appear before the Maritime Appeal Authority in support of the application or be represented by counsel or a solicitor or an agent.

13 Except as otherwise provided by this clause, the Maritime Appeal Authority may determine the Authority's own procedure, but shall follow the rules of natural justice.

14 Every application heard by the Maritime Appeal Authority shall be determined by the decision in writing of the Maritime Appeal Authority alone, and shall be final.

15 Every application to the Maritime Appeal Authority shall be in writing specifying the grounds thereof, and shall be lodged with the Director, who shall forthwith refer it to the Maritime Appeal Authority.

16 The Maritime Appeal Authority is hereby declared to be a statutory board within the meaning of the Fees and Travelling Allowances Act 1951.

17 There shall be paid to the Maritime Appeal Authority by Maritime New Zealand remuneration by way of fees or allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

Schedule 2 clause 17: amended, on 1 July 2005, by section 11(2) of the Maritime Transport Amendment Act 2004 (2004 No 98).

18 Notwithstanding clause 16, any money received under that clause by the Maritime Appeal Authority who is an employee of the Public Service shall be subject to the provisions of the State Sector Act 1988.

Schedule 3
Enactments repealed

s 202

Part 1
Repeals

Flags, Emblems, and Names Protection Act 1981 (1981 No 47)
Amendment(s) incorporated in the Act(s).

Hovercraft Act 1971 (1971 No 17) (RS Vol 23, p 549)

Immigration Act 1987 (1987 No 74)
Amendment(s) incorporated in the Act(s).

Maritime Transport Act 1993 (1993 No 89)

Ministry of Transport Act Repeal Act 1990 (1990 No 101)
Amendment(s) incorporated in the Act(s).

Ship Registration Act 1992 (1992 No 89)
Amendment(s) incorporated in the Act(s).

Shipping Act 1987 (1987 No 183)
Amendment(s) incorporated in the Act(s).

Shipping and Seamen Act 1952 (1952 No 49) (RS Vol 4, p 275)

Shipping and Seamen Amendment Act 1954 (1954 No 88) (RS Vol 4, p 796)

Shipping and Seamen Amendment Act 1957 (1957 No 86) (RS Vol 4, p 796)

Shipping and Seamen Amendment Act 1959 (1959 No 102) (RS Vol 4, p 798)

Shipping and Seamen Amendment Act 1963 (1963 No 129) (RS Vol 4, p 806)

Shipping and Seamen Amendment Act 1964 (1964 No 127) (RS Vol 4, p 810)

Shipping and Seamen Amendment Act 1965 (1965 No 28) (RS Vol 4, p 812)

Shipping and Seamen Amendment Act 1968 (1968 No 55) (RS Vol 4, p 817)

Shipping and Seamen Amendment Act 1969 (1969 No 4) (RS Vol 4, p 821)

Shipping and Seamen Amendment Act (No 2) 1969 (1969 No 25) (RS Vol 4, p 823)

Shipping and Seamen Amendment Act 1970 (1970 No 4) (RS Vol 4, p 828)

Shipping and Seamen Amendment Act 1971 (1971 No 79) (RS Vol 4, p 831)

Shipping and Seamen Amendment Act 1972 (1972 No 24) (RS Vol 4, p 832)

Shipping and Seamen Amendment Act 1975 (1975 No 29) (RS Vol 4, p 834)

Shipping and Seamen Amendment Act (No 2) 1985 (1985 No 49)

Shipping and Seamen Amendment Act 1987 (1987 No 184)

Shipping and Seamen Amendment Act 1988 (1988 No 118)

Shipping and Seamen Amendment Act (No 2) 1988 (1988 No 211)

Shipping and Seamen Amendment Act 1990 (1990 No 121)

Shipping and Seamen Amendment Act 1991 (1991 No 30)

Part 2
Revocations

Ballast Regulations 1937 (SR 1937/271)

Coastal Pilots Regulations 1964 (SR 1964/13)

Deck Cargo Regulations 1950 (SR 1950/143)

Deck Cargo Regulations 1950, Amendment No 1 (SR 1960/157)

Deck Cargo Regulations 1950, Amendment No 2 (SR 1963/203)

Foreign Seamen (Netherlands) Notice 1942 (SR 1942/341)

Foreign Seamen (Panama) Notice 1941 (SR 1941/167)

Shipping (Accepted Safety Convention Certificates) Regulations 1968 (SR 1968/27)

Shipping and Seamen Act Commencement Order 1953 (SR 1953/51)

Shipping and Seamen Amendment Act Commencement Order 1960 (SR 1960/143)

Shipping and Seamen Amendment Act Commencement Order 1961 (SR 1961/43)

Shipping and Seamen Amendment Acts Commencement Order 1965 (SR 1965/225)

Shipping and Seamen Amendment Acts Commencement Order 1966 (SR 1966/67)

Shipping and Seamen Amendment Act Commencement Order 1969 (SR 1969/149)

Shipping and Seamen Amendment Act Commencement Order 1970 (SR 1970/76)

Shipping and Seamen Amendment Act Commencement Order 1972 (SR 1972/185)

Shipping and Seamen Amendment Act Commencement Order 1974 (SR 1974/263)

Shipping and Seamen Amendment Act Commencement Order 1976 (SR 1976/93)

Shipping and Seamen Amendment Act Commencement Order 1986 (SR 1986/109)

Shipping Casualty Rules 1937 (SR 1937/221)

Shipping (Certificates of Competency as AB) Order 1978 (SR 1978/201)

Shipping (Engagement of Seamen) Exemption Notice 1975 (SR 1975/70)

Shipping (Grain) Rules 1966 (SR 1966/175)

Shipping (Load Line Convention Countries) Order 1974 (SR 1974/18)

Shipping (Recognition of Certificates of Competency) Order 1988 (SR 1988/20)

Shipping (Survey of Fishing Boats) Order 1969 (SR 1969/41)

Stowaways Order 1969 (SR 1969/211)

Timber Cargo Regulations 1953 (SR 1953/190)

Schedule 4
Enactments amended

s 203

Admiralty Act 1973 (1973 No 119) (RS Vol 18, p 1)
Amendment(s) incorporated in the Act(s).

Antarctic Marine Living Resources Act 1981 (1981 No 53)
Amendment(s) incorporated in the Act(s).

Births and Deaths Registration Act 1951 (1951 No 22) (RS Vol 1, p 333)
Amendment(s) incorporated in the Act(s).

Chattels Transfer Act 1924 (1924 No 49) (RS Vol 15, p 33)
Amendment(s) incorporated in the Act(s).

Conservation Act 1987 (1987 No 65)
Amendment(s) incorporated in the Act(s).

Contributory Negligence Act 1947 (1947 No 3) (RS Vol 1, p 539)
Amendment(s) incorporated in the Act(s).

Customs Act 1966 (1966 No 19) (RS Vol 2, p 57)
Amendment(s) incorporated in the Act(s).

Defence Act 1990 (1990 No 28)
Amendment(s) incorporated in the Act(s).

Explosives Act 1957 (1957 No 19) (RS Vol 6, p 361)
Amendment(s) incorporated in the Act(s).

Harbours Act 1950 (1950 No 334) (RS Vol 2, p 551)
Amendment(s) incorporated in the Act(s).

Harbours Amendment Act 1969 (1969 No 81) (RS Vol 2, p 742)
Amendment(s) incorporated in the Act(s).

Harbours Amendment Act 1980 (1980 No 54)
Amendment(s) incorporated in the Act(s).

Health and Safety in Employment Act 1992 (1992 No 96)
Amendment(s) incorporated in the Act(s).

Immigration Act 1987 (1987 No 74)

Amendment(s) incorporated in the Act(s).

Land Transport Act 1993 (1993 No 88)

Amendment(s) incorporated in the Act(s).

Marine Mammals Protection Act 1978 (1978 No 80)

Amendment(s) incorporated in the Act(s).

Radiocommunications Act 1989 (1989 No 148)

Amendment(s) incorporated in the Act(s).

Ship Registration Act 1992 (1992 No 89)

Amendment(s) incorporated in the Act(s).

Territorial Sea and Exclusive Economic Zone Act 1977 (1977 No 28)

Amendment(s) incorporated in the Act(s).

Transport Accident Investigation Commission Act 1990 (1990 No 99)

Amendment(s) incorporated in the Act(s).

Transport Accident Investigation Commission Amendment Act 1992 (1992 No 112)

Amendment(s) incorporated in the Act(s).

Schedule 5
The Amended Hague Rules

s 209(1)

Article 1

In this convention the following words are employed with the meanings set out below:

(a) "Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper.

(b) "Contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

(c) "Goods" includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

(d) "Ship" means any vessel used for the carriage of goods by sea.

(e) "Carriage of goods" covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

Article 2

Subject to the provisions of Article 6, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

Article 3

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to—

   (a) Make the ship seaworthy.

   (b) Properly man, equip and supply the ship.

   (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article 4, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things—

   (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

   (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.

   (c) The apparent order and condition of the goods.

   Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3(a), (b) and (c). **[**However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.**]**

   The words in square brackets were added by the Protocol of 23 February 1968.

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

   The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

   [Subject to paragraph 6bis the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.**]**

The words in square brackets were substituted by the Protocol of 23 February 1968.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

[6bis. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.**]**

The words in square brackets were added by the Protocol of 23 February 1968.

7. After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3 of Article 3, shall for the purpose of this article be deemed to constitute a "shipped" bill of lading.

8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in this convention, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

Article 4

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article 3. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

(a) Act, neglect or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.

(b) Fire, unless caused by the actual fault or privity of the carrier.

(c) Perils, dangers and accidents of the sea or other navigable waters.

(d) Act of God.

(e) Act of war.

(f) Act of public enemies.

(g) Arrest or restraint of princes, rulers or people, or seizure under legal process.

(h) Quarantine restrictions.

(i) Act or omission of the shipper or owner of the goods, his agent or representative.

(j) Strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general.

(k) Riots and civil commotions.

(l) Saving or attempting to save life or property at sea.

(m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods.

(n) Insufficiency of packing.

(o) Insufficiency or inadequacy of marks.

(p) Latent defects not discoverable by due diligence.

(q) Any other cause arising without the actual fault or privity of the carrier, or without the actual fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of this convention or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

[5. (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding

666.67 units of account per package or unit or 2 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.**]**

[(b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

(c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the Bill of Lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.**]**

[(d) The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in subparagraph (a) of this paragraph shall be converted into national currency on the basis of the value of that currency on a date to be determined by the law of the court seized of the case.

The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State. Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of the preceding sentences may, at the time of ratification of the Protocol of 1979 or accession thereto or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in its territory shall be fixed as follows:

(i) in respect of the amount of 666.67 units of account mentioned in subparagraph (a) of paragraph 5 of this Article, 10,000 monetary units;

(ii) in respect of the amount of 2 units of account mentioned in subparagraph (a) of paragraph 5 of this Article, 30 monetary units.

The monetary unit referred to in the preceding sentence corresponds to 65.5 milligrammes of gold of millesimal fineness 900′. The conversion of the amounts specified in that sentence into the national currency shall be made according to the law of the State concerned.

The calculation and the conversion mentioned in the preceding sentences shall be made in such a manner as to express in the national currency of the State as far as possible the same real value for the amounts in subparagraph (a) of paragraph 5 of this Article as is expressed there in units of account.
States shall communicate to the depository the manner of calculation or the result of the conversion as the case may be, when depositing an instrument of ratification of the Protocol of 1979 or of accession thereto and whenever there is a change in either.**]**

[(e) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

(f) The declaration mentioned in subparagraph (a) of this paragraph, if embodied in the Bill of Lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

(g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in subparagraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that subparagraph.

(h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper in the Bill of Lading.**]**

Paragraph 5(a) was inserted by the Protocol of 21 December 1979.

Paragraphs 5(b) and 5(c) were inserted by the Protocol of 23 February 1968.

Paragraph 5(d) and the succeeding unlettered paragraphs were inserted by the Protocol of 21 December 1979.

Paragraphs 5(e) to 5(h) were inserted by the Protocol of 23 February 1968.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

[Article 4bis

1. The defences and limits of liability provided for in this Convention shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.
2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.
3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in this Convention.
4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this Article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.]

This article was inserted by the Protocol of 23 February 1968.

Article 5

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under this convention, provided such surrender or increase shall be embodied in the Bill of Lading issued to the shipper. The provisions of this convention shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of this convention. Nothing in these rules shall be held to prevent the insertion in a Bill of Lading of any lawful provision regarding general average.

Article 6

Notwithstanding the provisions of the preceding articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

Provided that this article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under

which the carriage is to be performed are such as reasonably to justify a special agreement.

Article 7

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from the ship on which the goods are carried by sea.

Article 8

The provisions of this Convention shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

[Article 9

This Convention shall not affect the provisions of any international Convention or national law governing liability for nuclear damage.

Article 10

The provisions of this Convention shall apply to every Bill of Lading relating to the carriage of goods between ports in two different States if:

(a) The Bill of Lading is issued in a Contracting State, or

(b) The carriage is from a port in a Contracting State, or

(c) The contract contained in or evidenced by the Bill of Lading provides that the rules of this Convention or legislation of any State giving effect to them are to govern the contract

whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

Each Contracting State shall apply the provisions of this Convention to the Bills of Lading mentioned above.

This Article shall not prevent a Contracting State from applying the rules of this Convention to Bills of Lading not included in the preceding paragraphs.**]**

Articles 9 and 10 were added by the Protocol of 23 February 1968.

Schedule 6
International Convention on Salvage, 1989

s 215

THE STATES PARTIES TO THE PRESENT CONVENTION,

RECOGNIZING the desirability of determining by agreement uniform international rules regarding salvage operations,

NOTING that substantial developments, in particular the increased concern for the protection of the environment, have demonstrated the need to review the international rules presently contained in the Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, done at Brussels, 23 September 1910,

CONSCIOUS of the major contribution which efficient and timely salvage operations can make to the safety of vessels and other property in danger and to the protection of the environment,

CONVINCED of the need to ensure that adequate incentives are available to persons who undertake salvage operations in respect of vessels and other property in danger,

HAVE AGREED as follows:

Chapter I
General provisions

Article 1—Definitions

For the purpose of this Convention:

(a) *Salvage operation* means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.

(b) *Vessel* means any ship or craft, or any structure capable of navigation.

(c) *Property* means any property not permanently and intentionally attached to the shoreline and includes freight at risk.

(d) *Damage to the environment* means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.

(e) *Payment* means any reward, remuneration or compensation due under this Convention.

(f) *Organization* means the International Maritime Organization.

(g) *Secretary-General* means the Secretary-General of the Organization.

Article 2—Application of the Convention

This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a State Party.

Article 3—Platforms and drilling units

This Convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral sources.

Article 4—State-owned vessels

1 Without prejudice to article 5, this Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognized principles of international law unless that State decides otherwise.

2 Where a State Party decides to apply the Convention to its warships or other vessels described in paragraph 1, it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

Article 5—Salvage operations controlled by public authorities

1 This Convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.

2 Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.

3 The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in this Convention shall be determined by the law of the State where such authority is situated.

Article 6—Salvage contracts

1 This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication.

2 The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel.

3 Nothing in this article shall affect the application of article 7 nor duties to prevent or minimize damage to the environment.

Article 7—Annulment and modification of contracts

A contract or any terms thereof may be annulled or modified if:

(a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or

(b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

Chapter II
Performance of salvage operations

Article 8—Duties of the salvor and of the owner and master

1 The salvor shall owe a duty to the owner of the vessel or other property in danger:

(a) to carry out the salvage operations with due care;

(b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimize damage to the environment;

(c) whenever circumstances reasonably require, to seek assistance from other salvors; and

(d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.

2 The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor:

(a) to co-operate fully with him during the course of the salvage operations;

(b) in so doing, to exercise due care to prevent or minimize damage to the environment; and

(c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.

Article 9—Rights of coastal States

Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognized principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations.

Article 10—Duty to render assistance

1 Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.

2 The States Parties shall adopt the measures necessary to enforce the duty set out in paragraph 1.

3 The owner of the vessel shall incur no liability for a breach of the duty of the master under paragraph 1.

Article 11—Co-operation

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provisions of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.

Chapter III
Rights of salvors

Article 12—Conditions for reward

1 Salvage operations which have had a useful result give right to a reward.

2 Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.

3 This chapter shall apply, notwithstanding that the salved vessel and the vessel undertaking the salvage operations belong to the same owner.

Article 13—Criteria for fixing the reward

1 The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:

(a) the salved value of the vessel and other property;

(b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;

(c) the measure of success obtained by the salvor;

(d) the nature and degree of the danger;

(e) the skill and efforts of the salvors in salving the vessel, other property and life;

(f) the time used and expenses and losses incurred by the salvors;

(g) the risk of liability and other risks run by the salvors or their equipment;

(h) the promptness of the services rendered;

(i) the availability and use of vessels or other equipment intended for salvage operations;

(j) the state of readiness and efficiency of the salvor’s equipment and the value thereof.

2 Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salved values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence.

3 The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salved value of the vessel and other property.

Article 14—Special compensation

1 If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.

2 If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30% of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.

3 Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1(h), (i) and (j).

4 The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13.

5 If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.

6 Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.

Article 15—Apportionment between salvors

1 The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article.

2 The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the flag of that vessel. If the salvage has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servants.

Article 16—Salvage of persons

1 No remuneration is due from persons whose lives are saved, but nothing in this article shall affect the provisions of national law on this subject.

2 A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment.

Article 17—Services rendered under existing contracts

No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

Article 18—The effect of salvor's misconduct

A salvor may be deprived of the whole or part of the payment due under this Convention to the extent that salvage operations have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct.

Article 19—Prohibition of salvage operations

Services rendered notwithstanding the express and reasonable prohibition of the owner or master of the vessel or the owner of any other property in danger which is not and has not been on board the vessel shall not give rise to payment under this Convention.

Chapter IV
Claims and actions

Article 20—Maritime lien

1 Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law.

2 The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided.

Article 21—Duty to provide security

1 Upon the request of the salvor a person liable for payment due under this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.

2 Without prejudice to paragraph 1, the owner of the salved vessel shall use his best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them including interest and costs before the cargo is released.

3 The salved vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim against the relevant vessel or property.

Article 22—Interim payment

1 The tribunal having jurisdiction over the claim of the salvor may, by interim decision, order that the salvor shall be paid on account such amount as seems fair and just, and on such terms including terms as to security where appropriate, as may be fair and just according to the circumstances of the case.

2 In the event of an interim payment under this article the security provided under article 21 shall be reduced accordingly.

Article 23—Limitation of actions

1 Any action relating to payment under this Convention shall be time-barred if judicial or arbitral proceedings have not been instituted within a period of two years. The limitation period commences on the day on which the salvage operations are terminated.

2 The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration to the claimant. This period may in the like manner be further extended.

3 An action for indemnity by a person liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs, if brought within the time allowed by the law of the State where proceedings are instituted.

Schedule 6 Article 23 paragraph 2: amended, on 9 June 1999, by section 38(1) of the Maritime Transport Amendment Act 1999 (1999 No 68).

Article 24—Interest

The right of the salvor to interest on any payment due under this Convention shall be determined according to the law of the State in which the tribunal seized of the case is situated.

Article 25—State-owned cargoes

Unless the State owner consents, no provision of this Convention shall be used as a basis for the seizure, arrest or detention by any legal process of, nor for any proceedings *in rem* against, non-commercial cargoes owned by a State and entitled, at the time of the salvage operations, to sovereign immunity under generally recognised principles of international law.

Article 26—Humanitarian cargoes

No provision of this Convention shall be used as a basis for the seizure, arrest or detention of humanitarian cargoes donated by a State, if such State has agreed to pay for salvage services rendered in respect of such humanitarian cargoes.

Article 27—Publication of arbitral awards

States Parties shall encourage, as far as possible and with the consent of the parties, the publication of arbitral awards made in salvage cases.

Chapter V
Final clauses

Article 28—Signature, ratification, acceptance, approval and accession

1 This Convention shall be open for signature at the Headquarters of the Organization from 1 July 1989 to 30 June 1990 and shall thereafter remain open for accession.

2 States express their consent to be bound by this Convention by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) accession.

3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

Article 29—Entry into force

1 This Convention shall enter into force one year after the date on which 15 States have expressed their consent to be bound by it.

2 For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect one year after the date of expression of such consent.

Article 30—Reservations

1 Any State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right not to apply the provisions of this Convention:

(a) when the salvage operation takes place in inland waters and all vessels involved are of inland navigation;

(b) when the salvage operations take place in inland waters and no vessel is involved;

(c) when all interested parties are nationals of that State;

(d) when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed.

2 Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

3 Any State which has made a reservation to this Convention may withdraw it at any time by means of a notification addressed to the Secretary-General. Such withdrawal shall take effect on the date the notification is received. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date the notification is received by the Secretary-General, the withdrawal shall take effect on such later date.

Article 31—Denunciation

1 This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention enters into force for that State.

2 Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

Article 32—Revision and amendment

1 A conference for the purpose of revising or amending this Convention may be convened by the Organization.

2 The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of eight States Parties, or one fourth of the States Parties, whichever is the higher figure.

3 Any consent to be bound by this Convention expressed after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

Article 33—Depositary

1 This Convention shall be deposited with the Secretary-General.

2 The Secretary-General shall:

(a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;

(ii) the date of the entry into force of this Convention;

(iii) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;

(iv) any amendment adopted in conformity with article 32;

(v) the receipt of any reservation, declaration or notification made under this Convention;

(b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.

3 As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 34—Languages

This convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned* being duly authorized by their respective Governments for that purpose have signed this Convention.

DONE at LONDON this twenty-eighth day of April one thousand nine hundred and eighty-nine.

*Signatures omitted.

Attachment 1
Common Understanding Concerning Articles 13 and 14 of the International Convention on Salvage, 1989

Schedule 6 Attachment 1: added, on 9 June 1999, by section 38(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

It is the common understanding of the Conference that, in fixing a reward under article 13 and assessing special compensation under article 14 of the International Convention on Salvage, 1989 the tribunal is under no duty to fix a reward under article 13

up to the maximum salved value of the vessel and other property before assessing the special compensation to be paid under article 14.

Attachment 2
Resolution requesting the amendment of the York-Antwerp Rules, 1974

Schedule 6 Attachment 2: added, on 9 June 1999, by section 38(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

THE INTERNATIONAL CONFERENCE ON SALVAGE, 1989,

HAVING ADOPTED the International Convention on Salvage, 1989,

CONSIDERING that payments made pursuant to article 14 are not intended to be allowed in general average,

REQUESTS the Secretary-General of the International Maritime Organization to take the appropriate steps in order to ensure speedy amendment of the York-Antwerp Rules, 1974, to ensure that special compensation paid under article 14 is not subject to general average.

Attachment 3
Resolution on international co-operation for the implementation of the International Convention on Salvage, 1989

Schedule 6 Attachment 3: added, on 9 June 1999, by section 38(2) of the Maritime Transport Amendment Act 1999 (1999 No 68).

The International Conference on Salvage, 1989,

IN ADOPTING the International Convention on Salvage, 1989 (hereinafter referred to as "The Convention"),

Considering it Desirable that as many States as possible should become Parties to the Convention,

RECOGNIZING that the entry into force of the Convention will represent an important additional factor for the protection of the marine environment,

CONSIDERING that the international publicizing and wide implementation of the Convention is of the utmost importance for the attainment of its objectives,

I RECOMMENDS:

(a) that the Organization promote public awareness of the Convention through the holding of seminars, courses or symposia;

(b) that training institutions created under the auspices of the Organization include the study of the Convention in the corresponding courses of study.

II REQUESTS:

(a) Member States to transmit to the Organization the text of the laws, orders, decrees, regulations and other instruments that they promulgate concerning the various matters falling within the scope of application of the Convention;

(b) Member States, in consultation with the Organization, to promote the giving of help to those States requesting technical assistance for the drafting of laws, orders, decrees, regulations and other instruments necessary for the implementation of the Convention; and

(c) the Organization to notify Member States of any communication it may receive under paragraph II(a).

Schedule 7
Enactments repealed

s 481(1)

Foreign Affairs Amendment Act 1993 (1993 No 48)

Amendment(s) incorporated in the Act(s).

Health and Safety in Employment Act 1992 (1992 No 96)

Amendment(s) incorporated in the Act(s).

Marine Pollution Act 1974 (1974 No 14) (RS Vol 24, p 499)

Marine Pollution Amendment Act 1974 (1974 No 101) (RS Vol 24, p 584)

Marine Pollution Amendment Act 1975 (1975 No 89) (RS Vol 24, p 584)

Marine Pollution Amendment Act 1977 (1977 No 12) (RS Vol 24, p 585)

Marine Pollution Amendment Act (No 2) 1977 (1977 No 130) (RS Vol 24, p 586)

Marine Pollution Amendment Act 1980 (1980 No 53) (RS Vol 24, p 586)

Marine Pollution Amendment Act 1988 (1988 No 93) (RS Vol 24, p 590)

Marine Pollution Amendment Act 1990 (1990 No 34)

New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987 (1987 No 86)

Amendment(s) incorporated in the Act(s).

Public Finance Act 1989 (1989 No 44)

Amendment(s) incorporated in the Act(s).

Resource Management Act 1991 (1991 No 69)

Amendment(s) incorporated in the Act(s).

Shipping and Seamen Amendment Act 1987 (1987 No 184)

Schedule 7 **Shipping and Seamen Amendment Act 1987**: repealed, on 1 February 1995, by section 202(1).

Schedule 8
Convention on the Limitation of Liability for Maritime Claims (1976)

s 84

Schedule 8: inserted, on 23 October 2013, by section 84 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Schedule 8: amended by Schedule 9: Protocol of 1996 to Amend the Convention on the Limitation of Liability for Maritime Claims (1976).

THE STATES PARTIES TO THIS CONVENTION,

HAVING RECOGNIZED the desirability of determining by agreement certain uniform rules relating to the limitation of liability for maritime claims,

HAVE DECIDED to conclude a Convention for this purpose and have thereto agreed as follows:

Chapter I
The Right of Limitation

Article 1—Persons entitled to limit liability

1. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.
2. The term "shipowner" shall mean the owner, charterer, manager and operator of a seagoing ship.
3. Salvor shall mean any person rendering services in direct connexion with salvage operations. Salvage operations shall also include operations referred to in Article 2, paragraph 1(d), (e) and (f).
4. If any claims set out in Article 2 are made against any person for whose act, neglect or default the shipowner or salvor is responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.
5. In this Convention the liability of a shipowner shall include liability in an action brought against the vessel itself.
6. An insurer of liability for claims subject to limitation in accordance with the rules of this Convention shall be entitled to the benefits of this Convention to the same extent as the assured himself.
7. The act of invoking limitation of liability shall not constitute an admission of liability.

Article 2—Claims subject to limitation

1. Subject to Articles 3 and 4 the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:

(a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connexion with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;

(b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;

(c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connexion with the operation of the ship or salvage operations;

(d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;

(e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;

(f) claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.

2. Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, claims set out under paragraph 1(d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

Article 3—Claims excepted from limitation

The rules of this Convention shall not apply to:

(a) claims for salvage or contribution in general average;

(b) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, dated 29 November 1969 or of any amendment or Protocol thereto which is in force;

(c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;

(d) claims against the shipowner of a nuclear ship for nuclear damage;

(e) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 6.

Article 4—Conduct barring limitation

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

Article 5—Counterclaims

Where a person entitled to limitation of liability under the rules of this Convention has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance, if any.

Chapter II
Limits of Liability

Article 6—The general limits

1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows:

(a) in respect of claims for loss of life or personal injury,

(i) 333,000 Units of Account for a ship with a tonnage not exceeding 500 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 501 to 3,000 tons, 500 Units of Account;

for each ton from 3,001 to 30,000 tons, 333 Units of Account;

for each ton from 30,001 to 70,000 tons, 250 Units of Account; and

for each ton in excess of 70,000 tons, 167 Units of Account,

(b) in respect of any other claims,

(i) 167,000 Units of Account for a ship with a tonnage not exceeding 500 tons,

(ii) for a ship with a tonnage in excess thereof the following amount in addition to that mentioned in (i):

for each ton from 501 to 30,000 tons, 167 Units of Account;

for each ton from 30,001 to 70,000 tons, 125 Units of Account; and

for each ton in excess of 70,000 tons, 83 Units of Account.

2. Where the amount calculated in accordance with paragraph 1(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph 1(b) shall be available for payment of the unpaid balance of claims under paragraph 1(a) and such unpaid balance shall rank rateably with claims mentioned under paragraph 1(b).

3. However, without prejudice to the right of claims for loss of life or personal injury according to paragraph 2, a State Party may provide in its national law that claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have such priority over other claims under paragraph 1(b) as is provided by that law.

4. The limits of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which he is rendering salvage services, shall be calculated according to a tonnage of 1,500 tons.

5. For the purpose of this Convention the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

Article 7—The limit for passenger claims

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 46,666 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate, but not exceeding 25 million Units of Account.

2. For the purpose of this Article "claims for loss of life or personal injury to passengers of a ship" shall mean any such claims brought by or on behalf of any person carried in that ship:

   (a) under a contract of passenger carriage, or

   (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

Article 8—Unit of Account

1. The Unit of Account referred to in Articles 6 and 7 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Articles 6 and 7 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund shall have been constituted, payment is made, or security is given which under the law of that State is equivalent to such payment. The value of a national currency in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transac-

tions. The value of a national currency in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State Party.

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of signature without reservation as to ratification, acceptance or approval or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as follows:

(a) in respect of Article 6, paragraph 1(a) at an amount of:

(i) 5 million monetary units for a ship with a tonnage not exceeding 500 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 501 to 3,000 tons, 7,500 monetary units;

for each ton from 3,001 to 30,000 tons, 5,000 monetary units;

for each ton from 30,001 to 70,000 tons, 3,750 monetary units; and

for each ton in excess of 70,000 tons, 2,500 monetary units; and

(b) in respect of Article 6, paragraph 1(b), at an amount of:

(i) 2.5 million monetary units for a ship with a tonnage not exceeding 500 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 501 to 30,000 tons, 2,500 monetary units;

for each ton from 30,001 to 70,000 tons, 1,850 monetary units; and

for each ton in excess of 70,000 tons, 1,250 monetary units; and

(c) in respect of Article 7, paragraph 1, at an amount of 700,000 monetary units multiplied by the number of passengers which the ship is authorized to carry according to its certificate, but not exceeding 375 million monetary units.

Paragraphs 2 and 3 of Article 6 apply correspondingly to sub-paragraphs (a) and (b) of this paragraph.

3. The monetary unit referred to in paragraph 2 corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion

of the amounts referred to in paragraph 2 into the national currency shall be made according to the law of the State concerned.

4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 shall be made in such a manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 6 and 7 as is expressed there in units of account. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 3, as the case may be, at the time of the signature without reservation as to ratification, acceptance or approval, or when depositing an instrument referred to in Article 16 and whenever there is a change in either.

Article 9—Aggregation of claims

1. The limits of liability determined in accordance with Article 6 shall apply to the aggregate of all claims which arise on any distinct occasion:
   (a) against the person or persons mentioned in paragraph 2 of Article 1 and any person for whose act, neglect or default he or they are responsible; or
   (b) against the shipowner of a ship rendering salvage services from that ship and the salvor or salvors operating from such ship and any person for whose act, neglect or default he or they are responsible; or
   (c) against the salvor or salvors who are not operating from a ship or who are operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he or they are responsible.
2. The limits of liability determined in accordance with Article 7 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the person or persons mentioned in paragraph 2 of Article 1 in respect of the ship referred to in Article 7 and any person for whose act, neglect or default he or they are responsible.

Article 10—Limitation of liability without constitution of a limitation fund

1. Limitation of liability may be invoked notwithstanding that a limitation fund as mentioned in Article 11 has not been constituted. However, a State Party may provide in its national law that, where an action is brought in its Courts to enforce a claim subject to limitation, a person liable may only invoke the right to limit liability if a limitation fund has been constituted in accordance with the provisions of this Convention or is constituted when the right to limit liability is invoked.
2. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Article 12 shall apply correspondingly.

3. Questions of procedure arising under the rules of this Article shall be decided in accordance with the national law of the State Party in which action is brought.

Chapter III
The Limitation Fund

Article 11—Constitution of the fund

1. Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Articles 6 and 7 as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.
2. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the Court or other competent authority.
3. A fund constituted by one of the persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2 of Article 9 or his insurer shall be deemed constituted by all persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2, respectively.

Article 12—Distribution of the fund

1. Subject to the provisions of paragraphs 1, 2 and 3 of Article 6 and of Article 7, the fund shall be distributed among the claimants in proportion to their established claims against the fund.
2. If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.
3. The right of subrogation provided for in paragraph 2 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.
4. Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 2 and 3 had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provi-

sionally set aside to enable such person at such later date to enforce his claim against the fund.

Article 13—Bar to other actions

1. Where a limitation fund has been constituted in accordance with Article 11, any person having made a claim against the fund shall be barred from exercising any right in respect of such claim against any other assets of a person by or on behalf of whom the fund has been constituted.

2. After a limitation fund has been constituted in accordance with Article 11, any ship or other property, belonging to a person on behalf of whom the fund has been constituted, which has been arrested or attached within the jurisdiction of a State Party for a claim which may be raised against the fund, or any security given, may be released by order of the Court or other competent authority of such State. However, such release shall always be ordered if the limitation fund has been constituted:

   (a) at the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter; or

   (b) at the port of disembarkation in respect of claims for loss of life or personal injury; or

   (c) at the port of discharge in respect of damage to cargo; or

   (d) in the State where the arrest is made.

3. The rules of paragraphs 1 and 2 shall apply only if the claimant may bring a claim against the limitation fund before the Court administering that fund and the fund is actually available and freely transferable in respect of that claim.

Article 14—Governing law

Subject to the provisions of this Chapter the rules relating to the constitution and distribution of a limitation fund, and all rules of procedure in connexion therewith, shall be governed by the law of the State Party in which the fund is constituted.

Chapter IV
Scope of Application

Article 15

1. This Convention shall apply whenever any person referred to in Article 1 seeks to limit his liability before the Court of a State Party or seeks to procure the release of a ship or other property or the discharge of any security given within the jurisdiction of any such State. Nevertheless, each State Party may exclude wholly or partially from the application of this Convention any person referred to in Article 1 who at the time when the rules of this Convention are invoked before the Courts of that State does not have his habitual residence in a State Party or does not have his principal place of business in a State Party or any

ship in relation to which the right of limitation is invoked or whose release is sought and which does not at the time specified above fly the flag of a State Party.

2. A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to vessels which are:

   (a) according to the law of that State, ships intended for navigation on inland waterways

   (b) ships of less than 300 tons.

   A State Party which makes use of the option provided for in this paragraph shall inform the depositary of the limits of liability adopted in its national legislation or of the fact that there are none.

3. A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to claims arising in cases in which interests of persons who are nationals of other States Parties are in no way involved.

4. The Courts of a State Party shall not apply this Convention to ships constructed for, or adapted to, and engaged in, drilling:

   (a) when that State has established under its national legislation a higher limit of liability than that otherwise provided for in Article 6; or

   (b) when that State has become party to an international convention regulating the system of liability in respect of such ships.

   In a case to which sub-paragraph (a) applies that State Party shall inform the depositary accordingly.

5. This Convention shall not apply to:

   (a) air-cushion vehicles;

   (b) floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof.

Chapter V
Final Clauses

Article 16—Signature, ratification and accession

1. This Convention shall be open for signature by all States at the Headquarters of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as "the Organization") from 1 February 1977 until 31 December 1977 and shall thereafter remain open for accession.

2. All States may become parties to this Convention by:

   (a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or

(c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization (hereinafter referred to as "the Secretary-General").

Article 17—Entry into force

1. This Convention shall enter into force on the first day of the month following one year after the date on which twelve States have either signed it without reservation as to ratification, acceptance or approval or have deposited the requisite instruments of ratification, acceptance, approval or accession.

2. For a State which deposits an instrument of ratification, acceptance, approval or accession, or signs without reservation as to ratification, acceptance or approval, in respect of this Convention after the requirements for entry into force have been met but prior to the date of entry into force, the ratification, acceptance, approval or accession or the signature without reservation as to ratification, acceptance or approval, shall take effect on the date of entry into force of the Convention or on the first day of the month following the ninetieth day after the date of the signature or the deposit of the instrument, whichever is the later date.

3. For any State which subsequently becomes a Party to this Convention, the Convention shall enter into force on the first day of the month following the expiration of ninety days after the date when such State deposited its instrument.

4. In respect of the relations between States which ratify, accept, or approve this Convention or accede to it, this Convention shall replace and abrogate the International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships, done at Brussels on 10 October 1957, and the International Convention for the Unification of certain Rules relating to the Limitation of Liability of the Owners of Sea-going Vessels, signed at Brussels on 25 August 1924.

Article 18—Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right to exclude the application of Article 2 paragraph 1(d) and (e). No other reservations shall be admissible to the substantive provisions of this Convention.

2. Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

3. Any State which has made a reservation to this Convention may withdraw it at any time by means of a notification addressed to the Secretary-General. Such

withdrawal shall take effect on the date the notification is received. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date the notification is received by the Secretary-General, the withdrawal shall take effect on such later date.

Article 19—Denunciation

1. This Convention may be denounced by a State Party at any time one year from the date on which the Convention entered into force for that Party.
2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General.
3. Denunciation shall take effect on the first day of the month following the expiration of one year after the date of deposit of the instrument, or after such longer period as may be specified in the instrument.

Article 20—Revision and amendment

1. A Conference for the purpose of revising or amending this Convention may be convened by the Organization.
2. The Organization shall convene a Conference of the States Parties to this Convention for revising or amending it at the request of not less than one-third of the Parties.
3. After the date of the entry into force of an amendment to this Convention, any instrument of ratification, acceptance, approval or accession deposited shall be deemed to apply to the Convention as amended, unless a contrary intention is expressed in the instrument.

Article 21—Revision of the limitation amounts and of Unit of Account or monetary unit

1. Notwithstanding the provisions of Article 20, a Conference only for the purposes of altering the amounts specified in Articles 6 and 7 and in Article 8, paragraph 2, or of substituting either or both of the Units defined in Article 8, paragraphs 1 and 2, by other units shall be convened by the Organization in accordance with paragraphs 2 and 3 of this Article. An alteration of the amounts shall be made only because of a significant change in their real value.
2. The Organization shall convene such a Conference at the request of not less than one fourth of the States Parties.
3. A decision to alter the amounts or to substitute the Units by other units of account shall be taken by a two-thirds majority of the States Parties present and voting in such Conference.
4. Any State depositing its instrument of ratification, acceptance, approval or accession to the Convention, after entry into force of an amendment, shall apply the Convention as amended.

Article 22—Depositary

1. This Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:
   (a) transmit certified true copies of this Convention to all States which were invited to attend the Conference on Limitation of Liability for Maritime Claims and to any other States which accede to this Convention;
   (b) inform all States which have signed or acceded to this Convention of:
      (i) each new signature and each deposit of an instrument and any reservation thereto together with the date thereof;
      (ii) the date of entry into force of this Convention or any amendment thereto;
      (iii) any denunciation of this Convention and the date on which it takes effect;
      (iv) any amendment adopted in conformity with Articles 20 or 21;
      (v) any communication called for by any Article of this Convention.
3. Upon entry into force of this Convention, a certified true copy thereof shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 23—Languages

This Convention is established in a single original in the English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this nineteenth day of November one thousand nine hundred and seventy-six.

IN WITNESS WHEREOF the undersigned being duly authorized for that purpose have signed this Convention.

Schedule 9
Protocol of 1996 to Amend the Convention on the Limitation of Liability for Maritime Claims (1976)

s 84

Schedule 9: inserted, on 23 October 2013, by section 84 of the Maritime Transport Amendment Act 2013 (2013 No 84).

THE PARTIES TO THE PRESENT PROTOCOL,

CONSIDERING that it is desirable to amend the Convention on Limitation of Liability for Maritime Claims, done at London on 19 November 1976, to provide for enhanced compensation and to establish a simplified procedure for updating the limitation amounts,

HAVE AGREED as follows:

Article 1

For the purposes of this Protocol:

1. "Convention" means the Convention on Limitation of Liability for Maritime Claims, 1976.
2. "Organization" means the International Maritime Organization.
3. "Secretary-General" means the Secretary-General of the Organization.

Article 2

Article 3, subparagraph (a) of the Convention is replaced by the following text:

(a) claims for salvage, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average;

Article 3

Article 6, paragraph 1 of the Convention is replaced by the following text:

1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows:
   (a) in respect of claims for loss of life or personal injury,
      (i) 2 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,
      (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

         for each ton from 2,001 to 30,000 tons, 800 Units of Account;

for each ton from 30,001 to 70,000 tons, 600 Units of Account; and

for each ton in excess of 70,000 tons, 400 Units of Account,

(b) in respect of any other claims,

(i) 1 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 400 Units of Account;

for each ton from 30,001 to 70,000 tons, 300 Units of Account; and

for each ton in excess of 70,000 tons, 200 Units of Account.

Schedule 9 Article 3 new paragraph 1(a)(i): 2 million to be read as 3.02 million, on 8 June 2015, by clause 4(2) of the Maritime Transport (Limitation of Liability for Maritime Claims) Order 2015 (LI 2015/111).

Schedule 9 Article 3 new paragraph 1(a)(ii): 800 to be read as 1,208, on 8 June 2015, by clause 4(2) of the Maritime Transport (Limitation of Liability for Maritime Claims) Order 2015 (LI 2015/111).

Schedule 9 Article 3 new paragraph 1(a)(ii): 600 to be read as 906, on 8 June 2015, by clause 4(2) of the Maritime Transport (Limitation of Liability for Maritime Claims) Order 2015 (LI 2015/111).

Schedule 9 Article 3 new paragraph 1(a)(ii): 400 to be read as 604, on 8 June 2015, by clause 4(2) of the Maritime Transport (Limitation of Liability for Maritime Claims) Order 2015 (LI 2015/111).

Schedule 9 Article 3 new paragraph 1(b)(i): 1 million to be read as 1.51 million, on 8 June 2015, by clause 4(2) of the Maritime Transport (Limitation of Liability for Maritime Claims) Order 2015 (LI 2015/111).

Schedule 9 Article 3 new paragraph 1(b)(ii): 400 to be read as 604, on 8 June 2015, by clause 4(2) of the Maritime Transport (Limitation of Liability for Maritime Claims) Order 2015 (LI 2015/111).

Schedule 9 Article 3 new paragraph 1(b)(ii): 300 to be read as 453, on 8 June 2015, by clause 4(2) of the Maritime Transport (Limitation of Liability for Maritime Claims) Order 2015 (LI 2015/111).

Schedule 9 Article 3 new paragraph 1(b)(ii): 200 to be read as 302, on 8 June 2015, by clause 4(2) of the Maritime Transport (Limitation of Liability for Maritime Claims) Order 2015 (LI 2015/111).

Article 4

Article 7, paragraph 1 of the Convention is replaced by the following text:

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175,000 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate.

Article 5

Article 8, paragraph 2 of the Convention is replaced by the following text:

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of signature without reservation as to ratification, acceptance or approval or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as follows:

(a) in respect of Article 6, paragraph 1(a), at an amount of

(i) 30 million monetary units for a ship with a tonnage not exceeding 2,000 tons;

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 12,000 monetary units;

for each ton from 30,001 to 70,000 tons, 9,000 monetary units; and

for each ton in excess of 70,000 tons, 6,000 monetary units; and

(b) in respect of Article 6, paragraph 1(b), at an amount of:

(i) 15 million monetary units for a ship with a tonnage not exceeding 2,000 tons;

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 6,000 monetary units;

for each ton from 30,001 to 70,000 tons, 4,500 monetary units; and

for each ton in excess of 70,000 tons, 3,000 monetary units; and

(c) in respect of Article 7, paragraph 1, at an amount of 2,625,000 monetary units multiplied by the number of passengers which the ship is authorized to carry according to its certificate.

Paragraphs 2 and 3 of Article 6 apply correspondingly to subparagraphs (a) and (b) of this paragraph.

Article 6

The following text is added as paragraph 3*bis* in Article 15 of the Convention:

3*bis* Notwithstanding the limit of liability prescribed in paragraph 1 of Article 7, a State Party may regulate by specific provisions of national law the system of liability to be applied to claims for loss of life or personal injury to passengers of a ship, provided that the limit of liability is not lower than that prescribed in paragraph 1 of Art-

icle 7. A State Party which makes use of the option provided for in this paragraph shall inform the Secretary-General of the limits of liability adopted or of the fact that there are none.

Article 7

Article 18, paragraph 1 of the Convention is replaced by the following text:

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right:
   (a) to exclude the application of Article 2, paragraphs 1(d) and (e);
   (b) to exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or protocol thereto.

No other reservations shall be admissible to the substantive provisions of this Convention.

Article 8
Amendment of limits

1. Upon the request of at least one half, but in no case less than six, of the States Parties to this Protocol, any proposal to amend the limits specified in Article 6, paragraph 1, Article 7, paragraph 1 and Article 8, paragraph 2 of the Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.
2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (the **Legal Committee**) for consideration at a date at least six months after the date of its circulation.
3. All Contracting States to the Convention as amended by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
4. Amendments shall be adopted by a two-thirds majority of the Contracting States to the Convention as amended by this Protocol present and voting in the Legal Committee expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States to the Convention as amended by this Protocol shall be present at the time of voting.
5. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.

6. (a) No amendment of the limits under this Article may be considered less than five years from the date on which this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this Article.

   (b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol increased by six percent per year calculated on a compound basis from the date on which this Protocol was opened for signature.

   (c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol multiplied by three.

7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period not less than one-fourth of the States that were Contracting States at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with paragraphs 1 and 2 of Article 12 at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10. When an amendment has been adopted but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article 9

1. The Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2. A State which is Party to this Protocol but not a Party to the Convention shall be bound by the provisions of the Convention as amended by this Protocol in relation to other States Parties hereto, but shall not be bound by the provisions of the Convention in relation to States Parties only to the Convention.

3. The Convention as amended by this Protocol shall apply only to claims arising out of occurrences which take place after the entry into force for each State of this Protocol.

4. Nothing in this Protocol shall affect the obligations of a State which is a Party both to the Convention and to this Protocol with respect to a State which is a Party to the Convention but not a Party to this Protocol.

Final Clauses

Article 10
Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at the Headquarters of the Organization from 1 October 1996 to 30 September 1997 by all States.

2. Any State may express its consent to be bound by this Protocol by:

   (a) signature without reservation as to ratification, acceptance or approval; or

   (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or

   (c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

Article 11
Entry into force

1. This Protocol shall enter into force ninety days following the date on which ten States have expressed their consent to be bound by it.

2. For any State which expresses its consent to be bound by this Protocol after the conditions in paragraph 1 for entry into force have been met, this Protocol shall enter into force ninety days following the date of expression of such consent.

Article 12
Denunciation

1. This Protocol may be denounced by any State Party at any time after the date on which it enters into force for that State Party.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

4. As between the States Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 19 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

Article 13
Revision and amendment

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2. The Organization shall convene a conference of Contracting States to this Protocol for revising or amending it at the request of not less than one-third of the Contracting Parties.

Article 14
Depositary

1. This Protocol and any amendments adopted under Article 8 shall be deposited with the Secretary-General.

   The Secretary-General shall:

   (a) inform all States which have signed or acceded to this Protocol of:

      (i) each new signature or deposit of an instrument together with the date thereof;

      (ii) each declaration and communication under Article 8, paragraph 2 of the Convention as amended by this Protocol, and Article 8, paragraph 4 of the Convention;

      (iii) the date of entry into force of this Protocol;

      (iv) any proposal to amend limits which has been made in accordance with Article 8, paragraph 1;

      (v) any amendment which has been adopted in accordance with Article 8, paragraph 4;

      (vi) any amendment deemed to have been accepted under Article 8, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article;

(vii) the deposit of any instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;

(b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to this Protocol.

3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 15
Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE at London this second day of May one thousand nine hundred and ninety-six.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

Maritime Transport Amendment Act 1998

Public Act	1998 No 53
Date of assent	3 June 1998
Commencement	see section 1(2)

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.

Section 1(2): this Act brought into force, on 25 June 1999, by the Maritime Transport Amendment Act 1998 Commencement Order 1999 (SR 1999/137).

2 Transitional provision relating to application of this Act

Despite the commencement of this Act, if any event giving rise to liability under Part 25 of the principal Act or to a claim for compensation under Part 26 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 25 and 26 of the principal Act apply to that event as if this Act had not come into force.

Maritime Transport Amendment Act 2004

Public Act	2004 No 98
Date of assent	30 November 2004
Commencement	see section 2

1 Title

(1) This Act is the Maritime Transport Amendment Act 2004.

(2) In this Act, the Maritime Transport Act 1994 is called "the principal Act".

2 Commencement

(1) Section 11 comes into force on 1 July 2005.

(2) The rest of this Act comes into force on 1 December 2004.

11 Transitional provisions relating to references to Maritime Safety Authority and Director of Maritime Safety

(1) Unless the context otherwise requires, in any enactment, agreement, deed, instrument, application, or notice, or in any other document in force immediately before the commencement of this section,—

(a) every reference to the Maritime Safety Authority is, on and after that commencement, to be read as a reference to Maritime New Zealand:

(b) every reference to the Director of Maritime Safety is, on and after that commencement, to be read as a reference to the Director of Maritime New Zealand.

(2) The principal Act is amended in the manner indicated in Part 1 of the Schedule.

(3) The Acts specified in Part 2 of the Schedule are amended in the manner indicated in that Part.

(4) The regulations specified in Part 3 of the Schedule are amended in the manner indicated in that Part.

12 Transitional provisions relating to rules

(1) Nothing in this Act affects the validity of a rule that—

(a) was in force immediately before the commencement of this Act; or

(b) has been made but is to come into force after the commencement of this Act.

(2) If a notice to make a rule has been published under section 446(a) of the principal Act as in force immediately before the commencement of this Act, but has not been made before that commencement,—

(a) the proposed rule may be made in accordance with the law in force immediately before that commencement; or

(b) if the Minister so directs, a new rule may be prepared, notified, and made in accordance with the law in force on the commencement of this Act.

Maritime Transport Amendment Act 2013

Public Act	2013 No 84
Date of assent	22 October 2013
Commencement	see section 2

1 Title

This Act is the Maritime Transport Amendment Act 2013.

2 Commencement

(1) Sections 91 to 100 come into force on a date appointed by the Governor-General by Order in Council.

(2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Section 2(1): sections 91 to 100 brought into force, on 1 October 2014, by the Maritime Transport Amendment Act 2013 Commencement Order 2014 (LI 2014/276).

3 Principal Act

This Act amends the Maritime Transport Act 1994 (the **principal Act**).

Transitional and savings provisions

87 Savings provisions relating to Local Government Act 1974

(1) All regulations and bylaws, liability for fees, charges, or expenses, appointments, notices, directions, delegations, transfers, agreements, leases, licences, instruments, rights, other liabilities, and other acts of authority that originated under Part 39A, Part 43, or section 699A, 699B, 699C, or 699D of the Local Government Act 1974 and existed or were in force at the time of the repeal of those provisions by section 85 continue as if they had been made, and are deemed where necessary to have been made, under the corresponding provisions of the Maritime Transport Act 1994.

(2) All matters, proceedings, actions, and investigations under Part 39A, Part 43, or section 699A, 699B, 699C, or 699D of the Local Government Act 1974 that were pending or in progress at the time of the repeal of those provisions may be continued, completed, and enforced as if those provisions had not been repealed.

(3) Without limiting subsection (1), the following regulations continue in force and have the same effect as if they had been made under section 201(1)(b) of the Maritime Transport Act 1994:

(a) Lake Taupo (Crown Facilities, Permits and Fees) Regulations 2004:

(b) Local Government (Infringement Fees for Offences: Auckland Regional Council Navigation Safety Bylaw 2008) Regulations 2009:

(c) Local Government (Infringement Fees for Offences: Bay of Plenty Regional Navigation Safety Bylaw 2010) Regulations 2010:

(d) Local Government (Infringement Fees for Offences: Central Otago District Council Lake Dunstan Navigation Safety Bylaws 2006) Regulations 2010:

(e) Local Government (Infringement Fees for Offences—Environment Canterbury Navigation Safety Bylaws 2010) Regulations 2011:

(f) Local Government (Infringement Fees for Offences: Gisborne District Navigation and Safety Bylaw) Regulations 2004:

(g) Local Government (Infringement Fees for Offences: Hawke's Bay Regional Council Navigation Safety Bylaws) Regulations 2012:

(h) Local Government (Infringement Fees for Offences—Lake Taupo Navigation Safety Bylaw) Regulations 2010:

(i) Local Government (Infringement Fees for Offences: Manawatu River and Tributaries Navigation and Safety Bylaw 2010) Regulations 2010:

(j) Local Government (Infringement Fees for Offences—Marlborough District Council Navigation Bylaw 2009) Regulations 2011:

(k) Local Government (Infringement Fees for Offences—Navigation Bylaws for Port Taranaki and its Approaches 2009) Regulations 2012:

(l) Local Government (Infringement Fees for Offences: Northland Regional Council Navigation Safety Bylaw 2012) Regulations 2012:

(m) Local Government (Infringement Fees for Offences: Queenstown Lakes District Council (Shotover River) Bylaw 2009) Regulations 2009:

(n) Local Government (Infringement Fees for Offences: Queenstown Lakes District Navigation Safety Bylaw 2009) Regulations 2009:

(o) Local Government (Infringement Fees for Offences: Southland Regional Council Navigation Safety Bylaws 2009) Regulations 2009:

(p) Local Government (Infringement Fees for Offences: Tasman District Council Consolidated Bylaw, Chapter 5: Navigation Safety) Regulations 2007:

(q) Local Government (Infringement Fees for Offences: Waikato Regional Council Navigation Safety Bylaw) Regulations 2006:

(r) Local Government (Infringement Fees for Offences: Wellington Regional Navigation and Safety Bylaws) Regulations 2006.

88 Conflicts between existing navigation bylaws and existing maritime rules

Any provision in a navigation bylaw that was made under Part 43 of the Local Government Act 1974 and that was in force at the time of the repeal of that Part by section 85 ceases to have effect to the extent that it is inconsistent with the Maritime Transport Act 1994, or regulations or rules made under that Act.

89 Marine Safety Charges Regulations 2000

The Marine Safety Charges Regulations 2000 are to be treated as having been made under section 191 of the principal Act as amended by this Act.

Reprints notes

1 General

This is a reprint of the Maritime Transport Act 1994 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 Legal status

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 Editorial and format changes

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also http://www.pco.parliament.govt.nz/editorial-conventions/.

4 Amendments incorporated in this reprint

Customs and Excise Act 2018 (2018 No 4): section 443(3)

Maritime Transport Amendment Act 2017 (2017 No 48)

Resource Legislation Amendment Act 2017 (2017 No 15): section 286

Contract and Commercial Law Act 2017 (2017 No 5): section 347

Civil Defence Emergency Management Amendment Act 2016 (2016 No 88): section 42

District Court Act 2016 (2016 No 49): section 261

Radiation Safety Act 2016 (2016 No 6): section 99

Standards and Accreditation Act 2015 (2015 No 91): section 45(1)

Health and Safety at Work Act 2015 (2015 No 70): section 232

Maritime Transport (Limitation of Liability for Maritime Claims) Order 2015 (LI 2015/111)

Companies Amendment Act 2013 (2013 No 111): section 14

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85): section 47(1)

Maritime Transport Amendment Act 2013 (2013 No 84)

Crown Entities Amendment Act 2013 (2013 No 51): section 72

Legislation Act 2012 (2012 No 119): section 77(3)

Biosecurity Law Reform Act 2012 (2012 No 73): section 86

Search and Surveillance Act 2012 (2012 No 24): sections 279, 280

Criminal Procedure Act 2011 (2011 No 81): section 413

Trans-Tasman Proceedings Act 2010 (2010 No 108): section 10(1)

Policing Act 2008 (2008 No 72): section 116(a)(ii), (vii), (d)

Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64): section 9

Evidence Act 2006 (2006 No 69): section 216
Maritime Transport Amendment Act (No 2) 2005 (2005 No 108)
Maritime Transport Amendment Act 2005 (2005 No 59)
Relationships (Statutory References) Act 2005 (2005 No 3): section 7
Crown Entities Act 2004 (2004 No 115): section 200
Public Finance Amendment Act 2004 (2004 No 113): section 37(1)
Maritime Transport Amendment Act 2004 (2004 No 98)
Civil Aviation Amendment Act (No 2) 2004 (2004 No 95): section 12(3)
Maritime Security Act 2004 (2004 No 16): section 81(8)
Maritime Transport Act Commencement Order 2003 (SR 2003/259)
Health and Safety in Employment Amendment Act 2002 (2002 No 86): section 35
Local Government Act 2002 (2002 No 84): sections 262, 266
Civil Defence Emergency Management Act 2002 (2002 No 33): section 117
Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49): section 337(1)
Maritime Transport Amendment Act 2000 (2000 No 71)
Maritime Transport Amendment Act 1999 (1999 No 68)
Maritime Transport Amendment Act (No 2) 1998 (1998 No 116)
Maritime Transport Act Commencement Order 1998 (SR 1998/206)
District Courts Amendment Act 1998 (1998 No 76): section 7
Maritime Transport Amendment Act 1998 (1998 No 53)
Maritime Transport Act Commencement Order 1997 (SR 1997/300)
Maritime Transport Act Commencement Order 1996 (SR 1996/336)
Fisheries Act 1996 (1996 No 88): section 316(1)
Maritime Transport Amendment Act 1996 (1996 No 79)
Territorial Sea and Exclusive Economic Zone Amendment Act 1996 (1996 No 74): section 5(4)
Customs and Excise Act 1996 (1996 No 27): sections 289(1), 294(3)
Maritime Transport Act Commencement Order 1994 (SR 1994/272)
Maritime Transport Act 1994 (1994 No 104): sections 187, 202(1), 205(a)

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