

**Reprint
as at 1 October 2014**



**Maritime Transport Amendment
Act 2013**

Public Act 2013 No 84
Date of assent 22 October 2013
Commencement see section 2

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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.

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The Parliament of New Zealand enacts as follows:

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**).

4 Long Title amended

- (1) In the Long Title, paragraph (a), replace “**the Maritime Safety Authority of New Zealand**” with “**Maritime New Zealand**”.
- (2) In the Long Title, paragraph (g), after “environment”, insert “; and”.
- (3) In the Long Title, after paragraph (g), insert:
 - “(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”.

5 Section 2 amended (Interpretation)

- (1) In section 2(1), definition of **owner**, paragraph (c), replace “under section 57 of the Fisheries Act 1983” with “in the Fishing Vessel Register kept under section 98 of the Fisheries Act 1996”.
- (2) In section 2(1), replace the definition of **pleasure craft** with:
 - “**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”.
- (3) In section 2(1), replace the definition of **port** with:
- “**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”.
- (4) In section 2(1), definition of **reward**, replace paragraph (b) with:
- “(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”.

(5) In section 2(1), insert in their appropriate alphabetical order:

“**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

“**navigation bylaws** means bylaws made (or deemed to have been made) under Part 3A”.

6 Section 4 amended (Application of this Act)

After section 4(3), insert:

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

7 New Part 3A inserted

After Part 3, insert:

“Part 3A

“Local regulation of maritime activity

“33A Application of this Part

This Part applies to—

“(a) New Zealand waters; and

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

“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.

“**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.

“*Harbourmasters*

“**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

“**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.

“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 a District Court under section 424.
- “Compare: 1974 No 66 ss 650C, 650D, 650E, 650G; 2012 No 24 s 131(1), (2)

“Enforcement

“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

“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.

“Councils may carry out harbour works

“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

*“Wrecks***“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

“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)

“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

“Navigation bylaws

“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.

“(2) Navigation bylaws made under subsection (1) 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

“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

“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

“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

“**33Q Entitlement to infringement fees**

A regional council is entitled to retain all infringement fees received by it in respect of infringement offences under section 33O if the infringement notice was issued by a harbourmaster or an enforcement officer of that council.

“Compare: 1974 No 66 s 699D

“Fees and charges

“**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

“Port operations

“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.

“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

“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 a 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

“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

“Miscellaneous

“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

“**33X Delegation or transfer of council’s responsibilities**

- “(1) A regional council 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.
- “(3) A public authority may delegate any of the responsibilities transferred to it under subsection (2) to a port operator except any power to make bylaws.
- “(4) Section 17(3) to (6) of the Local Government Act 2002 apply to transfers of responsibilities under this section to another regional council or territorial authority.
- “(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”.

8 Section 34 amended (Maritime rules relating to maritime documents)

In section 34(1)(j), replace “maritime related” with “maritime-related”.

9 Section 36 amended (Maritime rules relating to other matters)

(1) After section 36(1)(tb), insert:

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

“(td) prescribing ship traffic separation and management schemes:”.

(2) Replace section 36(2) with:

“(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.”

10 New section 36A inserted (Power of Governor-General to make maritime rules)

After section 36, insert:

“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).”

11 Section 39 amended (Matters to be taken into account in making maritime rules)

- (1) In section 39(1), replace “The maritime rules made by the Minister and the emergency maritime rules made by the Director” with “Maritime rules and emergency maritime rules”.
- (2) In section 39(2), after “Minister”, insert “, the Governor-General,” in each place.

12 New Part 4A inserted

After section 40, insert:

**“Part 4A
Regulation of alcohol consumption by
seafarers**

“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 a 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).

“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

“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

“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

“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

“**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

“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

“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

“**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

“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

“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

“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 section 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 practitioner or medical of-

ficer to permit a blood specimen to be taken under this section.

“Compare: 1998 No 110 s 72

“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

“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

“**400 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

“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 proceed-

ings 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

“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

“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

“**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

“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

“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

“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

“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.”

13 Section 43 amended (Suspension of maritime documents or imposition of conditions)

Replace section 43(3) and (4) with:

- “(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.”

14 Section 47 amended (Exemption)

After section 47(2)(b), insert:

- “(ba) the risk of harm to the marine environment will not be significantly increased by the granting of the exemption; and”.

15 Cross-heading above section 52 replaced

Replace the cross-heading above section 52 with:

“Suspension of persons from work”.

16 Section 52 amended (Suspension from employment)

(1) In the heading to section 52, replace “**employment**” with “**work**”.

(2) In section 52(1), replace “employment” with “work”.

(3) Replace section 52(2) with:

“(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.”

(4) In section 52(3), replace “the re-employment of that person” with “that person’s return to work”.

17 Section 53 amended (Suspended persons not to be employed)

(1) In the heading to section 53, after “**to**”, insert “**work or**”.

- (2) In section 53(1), after “employ”, insert “or engage”.
- (3) In section 53(2), after “for”, insert “work or”.

18 Cross-heading above section 54 amended

In the cross-heading above section 54, after “*Inspection*”, insert “, *investigation*”.

19 New section 54A inserted (Power of Director to investigate holder of maritime document)

After section 54, insert:

“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”.

20 New sections 67A and 67B inserted

After section 67, insert:

“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.

“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.”

21 New sections 69A and 69B inserted

After section 69, insert:

“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.

“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.”

22 Part 7 heading replaced

Replace the Part 7 heading with:

**“Part 7
“Limitation of liability for maritime
claims”.**

23 Section 84 replaced (Interpretation)

Replace section 84 with:

“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.”

24 New section 84A inserted (LLMC Convention as amended by LLMC Protocol to have force of law)

After section 84, insert:

“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.”

25 Section 85 repealed (Persons entitled to limitation of liability under this Part)

Repeal section 85.

26 Section 86 amended (Claims subject to limitation of liability)

- (1) Repeal section 86(1) and (2).
- (2) In section 86(3), replace “under this Part” with “under the LLMC Convention also”.
- (3) Repeal section 86(3)(a) and (b).
- (4) Replace section 86(4) with:
“(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 the Carriage of Goods Act 1979.”

27 Section 87 amended (Calculation of limits of liability)

- (1) Repeal section 87(1), (2), (3), (4), and (5)(a), (b), and (d).
- (2) In section 87(5), replace “this section” with “Articles 6 and 7 of the LLMC Convention”.

28 New section 87A inserted (Governor-General may notify amended limits)

After section 87, insert:

“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.”

29 Section 88 amended (Units of account)

- (1) Repeal section 88(1).
- (2) In section 88(2), replace “subsection (1)(b)” with “paragraph 1 of Article 8 of the LLMC Convention” in each place.

- 30 Sections 89 to 91 repealed**
Repeal sections 89, 90, and 91.
- 31 Section 97 amended (Limitation of actions)**
In section 97(7), replace “26” with “26A”.
- 32 Section 100 amended (Powers and duties of Director where ship or aircraft in distress)**
In section 100(4), replace “a Director” with “the Director” in each place.
- 33 Section 105 amended (Rules to be observed by person finding wreck)**
In section 105(1)(a) and (b), after “must”, insert “, as soon as is reasonably practicable after finding or taking possession of the wreck,”.
- 34 Cross-heading above section 191 replaced**
Replace the cross-heading above section 191 with:
“Maritime levies”.
- 35 Section 191 amended (Marine safety charges)**
- (1) In the heading to section 191, replace “**Marine safety charges**” with “**Maritime levies**”.
- (2) Replace section 191(1) and (2) with:
- “(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) In section 191(3), replace “marine safety charges” with “levies” in each place.
- (4) In section 191(3)(c), replace “marine safety charge” with “levy”.
- (5) After section 191(3), insert:
“(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.”

36 Sections 192 to 197 amended

- (1) In the headings to sections 192 to 195 and section 197, replace “**marine safety charges**” with “**maritime levies**”.
- (2) Repeal section 192(1).
- (3) In sections 192 to 197, replace “marine safety” with “maritime” in each place.
- (4) In sections 192 to 194, replace “charges” with “levies” in each place.
- (5) In sections 195 to 197, replace “charge” with “levy” in each place.
- (6) In the heading to section 196, replace “**marine safety charge**” with “**maritime levy**”.

37 Section 198 amended (Coastal shipping)

- (1) Replace section 198(1)(c) and (d) with:
“(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.”
- (2) After section 198(1), insert:
- “(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.”
- (3) In section 198(2), replace “described in paragraph (a), (b), (c), or (d) of subsection (1)” with “specified in subsection (1)”.
- (4) In section 198(6), replace the definition of **coastal cargo** with:
- “**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”.
- (5) In section 198(6), insert in their appropriate alphabetical order:
- “**continuous**, in relation to a journey, means proceeding directly and expeditiously
- “**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”.

38 Section 200 amended (Navigational aids)

After section 200(3), insert:

“(3A) A regional council may erect, place, and maintain navigational aids in its region in accordance with section 33I.”

39 Section 200B amended (Special enforcement powers may be exercised when this section applies)

In section 200B(2)(f), replace “navigation safety under the Local Government Act 1974” with “ensuring maritime safety under Part 3A”.

40 Section 201 amended (Regulations)

In section 201(1)(a) and (b), after “maritime rules”, insert “, or breaches of navigation bylaws,”.

41 Section 222 amended (Interpretation)

- (1) In section 222(1), repeal the definition of **harbourmaster**.
- (2) In section 222(1), definition of **marine protection document**, paragraph (b), replace “section 363 or section 364” with “section 363 or 385H”.
- (3) In section 222(1), definition of **oil**, replace “Parts 25 and 26” with “Parts 25, 26, and 26A”.

42 Section 230 amended (Notice of transfer of oil or noxious liquid substances to or from ships)

- (1) In section 230(a), replace “internal waters or territorial sea” with “internal waters, territorial sea, or exclusive economic zone”.
- (2) In section 230(b), replace “internal waters or the territorial sea” with “internal waters, territorial sea, or exclusive economic zone”.

43 New section 233A inserted (Power to prohibit transfer of oil or noxious liquid substance)

After section 233, insert:

“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 a District Court under section 424.”

44 Section 241 amended (Failure to notify transfer of oil or noxious liquid substance from or to ships)

In section 241, replace “internal waters or territorial sea” with “internal waters, territorial sea, or exclusive economic zone”.

45 New section 242A inserted (Failure to comply with prohibitions)

After section 242, insert:

“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.”

46 Section 245 amended (Penalties in respect of sections 240 and 241)

- (1) In the heading to section 245, replace “240 and 241” with “240, 241, and 242A”.
- (2) In section 245, replace “section 240 or section 241” with “section 240, 241, or 242A”.

47 Section 247 amended (Interpretation)

(1) In section 247, definition of **hazardous ship**, replace “or New Zealand continental waters and” with “or in New Zealand continental waters, or on the high seas and”.

(2) In section 247, insert in their appropriate alphabetical order:

“**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 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”.

48 Section 248 amended (Powers of Director in relation to hazardous ships)

After section 248(4), insert:

“(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.”

49 Section 250 replaced (Exercise of power by Director)

Replace section 250 with:

“250 Exercise of power by Director

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.”

50 Section 254 amended (Instructions under this Part that conflict with other instructions)

In section 254(1), replace “under the Local Government Act 1974” with “under Part 3A”.

51 Section 256 amended (Protection of Director and other persons)

After section 256(2), insert:

- “(3) Nothing in subsection (1) affects the liability of any person under section 344, 345, or 346.”

52 Section 307 amended (Compensation payable where property requisitioned)

In section 307(3), replace “section 356” with “section 385C”.

53 Section 308 amended (Compensation for loss or damage to personal property)

In section 308(3), replace “section 356” with “section 385C”.

54 Section 342 amended (Interpretation)

- (1) In section 342, definition of **Civil Liability Convention**, after “**Convention**”, insert “or **CLC**”.
- (2) In section 342, definition of **pollution damage**, after “damage or loss of any kind”, insert “caused by or resulting from the escape or discharge of a harmful substance from a ship”.
- (3) In section 342, delete the definition of **regulated offshore installation**.

- (4) In section 342, replace the definition of **regulated ship** with:
“**regulated ship** means a New Zealand or foreign ship of 400 gross tonnage or more other than a regulated oil tanker”.

55 Section 347 amended (Maximum amount of liability of shipowners for pollution damage)

- (1) Replace the heading to section 347 with “**Limits of liability of CLC shipowners for oil pollution damage**”.
- (2) Replace section 347(1)(a) with:
“(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”.
- (3) In section 347(1)(b), replace “discharge, escape, or dumping” with “discharge or escape”.
- (4) In section 347(5), replace “effect” with “affect”.
- (5) Replace section 347(6) with:
- “(6) The liability limits for pollution damage, other than oil pollution damage from CLC ships, are specified in Part 7.”

56 Sections 355 to 360 and cross-heading above section 355 repealed

Repeal sections 355 to 360 and the cross-heading above section 355.

57 Section 362 repealed (Part 7 not to affect liability under this Part)

Repeal section 362.

58 Section 364 repealed

Repeal section 364.

59 Section 365 amended (Production of certificate of insurance)

In section 365, replace “The master of a regulated oil tanker or regulated ship, in New Zealand marine waters, or the person in charge of the offshore installation, as the case may be, shall” with “The master of a ship must”.

60 Section 366 amended (Rights of third parties against insurers of regulated oil tankers, regulated ships, and regulated offshore installations)

- (1) In the heading to section 366, replace “**regulated oil tankers, regulated ships, and regulated offshore installations**” with “**regulated oil tankers and regulated ships**”.
- (2) Replace section 366(1) with:
 - “(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.”
- (3) In section 366(2) and (4), replace “the regulated oil tanker, regulated ship, or regulated offshore installation, as the case may be,” with “the ship”.
- (4) After section 366(4), insert:
 - “(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 relates.”

61 Section 367 replaced (Offences)

Replace section 367 with:

“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.
- “(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.
- “(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 en-

ters or leaves a port outside New Zealand in breach of section 363.”

62 New Part 26A inserted

After section 385, insert:

“Part 26A

“Civil liability for pollution of marine environment from marine structures

“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

“**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

*“Liability for pollution from marine structures
and operations*

**“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

“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

“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

“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

“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

“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

“**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

“**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

“**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)”.

63 Section 387 amended (Marine protection rules relating to marine protection documents)

In section 387(4), replace “section 363 or section 364” with “section 363 or 385H”.

64 Section 388 amended (Marine protection rules in relation to harmful and other substances)

After section 388(c), insert:

“(ca) specifying the substances that are hazardous substances other than oil for the purposes of section 247:”.

65 Section 390 amended (Marine protection rules in relation to marine oil spills and other matters)

(1) In section 390(1)(c), replace “section 363 or section 364” with “section 363 or 385H”.

(2) In section 390(2), replace “26” with “26A”.

66 New section 390A inserted (Power of Governor-General to make marine protection rules)

After section 390, insert:

“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).”

67 Section 395 amended (Exemptions)

- (1) In section 395(2)(a), delete “marine protection”.
- (2) After section 395(2)(b), insert:
- “(ba) the risk to safety will not be significantly increased by the granting of the exemption; and”.

68 Section 406 amended (Communicating false or insufficient information)

- (1) In the heading to section 406, replace “**false or insufficient**” with “**fraudulent, misleading, or false**”.
- (2) In section 406(a), replace “false” with “fraudulent, misleading, or false”.

69 Section 407 amended (Penalties)

- (1) In section 407(3)(a), replace “\$5,000” with “\$10,000”.
- (2) In section 407(3)(b), replace “\$30,000” with “\$50,000”.

70 Section 409 amended (Additional penalty for offence involving commercial gain)

In section 409(1), replace “section 64 or section 65 or section 68 or section 70 or section 237 or section 238 or section 263 or section 264 or section 277 or section 278 or section 400” with “section 33F, 33T, 33V, 64, 65, 67A, 67B, 68, 69A, 69B, 70, 237, 238, 263, 264, 277, 278, or 400”.

71 Section 411 amended (Limitation of proceedings)

In section 411(1) and (2), replace “6 months” with “12 months”.

72 Section 423 amended (Infringement notices)

- (1) Replace section 423(1) with:

- “(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.”
- (2) In section 423(1A), after “a constable,”, insert “a harbourmaster”.

73 Section 425 amended (Procedure)

In section 425(2)(b)(i) and (ii), replace “the Authority or the Director” with “the Authority, the Director, or the harbourmaster”.

74 Section 426 amended (Decision of Director to continue in force pending appeal)

- (1) In the heading to section 426, replace “**Director**” with “**Director or harbourmaster**”.
- (2) In section 426(1), replace “the Director” with “the Director or the harbourmaster”.

75 Section 429 amended (Maritime New Zealand continued)

In section 429(1), replace “to be known as the” with “known as”.

76 Section 445 amended (Regulations for fees and charges)

- (1) In section 445(3)(d),—
- (a) replace “providing” with “provide”; and
 - (b) replace “enabling” with “enable”.
- (2) In section 445(3)(e), replace “fixing, or enabling” with “fix, or allow”.
- (3) In section 445(3)(f), replace “providing, or enabling” with “provide for, or allow”.
- (4) In section 445(3)(g), replace “prescribing” with “prescribe”.

77 New section 445A inserted (Text of certain marine protection conventions)

After section 445, insert:

“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.”

78 Section 446 amended (Procedure for making of rules by Minister)

Replace section 446(a) with:

- “(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”.

79 New section 446A inserted (Procedure for making of rules by Governor-General)

After section 446, insert:

“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).”

80 Section 448 amended (Provisions in respect of rules generally)

- (1) Replace section 448(1)(a) with:
“(a) be signed by the Minister, Governor-General, or Director (as appropriate); and”.
- (2) Repeal section 448(3).

81 Section 451 amended (Further general provisions in respect of rules)

- (1) In section 451(1), replace “maritime related” with “maritime-related” in each place.
- (2) Replace section 451(2) with:
“(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) Replace section 451(4) with:
“(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.”
- (4) After section 451(5), insert:
“(5A) A rule made by the Governor-General under this Act is a legislative instrument for the purposes of the Legislation Act 2012.”
- (5) In section 451(6), replace “A rule” with “Any other rule”.

82 Section 452 replaced (Incorporation in rules of material by reference)

Replace section 452 with:

“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 Standards New Zealand, or a body or organisation outside New Zealand that has functions corresponding to the functions of the New Zealand Standards Council; 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 offices 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 22 to 24 of the Standards Act 1988.

“Compare: 1990 No 98 s 36”.

83 Section 468 amended (Savings relating to Shipping and Seamen Act 1952)

After section 468(9), insert:

- “(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.”

84 New Schedules 8 and 9 inserted

After Schedule 7, insert the Schedules 8 and 9 set out in Schedule 1 of this Act.

Repeals and revocations

85 Amendments to Local Government Act 1974

- (1) This section amends the Local Government Act 1974.
- (2) Repeal—
 - (a) Parts 39A and 43; and
 - (b) sections 699A to 699D.

86 Revocation of Maritime Transport (Certificates of Insurance) Regulations 2005

Revoke the Maritime Transport (Certificates of Insurance) Regulations 2005 (SR 2005/196).

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 of this Act 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 by section 85 of this Act 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 of this Act 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.

Consequential amendments

90 Consequential amendments

Amend the enactments listed in Schedule 2 in the manner set out in that schedule.

Amendments to come into force by Order in Council

91 Section 222 amended (Interpretation)

In section 222(1), definition of **marine protection document**, paragraph (b), replace “section 363 or 385H” with “section 363, 363A, or 385H”.

92 Section 342 amended (Interpretation)

(1) In section 342, insert in their appropriate alphabetical order:

“**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”.

(2) In section 342, replace the definition of **harmful substance** with:

“**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”.

93 Section 354 replaced (Ships owned by CLC State)

Replace section 354 with:

“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.”

94 Section 361 amended (Time for bringing proceedings)

In section 361, after “CLC ship”, insert “, or in respect of the discharge or escape of bunker oil from a Bunker Oil Convention ship.”.

95 New section 363A inserted (Certain ships to have bunker oil certificates of insurance)

After section 363, insert:

“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.”

- 96 Section 366 amended (Rights of third parties against insurers of regulated oil tankers and regulated ships)**
In section 366(5), replace “section 363” with “section 363 or 363A”.
- 97 Section 367 amended (Offences)**
In section 367(1), (2), and (3), replace “section 363” with “section 363 or 363A”.
- 98 Section 387 amended (Marine protection rules relating to marine protection documents)**
In section 387(4), replace “section 363 or 385H” with “section 363, 363A, or 385H”.
- 99 Section 390 amended (Marine protection rules in relation to marine oil spills and other matters)**
In section 390(1)(c), replace “section 363 or 385H” with “section 363, 363A, or 385H”.
- 100 Consequential amendments**
Amend the enactments listed in Schedule 3 in the manner set out in that schedule.
-

Schedule 1

s 84

New Schedules 8 and 9 inserted**Schedule 8**

s 84

**Convention on the Limitation of Liability
for Maritime Claims (1976)**

THE STATES PARTIES TO THIS CONVENTION,
HAVING RECOGNIZED the desirability of determining by agree-
ment 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.

Schedule 8—*continued*
Chapter I—*continued*

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.

Schedule 8—*continued*
Chapter I—*continued*

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.

Schedule 8—*continued*

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

Schedule 8—*continued*Chapter II—*continued*Article 6—*continued*

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.

Schedule 8—*continued*

Chapter II—*continued*

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 transactions. 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;

Schedule 8—*continued*
Chapter II—*continued*
Article 8—*continued*

- 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 subparagraphs (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 re-

Schedule 8—*continued*
Chapter II—*continued*
Article 8—*continued*

sult 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

Schedule 8—*continued*Chapter II—*continued*Article 10—*continued*

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.

Schedule 8—*continued*

Chapter III—*continued*

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 provisionally 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

Schedule 8—*continued*
Chapter III—*continued*
Article 13—*continued*

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

Schedule 8—*continued*
Chapter IV—*continued*
Article 15—*continued*

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.

Schedule 8—*continued*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

Schedule 8—*continued*

Chapter V—*continued*

Article 17—*continued*

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.

Schedule 8—*continued*Chapter V—*continued**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.

Schedule 8—*continued*

Chapter V—*continued*

Article 21—*continued*

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.

Schedule 8—*continued*

Chapter V—*continued*

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

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Protocol of 1996 to Amend the Convention on the Limitation of Liability for Maritime Claims (1976)

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,

Schedule 9—*continued*Article 3—*continued*

- (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.

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.

Schedule 9—*continued*

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

Schedule 9—*continued*Article 5—*continued*

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:

3bis 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 Article 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.

Schedule 9—*continued*

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.

Schedule 9—*continued*Article 8—*continued*

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

Schedule 9—*continued*

Article 8—*continued*

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:

Schedule 9—*continued*Article 10—*continued*

- (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.

Schedule 9—*continued*

Article 12—*continued*

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

Schedule 9—*continued*Article 14—*continued*

- 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.

Schedule 2 Consequential amendments

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Part 1

Amendments to Acts

Litter Act 1979 (1979 No 41)

In section 6(1)(e), replace “under section 7 or section 42 of the Harbours Act 1950” with “under Part 3A of the Maritime Transport Act 1994”.

Local Government Act 2002 (2002 No 84)

In section 151(1AA), after “Act”, insert “or the Maritime Transport Act 1994”.

In section 155(1AA), after “Act”, insert “or the Maritime Transport Act 1994”.

In section 156(1), after “this Act”, insert “or the Maritime Transport Act 1994” in each place.

In section 158(1), after “made by it under this Act”, insert “or the Maritime Transport Act 1994”.

In section 159, after “this Act”, insert “, the Maritime Transport Act 1994,”.

Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3)

Replace section 37(2)(b) with:

“(b) any port operator (as defined in Part 3A of the Maritime Transport Act 1994):”.

In section 63, definition of **accommodated infrastructure**, replace paragraph (b)(vi) with:

“(vi) a port operator (as defined in Part 3A of the Maritime Transport Act 1994):”.

Maritime Security Act 2004 (2004 No 16)

In section 80(1), replace “, under the Local Government Act 1974, instructions” with “instructions under Part 3A of the Maritime Transport Act 1994,”.

Part 1—*continued***Te Arawa Lakes Settlement Act 2006 (2006 No 43)**

In section 37(1)(c), replace “under the Local Government Act 1974” with “under Part 3A of the Maritime Transport Act 1994”.

Part 2

Amendments to regulations

Lake Taupo (Crown Facilities, Permits and Fees) Regulations 2004 (SR 2004/140)

In regulation 3, definition of **enforcement officer**, replace “section 650I(3) of the Local Government Act 1974” with “Part 3A of the Maritime Transport Act 1994”.

In regulation 3, definition of **harbourmaster**, replace “section 650I(3) of the Local Government Act 1974” with “Part 3A of the Maritime Transport Act 1994”.

Local Government (Infringement Fees for Offences: Queenstown Lakes District Navigation Safety Bylaw 2009) Regulations 2009 (SR 2009/412)

In regulation 3, definition of **honorary enforcement officer**, replace “section 650B of the Act” with “Part 3A of the Maritime Transport Act 1994”.

Marine Safety Charges Regulations 2000 (SR 2000/268)

After regulation 5(b), insert:

“(c) pleasure craft.”

Part 3

Amendments to rules

Maritime Rules Part 91: Navigational Safety Rules

In the Part objective, replace the fifth paragraph with:

“A key object of Part 91 is to set basic national navigation standards. These can be enforced locally by harbourmasters and regional council enforcement officers. In addition, the Act allows regional councils to make navigation bylaws that are consistent with these rules.”

Part 3—*continued*

Maritime Rules Part 91: Navigational Safety Rules—*continued*

In rule 91.2, replace the definition of **harbourmaster** with:

“**harbourmaster** means a person appointed as a harbourmaster under Part 3A of the Act”.

In rule 91.2, replace the definition of **Regional Council** with:

“**regional council** has the meaning given to it in section 5(1) of the Local Government Act 2002; and includes—

“(a) any territorial authority that has the functions, powers, and duties of a regional council as the result of a transfer of responsibility under section 33X of the Act or section 17 of the Local Government Act 2002; and

“(b) the Chatham Islands Council”.

Replace rule 91.3 with:

“91.3 Application

Part 91 applies everywhere in New Zealand waters.”

Part 4

Amendment to bylaw

Lake Taupo Navigation Safety Bylaw 2010 (SR 2010/363)

In clause 1.3, definition of **Harbourmaster**, replace “by the Secretary for Local Government under section 650B or 650I(3) of the Act” with “under Part 3A of the Maritime Transport Act 1994”.

Schedule 3

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**Amendments to rules to come into force
by Order in Council****Marine Protection Rules Part 102: Certificates of Insurance**

In rule 102.2, delete the definitions of **Regulated offshore installation** and **Regulated ship**.

In rule 102.2, insert in their appropriate alphabetical order:

“**Bunker Oil Convention** has the meaning given to it in section 342 of the Act

“**Bunker Oil Convention State** has the meaning given to it in section 342 of the Act

“**New Zealand continental waters** has the meaning given to it in section 222(1) of the Act

“**offshore installation** has the meaning given to it in section 222(1) of the Act

“**regulated offshore installation**—

“(a) means an offshore installation within New Zealand continental waters; and

“(b) includes any pipeline connected to that installation

“**regulated ship** means a New Zealand or foreign ship of 400 gross tonnage or more other than a regulated oil tanker”.

Replace the heading above rule 102.3 with:

“Subpart 1—Ships”.

Replace rule 102.3 with:

“102.3 Application

“(1) This subpart applies to ships that are required by section 363 or 363A of the Act to have a certificate of insurance.

“(2) The owner of a ship may apply under rule 102.4 for the issue or recognition of a certificate of insurance in respect of the owner’s liability under the Civil Liability Convention or the Bunker Oil Convention.

“(3) The owner of a CLC ship may apply under rule 102.6 for acceptance of a certificate of insurance in respect of the owner’s liability under the Civil Liability Convention.

“(4) The owner of a Bunker Oil Convention ship may apply under rule 102.6A for acceptance of a certificate of insurance in re-

Marine Protection Rules Part 102: Certificates of Insurance—*continued*

spect of the owner’s liability under the Bunker Oil Convention.”

In rule 102.4(2)(b), replace “section 347 of the Maritime Transport Act” with “Part 7 or section 347 of the Act, as the case may be”.

In rule 102.4(2)(d), replace “section 347 of the Act” with “Part 7 or section 347 of the Act, as the case may be”.

In rule 102.4(2)(d) and (e), replace “Insurance Companies (Ratings and Inspections) Act 1994” with “Insurance (Prudential Supervision) Act 2010”.

Replace rule 102.4(3) with:

- “(3) Every certificate of insurance issued by the Director for a ship must—
- “(a) contain the following particulars—
 - “(i) the name of the ship, the ship’s distinctive number or letters, and the ship’s port of registry; and
 - “(ii) the name of the owner of the ship and the principal place of business of that owner; and
 - “(iii) the ship’s IMO ship identification number; and
 - “(iv) the nature of the contract of insurance or other financial security; and
 - “(v) the name and principal place of business of the insurer or other person giving security and the place of business where the insurance or security is established; and
 - “(vi) the period of validity of the insurance or other financial security; and
 - “(vii) the period of validity of the certificate, which must not exceed the period of validity of the insurance or other financial security; and
 - “(b) in the case of a regulated oil tanker, be in the form specified in—
 - “(i) Appendix 1, in respect of liability under the Civil Liability Convention:
 - “(ii) Appendix 4, in respect of liability under the Bunker Oil Convention:

Marine Protection Rules Part 102: Certificates of Insurance—*continued*

- “(c) in the case of a regulated ship of 1 000 gross tonnage or more, be in the form specified in Appendix 4 in respect of liability under the Bunker Oil Convention:
- “(d) in the case of a regulated ship of less than 1 000 gross tonnage, be in the form specified in Appendix 3 in respect of civil liability for oil pollution damage.”

In rule 102.5, replace “section 347 of the Maritime Transport Act 1994” with “Part 7 or section 347 of the Act, as the case may be”.

After rule 102.6, insert:

“Foreign ships registered in Bunker Oil Convention States**“102.6A Acceptance of certificates of insurance**

- “(1) For the purpose of sections 271 and 363 of the Act, a certificate of insurance for a foreign ship registered in a Bunker Oil Convention State means—
 - “(a) a valid certificate evidencing a contract of insurance or other financial security issued, or recognised, by or under the authority of the Bunker Oil Convention State in accordance with the Bunker Oil Convention; or
 - “(b) in the case of a State-owned ship used for a commercial purpose for which insurance or other financial security is not maintained, a valid certificate issued by or under the authority of the government of that State stating liability for pollution damage within the meaning of Article 1 of the Bunker Oil Convention is covered up to the limits determined in accordance with Part 7 of the Act.
- “(2) In this rule, **flag State** means—
 - “(a) the State in which the ship is registered; or
 - “(b) if the ship is not registered, the State whose flag the ship flies.”

Replace the heading above rule 102.7 with:

“Subpart 2—Offshore installations”.

In rule 102.7, replace “section 364” with “section 385H”.

Revoke rules 102.10 to 102.12 and the heading above rule 102.10.

In the Appendix 1 heading, replace “**Regulated Oil Tankers**” with “**CLC Certificates for Regulated Oil Tankers**”.

Marine Protection Rules Part 102: Certificates of Insurance—*continued*

In the Appendix 3 heading, replace “**Regulated Ships**” with “**Civil Liability for Oil Pollution Damage Certificates for Regulated Ships**”.

After Appendix 3, insert:

“Appendix 4: Bunker Oil Convention Certificates

“CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE

“Issued in accordance with the provisions of Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.

Name of ship	Distinctive number or letters	IMO ship identification number	Port of registry	Name and full address of the principal place of business of the registered owner
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“This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.

“Type of security:

“Duration of security:

“From:

“To:

“Name and address of the insurer(s) and/or guarantor(s):

“Name:

“Address:

Marine Protection Rules Part 102: Certificates of Insurance—*continued*

“This certificate is valid until:

“Issued and certified on behalf of the Government of New Zealand

“at:

“on:

“Signature:”

“(Director of Maritime New Zealand)

“Explanatory Notes:

- “1 If desired, the designation of the State may include a reference to the competent public authority of the country where the Certificate is issued.
 - “2 If the total amount of security has been furnished by more than one source, the amount furnished by each source should be indicated.
 - “3 If security is furnished in several forms, these should be enumerated.
 - “4 The entry ‘Duration of security’ must stipulate the date on which such security takes effect.
 - “5 The entry ‘Address’ of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.”
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Reprints notes

1 *General*

This is a reprint of the Maritime Transport Amendment Act 2013 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*

Maritime Transport Amendment Act 2013 Commencement Order 2014 (LI 2014/276)
