TRANSPORT LAW REFORM BILL - IMPACT ON NEW ZEALAND SHIPOWNERS

"EFFECTS OF THE TRANSPORT LAW REFORM BILL" NOW "MARITIME TRANSPORT BILL"

Ladies and Gentlemen,

I have been asked to talk on the Transport Law Reform Bill outlining its contents and the Bills impact on the New Zealand shipowner.

The Bill is a wide ranging piece of legislation replacing aged and time worn Acts, and some may say omissions.

- It sets in place the Maritime Safety Authority; this part of the Bill was passed into law last year.
- It set in motion the ability to sell Marine and Industrial (M & I Limited); this was achieved last month. M & I was the Surveying arm of Maritime Transport, or to those of my vintage the Marine Department Surveyors.
- It introduces Health and Safety for Seafarers on Ships.
- It makes provision for foreign flag ships to engage in the carriage of coastal cargoes.
- It replaces the Marine Pollution Act.
- It make provision for the implementation of MARPOL 1973/78.
- It endeavours to correct anomalies in the Resource Management Act.
- It provides for a transitional period in so far as regulations and requirements currently in place will remain so for 3 years during which time new rules will be made to replace them.
- It also covers Salvage, amends the Mercantile Law Act 1908, Oil Spill Preparedness and Response, Civil Liability for Pollution Damage.
- The Bill also contains amendments to the Civil Aviation Act 1990 and the New Zealand Land Transport Authority.
- All in all, wide ranging and apart from a few clauses I believe the Bill is welcome. Although I hasten to add there will be some who will disagree with this remark.

As you can see the subject is broad. The Transport Law Reform Bill is also broad and far reaching and I would suggest there are as many varied opinions on it, that would more than equal the number of clauses embodied in the Bill.

In the time permitted I will endeavour to give an outline on the Bill and the effects or some of the effects it will have on Shipowners.

Over the last ten to fifteen years numerous attempts have been made to modernise or rewrite the New Zealand Shipping and Seamen Act 1952 including its numerous amendments.

Without casting any reflections on the various persons involved, it was a mammoth and daunting task, and by that very nature it fell by the wayside - being overtaken by more important tasks or the retirement of those assigned to the revision.

The Shipping and Seamen Act was modelled on United Kingdom Legislation, and not unjustly our Law Makers and the Industry at large felt something better could be achieved. This conclusion was probably drawn from the numerous failures to rewrite the aging Act and its inability to respond to changes that were occurring within the Maritime Industry. eg. The move away from AB's, O.S. and Motorman to Integrated Ratings.

The Transport Law Reform Bill commenced it's progress through the Parliamentary process in May 1993 by the Honourable W Rob Storey, the Minister of Transport. The Bill was, I believe, fore shadowed by the Maritime Transport report dated November 1989 entitled "Quality and Safety Systems". Reported back as the Maritime Transport Bill and introduced in May this year and commenced second reading in June 1994.

This report reviewed the Maritime Transports functions and activities, and critically examined their effects on the provider and user and questioned whether they should remain a function of the Ministry (Government Body) or be devolved to others.

The Transport Law Reform Bill's arrival was greeted varying degrees of enthusiasm - this depending greatly as to which side of the street one walked.

- Shipowners saw no financial or fiscal assistance whatsoever.
- Federated Farmers spokesmen were full of praise for the Bill especially Clause 240 "Coastal Shipping". I believe this was seen as a means of breaking or hitting back at the NZ Maritime Unions perceived as being the last bastion of the old guard Trade Union.

I very much doubt whether Federated Farmers or other such likes took the time to read the remainder of the Bill, or for that matter understand some of the Bills other important provisions. These were probably seen as mere formalities.

Time will not permit, nor do I believe that you would wish me to bore you with the entire contents of the Bill. What I will endeavour to do is isolate the major changes and their impact on the operation of N.Z. ships and NZ Shipowners.

The Transport Law Reform Bill will, beside replacing the 1952 Shipping and Seamen Act, replace the 1974 Marine Pollution Act, create stand alone safety authorities in place of Maritime Transport, reform maritime transport law, make the Resource Management Act 1991 the sole vehicle for the control of discharges of any substances into the sea, contains measures that will enable MARPOL 73/78 to be implemented in New Zealand Law etc. A far reaching Bill.

Possibly the first place to start is Clause 240 "Coastal Shipping" which provides that foreign ships may trade on the New Zealand coast so long as they hold the appropriate maritime documents.

What is a Maritime document. This is defined in Part 1 Clause 2
(a) Means any licence, permit, certificate, or other document issued under this Act to or in respect of any person, ship, maritime procedure or maritime product; and
(b) Includes any foreign licence permit, certificate or other document recognised by the Director under section 38 of this Act.

Now Clause 39 states - The Director shall accept every valid licence permit, certificate, or other document issued or approved by a State, other than New Zealand, under or international convention to which that State is a party; and, for the purposes of this Act, such documents shall be deemed to be maritime documents. From this you will see that Clause 39 is vital to the practical process of freeing or opening the coastal trade up to foreign ships.

Due to the storm of protests that greeted clause 240 and the up coming Parliamentary elections in November 1993 the Government delayed the passage of the Bill. Though they passed that section of the Bill Part VIII into Law that gave birth to the Maritime Safety Authority (MSA).

The elections returned the Government though with a greatly reduced majority and despite the Prime Minister indicating that the controversial clause or clauses would be eliminated, we have been presented with an Alternative to Clause 240, and I should note we have a new Minister of Transport Maurice Williamson and the ex Minister is the Chairman of the Transport Select Committee.

The basic aim of the Alternative is to restrict foreign flag ships on the coast to those that a transiting, or expressed in other words, to those foreign ships already well known on New Zealand ports eg. Nedlloyd, P&O, OCL, COSCO etc. This Alternative may sound not too bad, perhaps a compromise. But look at Subsection 2 - it gives the Minister power to interfere without him requiring any proof or quantum. There is no burden of proof required and this we feel is wrong.

The Government has said that the market place must be freed up and allowed to react to market pressures without Government interference. New Zealand Shipowner's are happy to go along with this, but the rules must be the same for all players, National and Foreign flags. However, as shown above and by the two overheads it is clear that there are different rules and there is Government interference.

Before leaving this Clause, it may be of interest to note that the reforms that have been carried out on New Zealand registered ships were financed in total by New Zealand Shipowner's - that includes training costs, redundancies etc. The latter reached a sum of over $27.0 million. The reforms in Australia, which were similar to New Zealand or vice versa, received Federal Government assistance - both in subsidised training and some A$20,000 per man towards redundancy. Our Government barely gave any recognition.

Perhaps it was wrong to discuss the coastal shipping issue first, but it has probably received the greatest media exposure, public debate and submissions to the Select Committee. It is emotive and could well be debated for years to come.

I would like to retrace my steps for a moment to Clause 39. It is I feel a well known fact that the standard or level of compliance required by the Worlds flag states for the various international trading certificates varies dramatically. I think it can be said that New Zealand and Australia would have one of the highest levels of compliance in the World. Again I believe many of you will have read or seen the statistical evidence of Flag States

such as Malta, Cook Islands, etc. However, the Government has made it clear by Clause 39 that it is prepared to accept certificates issued by such countries. As a responsible ship manager we believe such is wrong on all counts.

Having got these two issues off my chest, I quote Union Shipping's opening remarks in its submission on the Bill.

"In making this submission we acknowledge and applaud the general thrust of the Bill and concur with the intent. We also acknowledge the difficult task in drafting a Bill to replace out-dated legislation that has to include amendments to recent Acts and incorporate new interpretations without conflicting with or losing interpretations currently in use".

This may sound at odds with my remarks on Coastal Shipping Clause 240, its Alternative and Clause 39 Acceptance of Documents.

The Transport Law Reform Bill has 547 clauses and ten schedules, it not only covers maritime activities it also Amends the Civil Aviation Act 1990, creates the New Zealand Land Transport Authority. As alluded to in my opening remarks I will confine all comment and discussion to those clauses and schedules that effect the maritime area.

Clause 2 Interpretations - there are some departures from our old terminologies and will force some of us out of our comfort zones!!

"HAZARD"	means an activity, arrangement, circumstance, event, occurrence phenomenon, process, situation, or substance (whether or not arising or caused on board a ship) that is an actual or potential cause or source of harm.
"INCIDENT"	means an occurrence, other than an accident, that is associated with the operation of a ship and affects or could affect the safety of operation.
"MARITIME PRODUCT"	means anything that comprises or is intended to comprise any part of a ship or that is or is intended to be installed in or fitted or supplied to a ship.
"NZ SHIP"	means a ship that is registered under the Ship Registration Act 1992 and includes a ship that is not registered under that Act but is required or entitled to be registered under that Act.

"MARITIME DOCUMENT" (a) means any licence, permit, certificate, or other document issued under this Act to or in respect of any person, ship, maritime procedure or maritime product and

(b) includes any foreign licence, permit, certificate or other document recognised by the Director under section 38 of this Act.

"SIGNIFICANT HAZARD" means a hazard that is an actual or potential cause or source of:

(a) Serious harm or

(b) Harm (being harm that is more than trivial) the severity of whose effects on any person depend (entirely or among other things) on the extent or frequency of the person's exposure to the hazard; or

(c) Harm that does not usually occur, or usually is not easily detectable until a significant time after exposure to the hazard.

Part II of the Bill (Clauses 6 to 16) sets out the Employers duties relating to Health and Safety of Seafarers. This part is the Maritime equivalent to the Occupational Safety and Health which covers workers in shore based occupations. The strange part is that OSH covers Watersider Workers and repair contractors working in the ship and OSH is administered by the Labour Department whilst MSA will administer the Seafarers side. The latter has marine experience the former nil.

This part will require each ship to have a safety committee to ensure hazards are identified and eliminated or the Seafarer protected from the hazard. Adequate training given to the Seafarer etc. All sensible and commonsense in this day and age, though we feel a little too much emphasis is placed on the employer the seafarer could have more accountability and responsibility.

In our submissions on the Bill we requested the present wording of Clause 14 be amended. It states "Every Employer of seafarers on a New Zealand ship shall ensure that all seafarers have the opportunity to be fully involved in the development of procedures". We wish to see "all seafarers" to "a representative group of seafarers". Can you imagine endeavouring to draft procedure guidelines for reacting to emergencies that require the

involvement of all seafarers. The mind boggles.

Part III (Clauses 17 to 31)

Clause 25 prohibits pecuniary gain for any person finding employment for seafarers. We found this a rather odd clause. Employment agencies find work/positions for others, why distinguish on the grounds of trade or profession.

Clause 29 Requires the Master of an NZ ship or foreign ship to advise the Authority of an accident.

Part IV (Clauses 32 to 37)

Clause 32 indicates that Maritime rules made under section 34 may require that a maritime document (certificate) shall be required by or in respect of all or any of the following. Besides the obvious, New Zealand ships, persons, seafarers, teaching and training institutions it mentions "shipping operations and management". This gives an indicator that the IMO resolution A741 (18) will be endorsed. The last three clauses give how the rules will be made. Clause 36 states that prior to making a maritime rule, the Minister shall:

1) publish a notice of the intention in the 4 daily newspapers.
2) give interested persons reasonable time, to make submissions on the proposal
3) Consult with such persons, representative groups within the industry, Government Departments, and Crown entities.

It goes on to say that.

(a) Every maritime rule shall be signed by the Minister and contain a statement specifying the objective of the rule and extent of any consultation.
Again good plausible wording and sound reasoning.

However, recent events in May this year, did not see the consultative approach. We had MSA giving edicts without any discussion and when tackled on the issue used their past excuses. This does give us some cause for concern.

Part V (Clauses 38 to 56). The Bills title for this part is "Powers and Duties of Director of Maritime Safety in Relation to Maritime Activity".

I have already discussed clause 39 and will leave it at that. Clause 45, Exemptions is interesting. It states in essence, that the Director may, with the normal provisos, conditions, appropriate etc exempt any ship, person or maritime product from any

specified requirement in any maritime rule and may vary or revoke such exemption. The interesting part is, subsection (3) which states "The number and nature of exemptions granted shall be notified as soon as practicable in the Gazette". This is a welcome open piece of legislation.

As quick as we are to give credit, we are equally quick to denounce. Clause 55 covers the investigation of accidents, incidents and mishaps by the Director. The tenor of the clause implies that whilst an accident is being investigated by the Director or the Transport Accident Investigation Commission all other interested parties are excluded, irrespective of their interest. This is not an appropriate provision for the twentieth century. It is not conducive to obtaining the co-operation of the parties involved in the incident or accident, and so facilitate the determination of the actual cause.

If the subclause is left as is, then we are sure that Legal advice to seafarers and shipowners will be to say or acknowledge nothing. We recommended that a re write to reflect the consultative and co-operative approach the Ministry has and says it has adopted, was in order. We wonder what our P & I Clubs and Hull Underwriters would say if they were excluded from the ship. Perhaps this could exercise the minds of the legal fraternity present here today.

Part VI (Clause 57 to 88). Offences Against Health and Safety on Ships. Clause 73 details the penalties that can be incurred by a person or body corporate for offences. Of particular note Clause 75 highlights section 14 which I mentioned earlier as requiring the employer to ensure that all seafarers have the opportunity to be fully involved in the development of procedures. We believe clause 14 places an unfair burden and we are hopeful that some measure of relief will be given in the Act.

Part VII (Clause 89 to 93). Deals with the Rights of Appeal.

Part VIII (Clauses 94 to 105) Maritime Safety Authority. This part of the Bill was passed into law last year, so as the Maritime Authority could be established, have its functions of authority, its performance agreement and service charter set out and permit it to start. The Authority is now in place. Its Chairman is Mr Ian McKay who is, I am sure well known to many of you. Its Director is Mr Russell Kilvington.

The Transport Law Reform Bill will, as said earlier, replace the 1952 Shipping and

Seamen Act and the 1974 Marine Pollution Act and provide the MSA with a modern framework within which to carry out its role. Its early passage through Parliament is essential if the Authority is to successfully meet its objectives.

Part IX to Part XIV Clauses 106 to 219

These parts carry forward provisions of the Shipping and Seamen Act 1952 relating to liability of shipowners, wreck and salvage, construction, survey, equipment, loadlines and safety at sea. It is intended that those provisions relating to matters other than liability, wreck and salvage will ultimately be governed by maritime rules. On the passing of the Transport Law Reform Bill into legislation all rules, surveys, certificates and related matters contained in the Shipping and Seamen Act 1952 and its amendments will remain in force for a period of 3 years. Section 184 of Part XII states, "This Part of this Act shall expire with the close of the period of 3 years beginning on the date of commencement of this Act; and on the day after the day on which that period closes, this Part of this Act shall be deemed to be repealed".

Under the Shipping Seamen Act 1952 all changes are required to pass through Parliament. Under the Transport Law Reform Bill the frame work is set enabling changes to the rules without passing through Parliament. This will make the rule making more responsive to industry and its needs.

During the 3 year period from the Bill becoming an Act, new rules will be made to replace those in the Shipping and Seamen Act and covered by Parts XII, XIII and XIV. We support this, and only have concern as to when the new will replace the old - at the end of the 3 years or during the passage of the 3 year period.

Part XV General Provisions

In 1989 by way of Regulation the Government introduced the Marine Safety Charge (MSC) which replaced Light Dues and is to provide funding to enable the provision of:-

- Lighthouses, buoys, beacons and other shore based aids to navigation.
- Distress and Safety Radio service.
- Marine Safety information.
- Other services related to the safety of shipping.

The Marine Safety Charge (MSC) is the most significant source of third party revenue for the Maritime Safety Authority and is a levy on merchant vessels, commercial boats over

eight metres in length, and fishing vessels. The levy is to pay for the provision of coastal navigation aids, operating the 24 hour coastal distress and safety radio system, and providing maritime safety information. Pleasure craft are exempt from the MSC and funded separately by the Crown.

In the current year about $6.5M out of an expenditure base of $11.5M is expected to be collected from this charge. This represents approximately 90% of the Authority's third party revenue. This is expected to reduce to 72% in the 1993/94 year as oil pollution levies will be treated as revenue for the Maritime Safety Authority. Previously oil pollution levies were recognised as "Receipts on behalf of the Crown".

This is now covered in section 232. But section 231 subsection (2) states that the Authority shall ensure information is readily available to any person upon payment of a reasonable charge fixed by the Authority.

Now look at section 233 which boldly states "All pleasure craft are totally exempt from liability in respect of marine safety charges". Here we have, the Shipowner paying for the provision of amenities and services he doesn't totally need eg. lighthouses. Such being needed by those that don't pay and, information that has been gathered has to be paid for again by the Shipowner.

Our recommendation is that pleasure craft - who would be by far the greater user of safety services - pay a marine safety charge. Regretfully this has fallen on deaf ears - a sensitive electoral matter!!

Part XVI Transitional Matters

This part was passed into Law along with Part VIII.

This gave continuity of employment to those staff transferring from the Maritime Transport Division to the Authority.

Part XVII Carriage of Goods by Sea

The Bill incorporates provisions allowing New Zealand to put in place the 1968 Hague Visby Rules relating to carrier liability for loss of or damage to cargo. The current law, contained in the Sea Carriage of Goods Act, is outdated. The level of liability is low, and there is no recognition of containerisation or modern documentation, rather than the traditional bill of lading. The changes in the Bill bring New Zealand into line with most of

its major trading partners.

Part XIX Salvage

The Bill also puts in place law that updates New Zealand salvage law, which is currently based on an international convention signed in 1910. The Bill incorporates the International Convention of Salvage 1989, which places an obligation on salvors to adopt environmental protection measures and recognises that a salvor who acts to protect the environment may be entitled to a reward.

Part XX Clause 271 to 272 Preliminary Provisions Relating to Marine Pollution

"Marine Pollutant" has the same meaning as in the Resource Management Act 1991.
"Harmful Substance" has the meaning given to it by section 273 of this Act and
"Harmful Marine Substance" has the same meaning.
Clause 272 gives complete immunity to NZ Warships, visiting warships, Aircraft and Defence areas from prosecution for oil spills etc.

Part XXI Protection of Marine Environment from Harmful Substances. Clause 273

Harmful Substance means any substance that, if introduced into the sea, is liable to create a hazard to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, and includes any substance specified as a harmful substance for the purposes of this definition by the marine protection rules".

Parts XX to XXI Marine Pollution

These parts of the Bill replace the Marine Pollution Act 1974.
As with that Act, those Parts of the Bill continue measures in the present Act relating to New Zealand's obligations under international conventions relating to marine pollution. However, the broad object of the Bill is to set in place a balanced pollution control system.

MARINE OIL SPILL PLANNING AND RESPONSE

Under the Maritime Transport Act 1993, the Maritime Safety Authority is charged with "ensuring New Zealand's preparedness for, and ability to respond to, marine oil pollution spills". This legislative framework for carrying out this role is provided by the Marine Pollution Act 1974. At present, the MSA's planning and response system is centred on its Oil Spill Service Centre at Te Atatu, Auckland, which houses a wide range of specialist oil spill containment and clean up equipment, and carries out training. Some MSA equipment was earlier this year relocated to Taranaki and Northland, which attract the greatest risk of

oil pollution in New Zealand. Some regional councils also have limited amounts of equipment for dealing with small harbour spills.

New Planning and Response System

The MSA's ability to carry out its role will be greatly enhanced with the enactment of the Transport Law Reform Bill which is currently before Parliament. The Marine Pollution Act is seriously deficient in that it provides little of no framework for oil pollution planning and response, focussing instead on questions of liability and what happens once a spill has occurred. The legislation will implement a new marine oil spill planning and response strategy which was developed last year by a consulative group established by the Minister of Transport. It will spell out, for the first time, what preparations are to be made to deal with marine oil pollution, and who has responsibility for making those preparations and for responding to spills when they occur.

The new strategy involves a 4 tiered planning and response system under which the control of an oil spill can graduate to a progressively higher level according to the severity of the spill and the amount of resources required to deal with it:

Tier 1 will be the responsibility of the ship or oil transfer facility owner/ operator, who will undertake the initial response to a spill.

Tier 2 covering the area within the territorial sea, will be the responsibility of regional councils.

Tier 3 assigns responsibility to the MSA for handling spills outside the 12 mile limit of the territorial sea and within the EEZ, and any spills regional councils cannot handle on their own at the Tier 2 level.

Tier 4 assigns responsibility to the MSA for obtaining international assistance.

Part XXI

Section 286 is entitled Power to require reception facilities, and states, that the Director may from time to time, by notice in writing, require any person who operates a Port in New Zealand to provide at that port a facility for the reception of harmful substances from ships.

Regretfully, to the best of my knowledge, no port in New Zealand has such facilities, nor do I believe will they be required to do so. In this day of environmental protection the cost of disposal will be prohibitive.

Moving to **Part XXIII section 316** we find some further interesting interpretations:-

"Toxic or hazardous waste" means any waste or other matter specified as toxic or hazardous waste under the marine protection rules.

"Waste or other matter" means material and substances of any kind, form or description.

The Bill under section 331 sets up an Oil Pollution Advisory Committee the Minister appoints the members who should represent a wide range of interests.

Turning now to Part XXXI entitled Amendments to Resource Management Act 1991. To review this part requires a brief look at the Resource Management Act itself.

LOOKING AT THE RESOURCE MANAGEMENT ACT:-

I will outline our difficulties with the Resource Management Act which are centred almost entirely upon ss 14, 15 and 343 of that Act.

Section 14 of the RMA prohibits any person from taking, using, damming or diverting any water other than open coastal water in a manner that contravenes a rule in a regional plan.

We have sought to have the "taking and using of water" for ships "ordinary operational use" exempted. (such "ordinary use" is currently "permitted" by means of "Transitional Regulations"). Our "Fall Back" position is that the National Coastal Policy Statement should specifically require Regional Councils to make the taking or using of water by ships for ordinary operational purposes a "Permitted Activity".

A Partner at Buddle and Weir who addressed the last RMA Conference, was scathing in his review of this provision. His argument, sea water is so plentiful, the "taking and using" by ships is hardly likely to deplete the resource.

Until the RMA Amendment Act is passed into law, we will not have a clear idea whether or not our submissions to the select committee have fallen on deaf ears. Nothing in the Transport Law Reform Bill addresses this "problem".

The fact that **all** ships would be technically committing an offence under s14 of the RMA once the Transitional Regulations expire is of little solace.

So, point number one - this bill does nothing to address the "difficulties" posed by s.14 of the RMA.

However, section 15 of the RMA is quite radically affected by s481 of the Bill.

Section 481 of the Bill, introduces a couple of terms worth considering. "Harmful Marine Substance" and "marine pollutant". It is also of note that the Bill refers, on occasions, to "Harmful substances" (which are synonymous with "Harmful Marine Substances" and defined by ss 271 & 273). These terms are very broadly defined and this broad definition will create confusion

A Marine Pollutant is virtually "anything", and a "Harmful Marine Substance" is anything liable to cause "harm". These broadly defined terms cause a few "conceptual" difficulties.

Much of section XXXI of the Bill seems to be infected by the sort of nonsensical mindset the law drafters sometimes display when they do not have a clue what they are talking about !

Point number two - this part of the bill has some poor definitions (or definitions so wide as to be meaningless) and this fact will create confusion.

The third point is, that the principle of "if it isn't expressly allowed, it's prohibited", enshrined by the RMA, is preserved by the very wide, all embracing definitions of "Marine Pollutant" and "Harmful Marine Substance", and the convoluted way the law has been drafted.

The fourth point is that the bill does not address the inequities of s343 of the RMA in that unless s343 of that Act is amended foreign ships are still exempt from prosecution for the discharge of "Marine Pollutants" and "Harmful Marine Substances". In point of fact

however, other provisions in the bill make the inclusion of New Zealand (or any other ship) for penalties under the provisions of the RMA in so far as discharges go, irrelevant all ships are liable to the Crown for the costs of cleaning up pollution and so the immunity granted to foreign ships under s343 of the RMA might as well be extended to "all ships". Unlawful discharges from "all ships" being dealt with under the TRANSPORT LAW REFORM ACT.

The fifth point is that care needs to be taken when looking to those sections of the bill containing definitions when searching for understanding. Some of those sections give definitions for the whole Act, others only for a part, and occasionally words are defined in a "SECTION" by reference to a definition given in a different part or a different Act.

The sixth point is that port state inspection in NZ must not become a paper checking exercise in respect of pollution control. If it does it seems inevitable that New Zealand ships will be required to meet a higher standard.

Acceptance of documents, if the provisions elsewhere in this Act are applied here it would seem that the question of actual "STANDARDS" is still "OPEN" and possibly there will be a "DOUBLE STANDARD"; one for New Zealand ships, one for others.

Why 100 grt "TONS" for tankers to have oil spill contingency plans? MARPOL standard is 150 grt "TONNES"? (See s 330)

Why a need to distinguish between New Zealand ships and foreign ships in part XXIX at all?

s392 Liability to the Crown and marine agencies for costs of cleaning up pollution

This liability is absolute and extends very widely to any discharge or dumping of any harmful substance or marine pollutant (remember a marine pollutant is anything and everything) that is in breach of either the Transport Act or the RMA EXCEPT for Oil spills or dumping from a CLC ship.

or its provisions extended to New Zealand ships. Our obvious preference is the latter as it removes the prospect of being prosecuted under an "either or" situation that no other New Zealander faces.

To summarise;

1) We would still expect to be excluded from prosecution for illegal discharge under the RMA, and should argue that we accept the Provisions of the Transport Law Reform Bill with respect to Marine Environment Protection are as stringent as the RMA and accept the need to enforce those provisions on all ships but we see no reason why we should be the only New Zealanders to potentially be submitted to an "either or" situation regarding which Act we might be prosecuted under.

2) We should be concerned about any provision regarding "Rules" made by the MSA that would be applied differently upon New Zealand ships than they would on Foreign ships. In this Act, in respect of Oil Pollution Plans, there is clearly no need for New Zealand ships to meet any standard other than that internationally accepted. If the "Director" is prepared to accept a Lloyd's approved Plan on a British ship, he should accept a similarly approved Plan on a New Zealand ship. The Bill at s330 should be amended so that all ships are required to have plans as per the Marine Protection Rules.

3) The specific requirements in the Bill for New Zealand ship Oil Spill Response plans to be reviewed by the Director every 3 years is totally unnecessary and no such requirement exists for foreign ships. MARPOL requires two surveys every five years for the IOPP Certificate, the possession of an adequate Oil Spill Response Plan is a requirement of that survey.

4) The changes in the Law that the Bill provides for will require Union Shipping to have a "first class" record keeping system with respect to "documents".

5) The Bill, at s330 oversteps into the area of "Rule Making" best left to the MSA. The provisions of s330 could conceivably see New Zealand requiring a French Tanker of 110 grt being required to have an Oil Spill Response Plan that MARPOL does not require it to have, and so clearly be acting beyond the requirements of International Conventions.

APPENDICES

AND

OVERHEADS

39. Acceptance of documents—(1) Subject to **subsection (2)** of this section, the Director shall accept every valid licence, permit, certificate, or other document issued or approved by a State, other than New Zealand, under an international convention to which that State is a party; and, for the purposes of this Act, such documents shall be deemed to be maritime documents.

(2) The Director may suspend acceptance of any document referred to in **subsection (1)** of this section if—

(a) He or she considers that such action is necessary in the interests of maritime safety and is satisfied that the ship, maritime product, or holder fails or has failed to comply with any conditions attaching to the document; or

(b) He or she considers that there is a reasonable doubt as to the seaworthiness of the ship, or as to the quality or safety of the maritime product to which the document relates.

(3) **Sections 33, 37, 40 to 49, 64, 65 (b), 65 (c), and 76 to 81** of this Act shall not apply to any document referred to in **subsection (1)** of this section.

55. Investigation of accidents, incidents, and mishaps by Director—(1) Subject to section 14 of the Transport Accident Investigation Commission Act 1990, where an accident, incident, or mishap occurs that is required to be reported to the Authority under **section 29** of this Act, the Director may investigate the accident, incident, or mishap.

(2) For the purposes of carrying out an investigation under this section, the Director shall have all the functions, powers, and duties of the Transport Accident Investigation Commission under the Transport Accident Investigation Commission Act 1990 in relation to the investigation of accidents.

(3) Subject to section 14 of the Transport Accident Investigation Commission Act 1990, when an accident, incident, or mishap is under investigation by the Director, the Director shall be in charge of that investigation.

(4) The Director shall permit the participation or representation of foreign states in any investigation in which they have an interest.

(5) Except with the consent of the Director and, where the accident or incident is also being investigated by the Transport Accident Investigation Commission, the consent of the Transport Accident Investigation Commission, no other person shall—

(a) Participate in any investigation being undertaken by the Director; or

(b) Undertake any independent investigation at the site of any accident or incident being investigated by the Director; or

(c) Examine or cause to be examined any material removed from the site of any accident or incident being investigated by the Director.

(6) Where the Director refuses consent under **subsection (5)** of this section, he or she shall give the applicant a statement in writing of the reasons for his or her refusal.

(7) Where an accident or incident is being investigated by the Director and by the Transport Accident Investigation Commission, or the New Zealand Defence Force, or a visiting force, the Director and the Transport Accident Investigation Commission, or the Chief of Defence Force, (as the case may be) shall take all reasonable measures to ensure that the investigations are co-ordinated.

Cf. 1990, No. 99, s. 14

73. Penalties—(1) Every person who commits an offence against **section 30** or **section 57** of this Act is liable to a fine not exceeding $100,000.

(2) Every person who commits an offence against **section 58** of this Act is liable to—

(a) A fine not exceeding $50,000, if the failure caused any person serious harm:

(b) A fine not exceeding $25,000, in any other case.

(3) Every person who commits an offence against **section 60** or **section 61 (2)** of this Act 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, or both:

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

(4) Every person who commits an offence against **section 60 (1)** or **section 61 (1)** of this Act is liable—

(a) In the case of an individual, to a fine not exceeding $50,000:

(b) In the case of a body corporate, to a fine not exceeding $200,000.

(5) Every person who commits an offence against any of **sections 63, 64, 65, 67,** and **70** of this Act is liable,—

(a) In the case of an individual to a fine not exceeding $10,000:

(b) In the case of a body corporate to a fine not exceeding $50,000.

(6) Every person who commits an offence against **section 51** or **section 66** or **section 68** or **section 69** of this Act 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; or

(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.

(7) Every person who commits an offence against **section 25 (2)** of this Act is liable to a fine not exceeding $1,000.

(8) Every person who commits an offence against **section 58 (2)** of this Act is liable to a fine not exceeding $10,000.

Cf. 1990, No. 98, Part V

PARTS XX to XXX

MARINE POLLUTION

Parts XX to XXX replace the Marine Pollution Act 1974. As with that Act, those Parts of the Bill continue measures in the present Act relating to New Zealand's obligations under international conventions relating to marine pollution. The broad object of the Bill, however, is to set in place a balanced pollution control system. Convention-derived measures oriented towards pollution prevention and liability for pollution damage will be complemented by new measures providing for co-ordinated national planning and response arrangements for dealing with oil spills.

The Bill also contains measures that will remove the overlap that exists at present between the application of the Marine Pollution Act 1974 and the Resource Management Act 1991. Henceforth, the Resource Management Act 1991 will be the sole vehicle for the control of discharges of any substances into New Zealand's territorial waters. Discharges beyond the territorial sea will be subject only to the controls contained in this Bill. Penalties for marine pollution offences under this legislation will be aligned with those for equivalent offences under the Resource Management Act 1991.

Previous Legislation

The Marine Pollution Act 1974 was largely a response to the fuller appreciation of oil pollution risks that followed the Torrey Canyon disaster in 1967. That accident spurred the development of international conventions dealing with civil liability for oil pollution damage and intervention measures to reduce the incidence of or likelihood of pollution damage. As the vehicle for giving effect to those conventions that New Zealand became party to, the Act reflected contemporary concerns. With the passage of time, 2 shortcomings in the legislation have become increasingly apparent. First, the Act contains very limited measures in relation to preparing for and responding to oil spills. Second, its controls over pollution from ships are still based on the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, which was superseded in 1983, when the International Convention for the Prevention of Pollution of the Sea 1973 and its Protocol of 1978 (together known as MARPOL 73/78) entered into force.

International Conventions

The Bill contains measures that will enable MARPOL 73/78 to be implemented in New Zealand law and make it possible for New Zealand to adopt MARPOL. Measures derived from MARPOL will allow effective control to be exercised over both domestic and foreign ships in New Zealand in relation to all types of marine pollution from ships, rather than just oil, as is the case under the present legislation. The Bill gives continued effect to the International Convention on Civil Liability for Oil Pollution Damage, 1969 (the Liability Convention), the International Convention relating to Intervention on the High Sea in Cases of Oil Pollution Casualties, 1969, and its Protocol of 1973 (Intervention Convention), and the Convention on the Prevention of Marine Pollution by the Dumping of Wastes and other Substances, 1972 (the London Dumping Convention). In addition, the Bill continues measures under which New Zealand can become a member of the International Oil Pollution Compensation Fund, under the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

Protection of Marine Environment

Part XXI contains measures that give effect to MARPOL 73/78. These measures include strict controls on the discharge of harmful substances into the sea. The controls on discharges of harmful substances are reinforced by the extensive framework of operational, construction documentary and equipment standards for ships that must be implemented under MARPOL. The primary obligations to conform with the Convention are contained in the legislation, but the detailed technical aspects of the Convention requirements will be implemented through rules that will be made by the Minister of Transport and administered by the Maritime Safety Authority.

Part XXII contains measures to allow prompt intervention action to be taken to forestall or reduce marine pollution risks in the event of a shipping accident or an accident affecting an offshore oil installation. Powers accorded in this Part are carried over from the Marine Pollution Act 1974 and give effect to the Intervention Convention.

Dumping, Incineration, and Storing of Wastes

The provisions contained in *Part XXIII* carry over the similar provisions contained in the Marine Pollution Act 1974, and give continued effect to New Zealand's obligations under the London Dumping Convention in relation to the dumping of wastes and other matter at sea, and the incineration of wastes at sea.

Oil Spill Preparedness and Response

Part XXIV of the Bill contains measures that provide structured national arrangements to plan for and respond to oil spills. The Bill embodies the multi-tiered planning and response system that graduates from the individual ships or sites where an oil spill risk exists, through to regional councils at the next level, and then to the Maritime Safety Authority that will, under the Transport Law Reform Bill, take over oil pollution related functions presently carried out by the Maritime Transport Division of the Ministry of Transport. Response action will be guided by plans at each level, with responsibility for control of response action graduating to regional councils and the Maritime Safety Authority, depending on such factors as the severity of a spill, its location, and the effectiveness of response action.

Financing of Plans and Responses

Part XXV provides for the funding of oil pollution-related activities under *Part XXIV* to be provided for from oil pollution levies. Levies will be paid into an Oil Pollution Fund, administered by the Maritime Safety Authority, and accounted for separately from the Authority's other funds. Although the system of levies provided for under the Marine Pollution Act 1974 will initially be preserved, the Bill contains measures that make it possible to apply levies at differential rates to reflect different risk levels, to impose a levy directly on total annual oil movements through terminals, rather than a levy on individual oil tankers, and to apply levies to installations or facilities that represent a potential marine oil pollution risk.

Civil Liability for Pollution Damage

Part XXVI gives continued effect to New Zealand's obligations under the Liability Convention, and in addition provides a single, statutory regime for civil liability for marine pollution damage from any ship or offshore installation within New Zealand jurisdiction. The owners of oil tankers are, under the Convention, afforded a limitation on their total liability for oil pollution damage if they are adequately insured against pollution damage in accordance with compulsory insurance requirements pursuant to the Convention. The legislation

The Transport Committee, in its consideration of the Transport Law Reform Bill, is considering the possibility of recommending to the House that clause 240, which concerns coastal shipping, be amended. As set out in the bill, the clause states:

> **240. Coastal shipping** - (1) Cargo loaded, or passengers embarking, at any port in New Zealand intended to be finally unloaded or to finally disembark at any port in New Zealand may be carried by any ship where all appropriate maritime documents are held in respect of the ship and any maritime products and seafarers on board the ship;
>
> (2) Nothing in this section shall limit any other provision of this Act or any other Act, or regulations made under this Act or any other Act, or maritime rules.

Following the hearing of evidence and after considering Ministry of Transport advice, the committee is considering recommending that the clause be amended to limit such shipping to any New Zealand ship or foreign ships in transit. The committee has prepared the following which could be an alternative to the current clause:

> **Coastal shipping** - Subject to **subsection (3)** of this section, cargo loaded or passengers embarking at any port in New Zealand with the intention of being finally unloaded or of finally disembarking at any port in New Zealand may be carried by -
>
> (a) Any New Zealand ship; or
>
> (b) Any foreign ship that is also carrying or has brought to New Zealand, from an overseas port, any cargo or passengers for unloading or disembarkation in New Zealand; or
>
> (c) Any foreign ship that has also loaded or is to load cargo, or has embarked or is to embark passengers, at a New Zealand port for unloading or disembarkation at an overseas port.
>
> (2) If the Minister is satisfied that there are no ships of the kinds described in **subsection (1)** of this section available to carry any cargo or passengers between ports in New Zealand, the Minister may authorise the carrying of cargo or passengers by any other ship on such conditions as the Minister considers appropriate; and every authorisation granted under this subsection shall, subject to **subsection (3)** of this section, have effect according to its tenor.
>
> (3) All the requirements of this Act in relation to maritime documents for ships, maritime products, and seafarers shall apply in respect of any ship authorised by **subsection (1)** or under **subsection (2)** of this section to carry cargo or passengers between ports in New Zealand.
>
> (4) Every person commits an offence against this Act who carries any cargo or passengers by ship between ports in New Zealand other than as authorised by or under this section, and is liable:
>
> (a) In the case of an individual, to a fine not exceeding $10,000; and
>
> (b) In the case of a body corporate, to a fine not exceeding $100,000.
>
> (5) Nothing in this section shall limit any other provision of this Act or any other Act, any regulations made under this Act, or any maritime rules.

331. Oil Pollution Advisory Committee—(1) The Minister shall appoint a committee, to be known as the Oil Pollution Advisory Committee, to give advice to the Authority on the following matters:

(a) The New Zealand Marine Oil Spill Response Strategy:

(b) The fixing and levying of oil pollution levies imposed under **Part XXV** of this Act:

(c) The use of the New Zealand Oil Pollution Fund:

(d) Any other matters related to marine oil spills that the Minister, or the Director, from time to time specifies by notice to the Committee.

(2) The Minister shall appoint to the Committee—

(a) The Director; and

(b) Such other persons as the Minister from time to time determines; and

(c) A chairperson of the Committee.

(3) The Minister shall, in appointing members of the Committee, consider whether the Committee should have members who represent, or have experience with regard to, the following:

(a) The shipping industry:

(b) The oil and gas exploration industry:

(c) The oil and gas production and distribution industry:

(d) The Petroleum Industry Emergency Action Committee:

(e) Port companies:

(f) Regional councils:

(g) The Ministry of Transport:

(h) The Ministry for the Environment:

(i) The Department of Conservation:

(j) Te Puni Kokiri.

(4) The Committee may, subject to any written directions of the Minister, regulate its procedure as it thinks fit.

(5) Members of the Committee shall be appointed on such terms and conditions (including travelling allowances and expenses) as the Minister from time to time determines.

(6) Any travelling allowances and expenses determined by the Minister under **subsection (5)** of this section shall be paid out of the New Zealand Oil Pollution Fund.

MARITIME Transport
Waka Moana

The New Rules Process for Maritime Transport

A new legislative system is being set in place which will require the public to play a major role. It is called Rule Making and is being set up as required by the Transport Law Reform Bill. It is a form of delegated legislation which invites the public to suggest new Rules on maritime safety, or comment on propsed or existing ones.

This brochure outlines the procedure. It begins by tracing through the origins of the idea, deals more fully with the processes, and ends with an invitation for you to take part.

RULES

Rule Making

Introduction

Maritime Transport is presently controlled by many Acts, regulations and orders. A 1992 discussion paper on maritime law reform first proposed the use of Rules as a way of keeping safety standards up-to-date. Although Rules are new to maritime transport, they are used successfully in aviation, both here and in the United States. However, Rules do not replace all legislation. Major offences, penalties, policies and principles will remain defined by Acts.

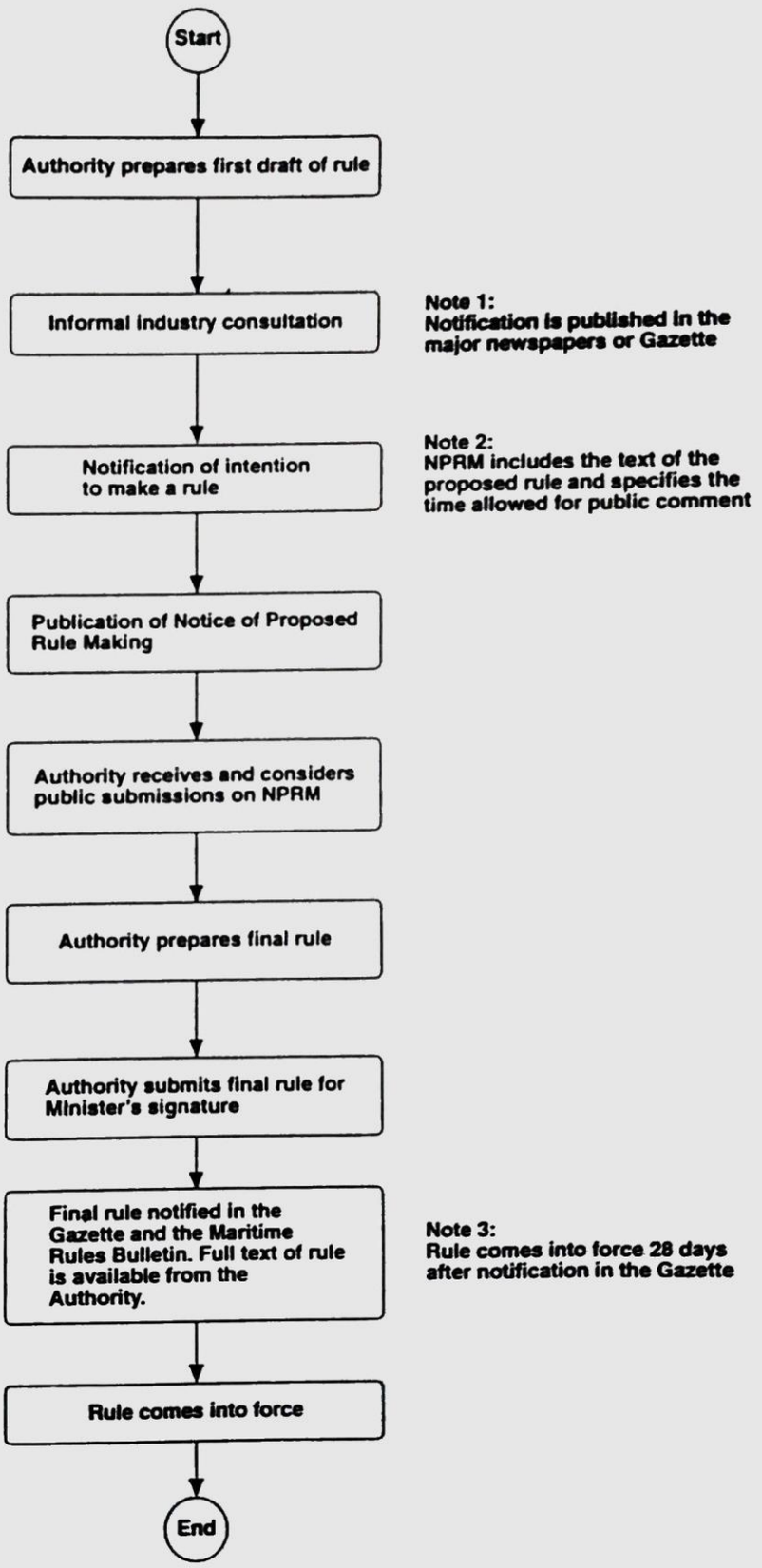
Rules and the Public

Rules differ from usual legislation in the way they are written. The language is plain English, and each has an explaining note. As a result the public should find them easier to read and understand.

The Bill insists that the public is fully consulted and it is the Maritime Safety Authority's job to see that this happens. They also manage all other processes such as drafting a Rule, advertising it, and calling for and handling submissions.

When the Authority proposes a new Rule or a change to an existing one, it advises the public through notices in newspapers and the Gazette. The draft Rule can be obtained from the Authority. Members of the public who have requested placement on the Authority's mailing list automatically receive a copy by mail.

The flow chart on this page shows the Rule Making process step-by-step.



The Petitioning Process

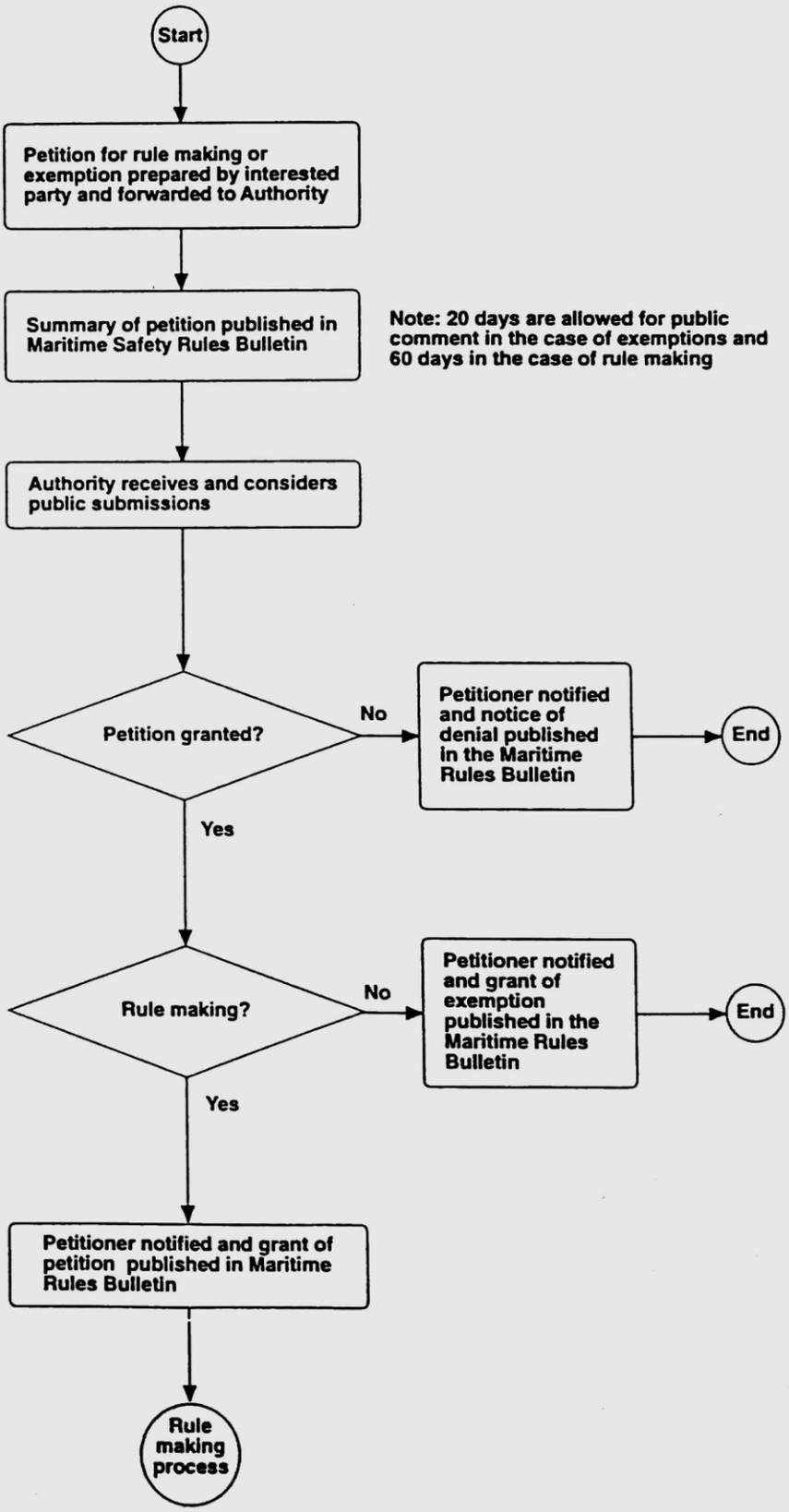
Making New Rules

The idea for a new rule may come from within the Authority or from a member of the public. If the idea is considered worthy, the Authority writes a first draft of the new Rule and publishes a Notice of Proposed Rule Making. Submissions are sought from the public and carefully considered, and a final draft prepared. The Rule becomes law when the Minister of Transport approves and signs it.

Those Interested

Those interested can petition the Authority to make a Rule. They can also petition it to amend or revoke a Rule, or grant a temporary or permanent exemption.

The flow chart on this page shows the petitioning process step-by-step. This process will begin once the new legislation comes into force.



Structure of the Maritime Transport Rules

All Rules belong to one of the following eight groups. The groups and parts are indicative and should not be considered final or complete.

General

Part 10 Rule Making Procedures
Part 11 Competent Persons

Ship Operations

Part 20 Operating Limits
Part 21 Safe Management Systems
Part 22 Collision Prevention and Safe Navigation
Part 23 Operational Procedures and Training
Part 24 Logbooks
Part 25 Carriage of Cargoes
- Subpart A Dangerous Goods
- Subpart B Containers
- Subpart C Grain
- Subpart D Livestock
- Subpart E Timber Deck Cargo

Ships' Personnel

Part 30 Minimum Crew Complement
Part 31 Qualifications
- Subpart A STCW
- Subpart B Restricted Limits
- Subpart C Fishing

Design, Construction, Equipment and Maintenance

Part 40 Design and Construction
- Subpart A Passenger Ships
- Subpart B Cargo Ships
- Subpart C Tankers
- Subpart D Fishing Boats
- Subpart E Sailing Ships
- Subpart F Others

Part 41 Anchors and Chain Cables
Part 42 Safety Equipment
- Subpart A Lifesaving Appliances
- Subpart B Fire Appliances

Part 43 Radio
Part 44 Nautical Instruments
Part 45 Maintenance and Survey
Part 46 Load Lines
Part 47 Tonnage Measurement

Welfare of Ships' Personnel

Part 50 Articles of Agreement
Part 51 Medical Examinations
Part 52 Crew Accommodation

Navigational Aids

Part 60 Lights, Buoyage and Beacons Marking System

Marine Environmental Protection

Part 70 Ships' Records
Part 71 Ships' Equipment
Part 72 Documents
Part 72 Operational Procedures
Part 73 Harmful Substances
Part 74 Reception Facilities
Part 72 Dispersants
Part 73 Dumping and Incineration

Harbours Management

Part 80 ~~Pilots' Licensing~~
~~Part 81~~ Compulsory Pilotage
Part 82 Pilotage Exemption Certificates
Part 83 Harbourmasters
Part 84 Contractual Services Provided by Port Companies
Part 85 Navigational Channels
Part 86 Navigational Hazards
Part 87 Structures and Works

Become involved

For further information contact:

The Manager, Policy and Standards Development
Maritime Safety Branch
PO Box 27006
Wellington
New Zealand

Water

14. Restrictions relating to water—(1) No person may take, use, dam, or divert any—

(a) Water (other than open coastal water); or

(b) Heat or energy from water (other than open coastal water); or

(c) Heat or energy from the material surrounding any geothermal water—

unless the taking, use, damming, or diversion is allowed by subsection (3).

(2) No person may—

(a) Take, use, dam, or divert any open coastal water; or

(b) Take or use any heat or energy from any open coastal water,—

in a manner that contravenes a rule in a regional plan or a proposed regional plan unless expressly allowed by a resource consent or allowed by section 20 (certain existing lawful activities allowed).

(3) A person is not prohibited by subsection (1) from taking, using, damming, or diverting any water, heat, or energy if—

(a) The taking, use, damming, or diversion is expressly allowed by a rule in a regional plan or a resource consent; or

(b) In the case of fresh water, the water, heat, or energy is required to be taken or used for—

(i) An individual's reasonable domestic needs; or

(ii) The reasonable needs of an individual's animals for drinking water,—

and the taking or use does not, or is not likely to, have an adverse effect on the environment; or

(c) In the case of geothermal water, the water, heat, or energy is taken or used in accordance with tikanga Maori for the communal benefit of the tangata whenua of the area and does not have an adverse effect on the environment; or

(d) In the case of coastal water (other than open coastal water), the water, heat, or energy is required for an individual's reasonable domestic or recreational needs and the taking, use, or diversion does not, or is not likely to, have an adverse effect on the environment; or

(e) The water is required to be taken or used for fire-fighting purposes.

Discharges

15. Discharge of contaminants into environment—(1) No person may discharge any—

(a) Contaminant or water into water; or

(b) Contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or

(c) Contaminant from any industrial or trade premises into air; or

(d) Contaminant from any industrial or trade premises onto or into land—

unless the discharge is expressly allowed by a rule of a regional plan, a resource consent, or regulations.

(2) No person may discharge any contaminant into the air, or into or onto land, from—

(a) Any place; or

(b) Any other source, whether moveable or not,—

in a manner that contravenes a rule in a regional plan or proposed regional plan unless the discharge is expressly allowed by a resource consent or allowed by section 20 (certain existing lawful activities allowed).

(3) Except with the leave of the Court, subsection (2) does not apply unless, within 7 days after the service of the summons or within such further time as the Court may allow, the defendant delivers to the prosecutor a written notice—

(a) Stating that he or she intends to rely on subsection (2); and

(b) Specifying the facts that support his or her reliance on subsection (2).

342. Fines to be paid to local authority instituting prosecution—(1) Subject to subsection (2), where a person is convicted of an offence under section 338 and the Court imposes a fine, the Court shall, if the information for that offence was laid on behalf of a local authority, order that the fine be paid to that local authority.

(2) There shall be deducted from every amount payable to a local authority under subsection (1), a sum equal to 10 percent thereof, and this sum shall be credited to the Crown Bank Account.

(3) Notwithstanding anything in subsection (2), where any money awarded by a Court in respect of any loss or damage is recovered as a fine, and that fine is ordered to be paid to a local authority under subsection (1), no deduction shall be made under subsection (2) in respect of that money.

(4) Subject to subsection (2), an order of the Court made under subsection (1) shall be sufficient authority for the Registrar receiving the fine to pay that fine to the local authority entitled to it under the order.

(5) Nothing in section 73 of the Public Finance Act 1989 shall apply to any fine ordered to be paid to any local authority under subsection (1).

343. Discharges from ships—The provisions of this Part shall not apply to any discharge of a contaminant into water from a ship that is not a New Zealand ship (as defined by section 2 of the Shipping and Seamen Act 1952).

PART XIII

HAZARDS CONTROL COMMISSION

344. Interpretation—In this Part, unless the context otherwise requires,—

"Commission" means the Hazards Control Commission established under this Part:

"Genetically modified organisms" means any organisms in which any of the genes or other genetic material—