ARE STANDING HARBOURMASTERS' DIRECTIONS LAWFUL IN NEW ZEALAND?

John Burton and Bevan Marten*

In recent years, a practice has developed within some regions of New Zealand of the local harbourmaster issuing a set of 'standing directions' to vessels and persons within their region. These directions govern matter such as mooring arrangements, pilotage restrictions, and navigation requirements in confined areas. The directions appear on the relevant regional council website, are addressed to any applicable vessels or persons, and have no fixed end date. This article argues that such directions are unlawful because the directions are beyond the powers available to harbourmasters under the *Maritime Transport Act 1994* (NZ) (**MTA**).

Harbourmasters in New Zealand

New Zealand's first harbourmasters were appointed by the colonial Governor in the early 1840s, with Captain David Rough assuming the position of Auckland harbourmaster in May 1841,[1] but it was not until the *Harbours Act 1878* (NZ) that their role was governed by legislation. That Act essentially gave them the power to ensure the observance of bylaws made by harbour boards,[2] a power substantially replicated in the *Harbour Act 1923* (NZ) and *Harbours Act 1950* (NZ). Following the abolition of harbour boards, the role sat for a time within the *Local Government Act 1974* (NZ), then in 2013 found its current home in Part 3A of the MTA ("Local regulation of maritime activity").[3]

This Part provides that harbourmasters may be appointed by a regional council for any port, harbour or waters in its region, to carry out the following functions:

> 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.[4]

Harbourmasters are therefore local government officials with a safety focus, but in practice tend to work closely with their region's largest port(s),[5] given the overlap between shipping safety and a well-functioning port. Regional councils are also empowered to make navigation safety bylaws for their regions, which can regulate matters such as the use or management of ships, vessel traffic, water-related nuisances, local events, and moorings.[6]

Section 33F of the MTA sets out 'habourmasters' general powers' (the direction-specific parts of the section are in bold):

> (1) For the purposes of ensuring maritime safety, or enforcing secondary legislation (including bylaws) 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:**

* Partners, Izard Weston, Wellington New Zealand.

[1] E R Martin, *Marine Department Centennial History 1866-1966* (Marine Department, Wellington, 1969) 1-2.

[2] *Harbours Act 1878* (NZ) s 215.

[3] *Maritime Transport Act 1994* (NZ) ss 33D-F ('*MTA*').

[4] Ibid, ss 33D and 33E.

[5] New Zealand ports are commercial entities governed by the *Port Companies Act 1988* (NZ) but are often wholly or partly owned by regional councils.

[6] *MTA* (n 3) s 33M.

(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 secondary legislation (including 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 secondary legislation (including 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.

[subsections (3) to (5) are omitted]

(6) Every person who, without reasonable excuse, fails to comply with a direction or requirement given or imposed under subsection (1) commits an offence and is liable,—
(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000:
(b) in the case of a body corporate, to a fine not exceeding $100,000:
(c) in any case, to an additional penalty under section 409.

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

The Standing Directions

Harbourmasters' standing directions have been introduced in recent years in regions around New Zealand including Auckland, Canterbury, Northland, and Taranaki (though the Taranaki directions have since been revoked).[7]

Taking as an illustration the Canterbury standing direction, which is the most comprehensive at 22 pages in length, it purports to be made under section 33F of the MTA, as well as the Canterbury Regional Council Navigation Safety Bylaw 2021.[8] The directions also claim to be implementing the New Zealand Port and Harbour Safety Code (**the Code**) 'to enable adequate implementation of the Code', although the Code is silent on the issue of standing directions.[9]

The document is expressly framed as a direction: 'the Harbourmaster directs that vessel and related maritime activities shall be conducted in accordance with the applications, purposes and requirements of this Direction.'[10]

The substantive matters covered by the direction include:[11]

- Hazardous activities, including hot work permits;
- Unseaworthy vessels, for example situations in which they should not move or should report to the harbourmaster;
- Vessel operating limits, including the need to notify the harbourmaster of certain vessel movements;
- Requirements regarding pilotage, such as the location for pilot disembarkation; and
- Prescribing restricted access areas for larger vessels visiting Akaroa and Kaikoura.

The shorter Auckland directions focus on maximum vessel sizes for operating within the Auckland region's various pilotage limits (with permission to be sought from the harbourmaster for larger vessels), and controlling

[7] Taranaki Regional Council, *Harbour Master's General Directions* (2015).
[8] Environment Canterbury, *Harbourmaster's Direction 16-1* (v1.3 2021) cl 1. The clause also refers to delegated powers under sections 48 and 60A of the MTA, which refer to exams/tests and compliance with pilotage laws.
[9] Environment Canterbury, *Harbourmaster's Direction 16-1* (v1.3 2021) foreword; Maritime New Zealand, *New Zealand Port and Harbour Safety Code* (3rd ed, 2020).
[10] Environment Canterbury, *Harbourmaster's Direction 16-1* (v1.3 2021) cl 1.
[11] Environment Canterbury, *Harbourmaster's Direction 16-1* (v1.4, 2021) cl 6.

vessel movements around the busy downtown ferry terminal.[12] Auckland has also put in place a series of six 'Navigation Safety Operating Requirements'. The legal basis for introducing these is unclear but they appear to have the same intended effect as the standing directions, namely to direct a class of vessels, such as superyachts, to operate in a certain way, or to govern operations in specific conditions, such as limited visibility.[13]

Part of Northland's directions have the confusing title of 'Harbourmaster Guidelines', but substantive rules are nonetheless described as requirements that will be backed up with a 'specific direction' from the harbourmaster if these are not complied with.[14]

The Legality of Standing Directions

The legal basis that the harbourmasters in Auckland and Canterbury have purported to operate on to issue standing directions rests on the wording of section 33F(1)(c) of the MTA, which states that they 'may give directions' to 'ships' (plural) in relation to their movements and cargo operations. Without further context, those words do not appear to limit such directions to one-off instructions to particular ships, as contrasted with the more emphatic 'direct the master of any ship' in section 33F(1)(d). Instead, the words appear to invite the development of a pragmatic set of standing directions, applicable to any and all vessels caught within the scope of those directions.

However, as stated at the outset, we believe this is a misreading of the statutory words in the light of their wider context and purpose,[15] and that such directions are unlawful.

Statutory Origins

The power of New Zealand's harbourmasters to direct shipping was not set out in legislative detail until the introduction of the *General Harbour (Nautical and Miscellaneous) Regulations 1968* (NZ) (**the Regulations**). These Regulations, made under the *Harbours Act 1950* (NZ), set out the following powers (emphasis is added to show the portions which are substantively unchanged from section 33F(1)(c) of the MTA):

> Subject to the provisions of any enactment or regulation to the contrary, any **Harbourmaster may**, in order to prevent risk or accident to shipping or to prevent overcrowding or confusion in the harbour under his control, **give directions** for all or any of the following purposes, namely:
>
> (a) For regulating **the time and manner in which any vessel may enter into, depart from, or lie in the harbour**:
>
> (b) For regulating **the position, mooring, unmooring, placing, removing, securing, or unsecuring of any vessel** within the harbour:
>
> (c) For regulating **the manner in which any vessel** within the harbour, or at any wharf, dock, or landing place in the harbour, **may take in or discharge its cargo** or any part thereof or take in or discharge ballast:
>
> (d) For regulating the time and manner in which any vessel may lie at any wharf, dock, or landing place in the harbour, and the position, securing or unsecuring, placing, or removing of any vessel lying thereat.[16]

That 1968 wording drew heavily on section 52 of the United Kingdom's *Harbours, Docks and Piers Clause Act 1847* (UK) (**the 1847 UK Act**) (the identical passages are in bold):

> The harbour master **may give directions** for all or any of the following purposes; (that is to say,)
>
> **For regulating the time at which and the manner in which any vessel shall enter into, go out of, or lie in or at the harbour,** dock, or pier, and within the prescribed limits, if any, **and its position, mooring or unmooring, placing and removing, whilst therein**:
>
> **For regulating the position in which any vessel shall take in or discharge its cargo or any part thereof,** or shall take in or land its passengers**, or shall take in or deliver ballast** within or on the harbour, dock, or pier:

[12] Auckland Harbourmaster's Office, *Harbourmaster's Direction 2-20: Vessel Operating Requirements* (2020); Auckland Harbourmaster's Office, *Harbourmaster's Direction 4-20: Downtown Ferry Terminal Basin* (2020).
[13] See for example Auckland Harbourmaster's Office, *Navigation Safety Operating Requirements: Operation of Vessels During Periods of Restricted Visibility* (2021); Auckland Harbourmaster's Office, *Navigation Safety Operating Requirements: Operation of Superyacht in the Auckland Region* (2021).
[14] Northland Regional Council *Harbourmaster Guidelines Whangarei Harbour* (2021); Northland Regional Council, *Harbourmaster's Direction 1-11: Bay of Islands Harbour Navigation Criteria – Waitangi Light Sector* (2011).
[15] *Legislation Act 2019* (NZ) s 10.
[16] *General Harbour (Nautical and Miscellaneous) Regulations 1968* (NZ), reg 50.

> For regulating the manner in which any vessel entering the harbour or dock or coming to the pier shall be dismantled, as well for the safety of such vessel as for preventing injury to other vessels, and to the harbour, dock, or pier, and the moorings thereof:
>
> For removing unserviceable vessels and other obstructions from the harbour, dock, or pier, and keeping the same clear:
>
> For regulating the quantity of ballast or dead weight in the hold which each vessel in or at the harbour, dock, or pier shall have during the delivery of her cargo, or after having discharged the same.

Therefore, while the current statutory provision was enacted in 2013,[17] its scope and wording can still be traced back to the British legislation over 160 years earlier.

Judicial Commentary

Section 52 of the 1847 UK Act has been the subject of several judgments, starting with the English Court of Appeal's 1926 decision in *The Guelder Rose*.[18] In that case, the harbourmaster at the Cornish town of Fowey issued the following directions under section 52 of the 1847 UK Act: (i) that between sunrise and sunset vessels should not proceed up the harbour at a pace exceeding three miles per hour; (ii) that between sunset and sunrise they should anchor in a certain defined position; (iii) that they should not at any time proceed above a named place in the harbour without the sanction of the harbour master; and (iv) that they should not at any time be moved within the limits without previously notifying the harbour master; unless in any of the four cases they had a qualified pilot on board.

The plaintiffs sought, and were granted, a declaration that the directions were invalid and unenforceable. Atkin LJ (with whom Sargant and Bankes LJJ agreed) compared the power of harbourmasters to make directions with the bylaw making process. He held the directions in question were 'very appropriate to the creation of bylaws, but not in the least within the powers which are given to the harbour master'.[19] Atkin LJ was concerned that, as compared with the process for making bylaws, those affected by the directions did not have a right to be consulted. It was explained that the purpose of s 52 was to give the harbour master powers 'for the purpose of giving specific directions to specific ships for specific movements'.[20] While it was acknowledged that there may be circumstances where a harbour master direction might operate for longer than one particular voyage, harbourmasters were not a 'legislative authority', and had no power 'to lay down rules of general application'.[21]

A number of subsequent cases have since followed the principles laid down in the *The Guelder Rose*.

In *Macdonald v Mackenzie*,[22] the harbourmaster of Stornoway in Scotland had purported to issue a direction under section 52 of the 1847 UK Act prohibiting the setting of fishing nets within the harbour in the interests of safe navigation. Mr Macdonald was charged and convicted with failing to comply with the direction.

On appeal, the Court held that the fishing prohibition was outside the powers of the harbourmaster, and Mr Macdonald's conviction was quashed. The Court considered that the purpose of the harbourmaster's direction should have been attained through bylaws. Lord Mackay found that the direction was an attempt to 'initiate new legislation, or to create or erect a general illegality, by a harbour master, whose only or at least main function in the question was to give executive directions to specific vessels.'[23]

In *Pearn v Sargent*,[24] the harbourmaster of the port of Looe in Cornwall served a notice on the owner of a self-hire motorboat company announcing that no vessel of any kind was permitted to move within the harbour without his permission between certain times on a specified date as there was a regatta arranged on that day. Drawing on *The Guelder Rose*, the Court held that the direction was *ultra vires* under section 52. Lord Widgery CJ compared the role of harbourmaster to that of a traffic policeman: only where there was an emergency, or exceptional circumstances, could a harbourmaster impose wider prohibitions on vessels for a particular time.[25]

Finally, in a decision from 1986, a harbourmaster purported to restrict access to Carrickarory pier in Donegal for the discharging and loading of vessels.[26] The direction was made pursuant to section 52 of the 1847 UK Act. The

[17] See also *Local Government Act 1974* (NZ) s 650C (enacted in 1999).
[18] *Richard Hughes and Co v Fowey Harbour Commissioners and Collins (The Guelder Rose)* [1927] P 1 ('*The Guelder Rose*')..
[19] Ibid 19 (Atkin LJ).
[20] Ibid 21 (Atkin LJ).
[21] Ibid 22 (Atkin LJ).
[22] *Macdonald v Mackenzie* [1947] JC 122.
[23] Ibid.
[24] *Pearn v Sargent* [1973] 2 Lloyd's Rep 141.
[25] Ibid 144 (Lord Widgery CJ).
[26] *Moyne, Thompson and McCauley Brothers v The Londonderry Port and Harbour Commissioners* [1986] IR 299.

plaintiffs, coal distributors, challenged the legality of the harbourmaster's directions. The Court referred to, and applied the cases discussed above, holding that 'any notification by the harbour master which contained the conditions limiting the use of Carrickarory pier cannot properly be regarded as an *ad hoc* direction given for a particular occasion; it is obviously one designed to enforce a permanent restriction of a general kind on the use of a pier'.[27] The direction was not one that could be lawfully imposed by the harbourmaster under s52 of the 1847 UK Act.

While these UK cases are consistent in their conclusion that the 1847 UK Act did not empower harbourmasters to issue 'standing directions', these are of course not New Zealand decisions. Nonetheless, these cases provide a clear backdrop against which New Zealand has legislated in this area. Drawing heavily on the 1847 UK Act in 1968, repeating this in 1999,[28] then bringing that statutory language through into section 33F(1)(c) of the MTA in 2013, New Zealand's legislature has been content to repeat the substance of those earlier provisions. In doing so, the Parliament has never demonstrated any intention to depart radically from what was in place before, even if Ministry of Transport officials considered the power to make standing directions already existed during the passage of the 2013 legislation.[29] Instead, the Parliament was reinforcing legislation with a long pedigree of being limited to 'specific directions to specific ships for specific movements' by the courts.[30]

This is further reinforced by the enforcement-related section 33G of the MTA, subsection (c) of which gives enforcement officers and constables the ability to exercise section 33F(1)(c) powers when authorised by the regional council. The idea that such powers could be exercised by an enforcement officer goes against the notion that such powers extend to the introduction of standing directions: 'Constable Smith's standing directions for Wellington Harbour' are not a credible form of local law-making. Yet there is nothing in the statutory language to distinguish the powers' use by enforcement officers in section 33G from use by habrourmasters under section 33F.

Similarly, the appeal right against a direction in section 33F(7) of the MTA, under which a person has 28 days to appeal against a harbourmaster's decision,[31] suggests an appeal from a specific direction issued on a specific occasion. It does not suggest an appeal right an affected party can either exercise at any point they choose to challenge the validity of a standing direction or, conversely, that they lose if they do not immediately raise a challenge once the standing direction first applies to them.

The Proper Approach

The alternative approach approved of in the judgments discussed above – the introduction of bylaws – also fits neatly within the same legislative hierarchy that exists in New Zealand. Parliament legislates for the entire country via statutes such as the MTA, and subsidiary legislation such as Part 91 of the Maritime Rules (which governs nationwide navigation safety issues such as speed limits and lifejackets).[32] Next, local authorities enact navigation safety bylaws to govern maritime safety and related issues specific to their regions, such as the prioritisation of recreation in specific areas.[33] Finally, using their powers under section 33F, local harbourmasters and other enforcement officers enforce those Maritime Rules and bylaws, as well as responding to the immediate needs of their harbours.

This legal architecture does not envisage a harbourmaster creating and enforcing their own legal code. The temptation to do so is obvious, for the same reasons now as existed in Cornwall a century ago. Bylaws are expensive and time-consuming to enact, requiring public consultation. They also carry very low penalties for breach of around $150 to $500,[34] especially in comparison with the fines of up to $10,000 (individuals) or $100,000 (corporations) – and even up to 12 months' imprisonment – for breaching section 33F of the MTA.[35]

However, we cannot accept that, without expressly saying as much, Parliament intended for an individual local government official to hold this much power when there is an alternative interpretation available to the effect that (i) standing directions are ultra vires, and (ii) that there is no legislative gap because the material currently found

[27] Ibid 311.
[28] *Local Government Act 1974* (NZ), s 650C.
[29] Ministry of Transport and Ministry for the Environment, *Marine Legislation Bill 2012: Report of the Ministry of Transport and Ministry for the Environment*, p 36: 'Directions may be issued as day to day or standing (enduring) instructions that may effectively impose conditions on the use or operation of a ship'.
[30] *The Guelder Rose* [1927] P 1, 21.
[31] *MTA* (n 3) s 425.
[32] Maritime Rules Part 91: Navigation Safety Rules (2016), rr 91.4 and 91.6.
[33] See for example Nelson City Council Navigation Safety Bylaw 2019, cl 2.2.
[34] See Local Government (Infringement Fees for Offences – Canterbury Navigation Safety Bylaws 2010) Regulations 2011; Maritime Transport (Infringement Fees for Offences – Auckland Council Navigation Bylaw 2021) Regulations 2021.
[35] The same mismatch in penalties was observed in *The Guelder Rose* [1927] P 1, 19.

in the standing directions can instead appear in a bylaw.[36] Taking the example of the Canterbury standing directions once again, the key substantive topics (Hazardous activities including hot work permits, unseaworthy vessels, operating limits, restricted areas, and pilotage matters) all routinely appear in bylaws around New Zealand.[37]

A Risk to Seafarers and Ratepayers

Standing directions are not only a questionable method of shortcutting the proper legislative process, they can also increase the risk of maritime accidents, and leave regional councils' ratepayers open to the risk of liability.

There are good reasons laws must undergo public scrutiny and consultation before enactment: it enables affected persons to test their representatives' thinking and help them identify unworkable or merely inconsistent rules. For example, in the case of Auckland's 'Navigation Safety Operating Requirements', these are said to 'set a single standard operating procedure' for various parts of Auckland waters.[38] But this standard operating procedure relating to 'operation of vessels during periods of restricted visibility' imposes requirements that are not provided for in Maritime Rule Part 22 (which gives domestic effect to the Collision Regulations),[39] or Auckland's Navigation Safety Bylaws.[40]

The effect of these requirements is that when several vessels are waiting to transit the Auckland Harbour Bridge Precautionary Area that the document establishes, the following order of priority is said to be created:

- Passenger ferries navigating from west to east, then;
- Passenger ferries navigating from east to west, then;
- Vessels navigating from west to east, then;
- Vessels navigating from east to west.

This is the kind of rule-setting that could lead to confusion and serious harm. The requirement is not contained in the Bylaw, so mariners, and especially recreational boaties, cannot be expected to have knowledge of it. A ferry that proceeds west to east in thick fog and collides with a recreational vessel travelling in the opposite direction could not claim that it had the right of way by virtue of this so called 'single standard'. Nor could the recreational vessel be held to be at fault provided the skipper had otherwise navigated in accordance with the collision rules and general standards of proper seamanship.

In those circumstances, parties might even look to hold the regional council liable for their losses, having created its own idiosyncratic rules of navigation that fall outside bylaws, Maritime Rule Part 22 and that were causative of damage, injury or even death. While shipowners, and pilotage providers (who tend to be the local commercial port) can limit their liability under the MTA,[41] regional authorities' liability remains unlimited, and it may fall to ratepayers to bear the loss. Evidently conscious of this, most standing directions include a forlorn attempt to exclude liability.[42] Again, there is an obvious solution: transfer the provisions of the Navigation Safety Operating Requirement into a proposed bylaw and undertake the usual consultative process. Once enacted as a bylaw, this local rule would have proper legal effect.

Another example of a standing direction introducing potential confusion is the potential for 'mission creep' illustrated by the Canterbury standing directions. These contain requirements relating to several areas that are not found in section 33F(1)(c) and must therefore be ultra vires even if standing directions were lawful under that section. There are directions relating to pilotage,[43] and while harbourmasters have a role to play in the regulation of pilotage,[44] there is no legal basis for this role to take the form of standing directions nominally carrying significant penalties for non-compliance. Further examples of matters beyond section 33F include a direction that commercial ports set and operate agreed wind limit guidelines,[45] and rules on hazardous activities such as hot

[36] It appears that a number of United Kingdom ports instead obtained private Acts of Parliament or Harbour Revision Orders to achieve a similar goal: Douglas and Geen, *The Laws of Harbours and Pilotage* (4th ed, Lloyd's of London Press Ltd, London, 1993) 53.
[37] See for examples Bay of Plenty Regional Navigation Safety Bylaw 2017; Nelson City Council Navigation Safety Bylaw 2019; Wellington Regional Navigation Safety Bylaws 2021.
[38] Auckland Harbourmaster's Office, *Navigation Safety Operating Requirements: Operation of Vessels During Periods of Restricted Visibility* (2021), foreword.
[39] Maritime Rules Part 22: Collision Prevention (2021); Convention on the International Regulations for Preventing Collisions at Sea 1972.
[40] Auckland Council Navigation Bylaw 2021.
[41] *MTA* (n 3) ss 60B, 84A.
[42] See for examples Environment Canterbury, *Harbourmaster's Direction 16-1* (v1.4, 2021), cl 5; Northland Regional Council, *Harbourmaster's Direction 1-11: Bay of Islands Harbour Navigation Criteria – Waitangi Light Sector* (2011).
[43] Environment Canterbury, *Harbourmaster's Direction 16-1* (v1.4, 2021), cl 6.4.
[44] See for examples Maritime Rules Part 90: Pilotage, r 90.25 and 90.64.
[45] Environment Canterbury, *Harbourmaster's Direction 16-1* (v1.4, 2021), cl 6.3(4).

work.[46] In most other ports around New Zealand the latter issue is included in the local bylaw (with the harbourmaster issuing the necessary permits under that instrument's authority). The standing directions approach means that while a person who breaches the requirement for a hot work permit in Wellington will face a $200 fine,[47] in Canterbury they could pay up to a $10,000 fine or even go to jail for up to a year for the exact same offending.

Conclusion

Our position is that section 33F(1)(c) of the MTA does not permit harbourmasters to issue standing directions to vessels within their regions. The context in which the statutory wording has developed, from a British precedent of the 1840s through to the current version enacted in 2013, does not demonstrate that Parliament intended for such a broad legislative power to be exercised by these officials. Instead, the power properly remains limited to giving directions to specific ships on specific occasions.

Nonetheless, for now New Zealand's harbourmasters remain divided into two camps – those who rely on standing directions, and those who do not. The men and women who issue such directions are doing so for understandable reasons of expediency and pragmatism, in reliance on statutory wording that, on its face, permits such an approach. Meanwhile, we are aware of other current and retired harbourmasters who are adamant that the practice is improper and unlawful. These differences can now only be resolved by a court decision or (less likely), a statutory amendment to clarify Parliament's intention. In the meantime, New Zealand's maritime regulatory environment is left in a position of unacceptable uncertainty.

[46] Environment Canterbury, *Harbourmaster's Direction 16-1* (v1.4, 2021), cl 6.1.
[47] Local Government (Infringement Fees for Offences: Wellington Regional Navigation and Safety Bylaws) Regulations 2006.