

# REGULATORY IMPACT STATEMENT

## Maritime Transport Amendment Bill Miscellaneous Amendments

### Executive summary

1. There are a number of provisions in the Maritime Transport Act 1994 (MTA) which are unenforceable, outdated, inconsistent, inflexible, ineffective or unclear. It is proposed that the upcoming Maritime Transport Amendment Bill includes amendments to remedy these matters. Most of the amendments are of a minor or machinery nature. Others, which introduce new provisions to improve enforceability, or propose changes to penalties for offences, are more significant. This statement relates to those more significant measures.

### Adequacy statement

2. The Ministry of Transport has reviewed this Regulatory Impact Statement and considers it adequate according to the adequacy criteria agreed by Cabinet.

### Status quo and problem definition

3. The MTA sets out the responsibilities of participants in the maritime transport system and specifies the functions of Maritime New Zealand (MNZ) and the functions and powers of the Director of Maritime New Zealand. In the course of administration and enforcement of the MTA, the Ministry of Transport and MNZ have identified a range of matters in respect of which the existing provisions of the Act are inadequate, inflexible, inconsistent, unclear or difficult to enforce or administer.
4. Most of the problems are of a minor or machinery nature and do not substantially alter existing arrangements. Others involve the introduction of new provisions to enhance enforceability, update penalty levels and clarify the application of certain provisions; this statement addresses those matters only.

### *Enforceability*

5. A number of gaps have been identified in the enforceability of the MTA, principally because statutory duties are either not complemented by an offence provision or the offence provision does not adequately reflect the importance of the relevant duty. While the gaps do not result in frequent cases of unsanctionable conduct, they do reflect problems identified in practice by MNZ. They also mean that the Act's treatment of the conduct in question is inconsistent with that of other behaviours that have comparable safety or environmental implications. The behaviours involved are:
  - communicating fraudulent or misleading information;
  - failing to comply with conditions imposed on a maritime document;
  - knowingly employing a seafarer holding a suspended or revoked document;
  - operating without the required number of seafarers or qualified personnel;
  - operating a ship outside its prescribed operating limits;
  - overloading;
  - intentionally breaching requirements for the carriage of dangerous goods; and
  - acting without/in breach of a marine protection document required in respect of an offshore installation or pipeline.

6. The Director of Maritime New Zealand faces difficulties in exercising or administering certain statutory powers and functions because the relevant MTA provisions limit the ability to act effectively in the interests of safety. Specifically:
  - the Director can effect the immediate suspension of a seafarer who is a maritime document holder but not of a seafarer who is not required to hold a maritime document;
  - the Director cannot suspend an owner-operator of a vessel, because the Director can only suspend a person “from employment”;
  - a person may not be charged with an offence against the Act unless information is laid within six months after the matter arose. The six months period causes problems when there has been late discovery of an incident or when evidence came to light very late in the investigation;
  - unlike the Director of Civil Aviation, the Director has no express power to require a document holder to undergo an examination if, on reasonable grounds, such an inspection is considered necessary.
7. The MTA makes no provision for late payment penalties in respect of the maritime fees and safety charges that provide virtually all of the funding for MNZ safety services to shipping, and for ship registration and personnel licensing activities. The MTA provides for detention of a ship or distraint of cargo for non-payment of safety charges but this is unrealistic as a sanction against late payment. Late payments can involve very large sums of money, placing late payers at a commercial advantage over those who pay on time, in addition to imposing collection costs on MNZ.
8. Section 105 sets out the rules that apply when a person finds or takes possession of a wreck. However, there is no time requirement to set out when a person must notify the Director about the wreck and deliver it to the Police or allow the Police to take possession of it. Because failure to comply with this requirement is a criminal offence, a Court could not imply an obligation to comply within what might be regarded as a reasonable period. Therefore the provision is unenforceable. It is recommended that a time limit be introduced, for example “as soon as reasonably practicable after discovery”.
9. Section 234 allows the Director to take or require measures to remove, contain or render harmless any oil or noxious liquid substance that is being transferred in internal waters or the territorial sea, but not to prohibit a transfer if the risks involved are too high. Limiting the provision to the territorial sea also means that the Director cannot intervene in respect of risks posed by transfers further from shore. This limits the value of this provision against a background of increasing offshore oil extraction in New Zealand waters beyond the territorial sea.
10. The MTA is not internally consistent in its treatment of breaches of conditions imposed on documents issued under the Act. Section 278 creates an offence for every person who fails to comply with the conditions imposed on a marine protection document (relating to marine environment protection). There is no equivalent offence provision in relation to maritime documents (relating to maritime safety).

### *Penalty levels*

11. Penalties in the MTA have not been updated since it was enacted in 1994. Some penalties are now at lower levels than those for similar offences in other legislation. For example the maximum fines for section 406 offences (*Communicating false or insufficient information*) are considerably lower than for equivalent offences under the Civil Aviation Act 1989.

### *Clarifying the application of the Act*

12. There are a number of problems in distinguishing the application of the MTA to commercial craft and pleasure craft. Ships operated by non-commercial entities for purely recreational activities are treated as commercial vessels; a definitional loop-hole can enable some commercial operators to be classified as recreational; while cost sharing on a recreational voyage renders the voyage commercial.
13. Rule-making powers under the MTA do not provide for the regulation of commercial operations that use ships powered solely by sail. Consequently, such operations cannot be required to meet safety standards required of other, comparable, commercial vessel operations.
14. Section 198 of the MTA allows foreign ships conditional access to carry coastal cargo in New Zealand. The policy intent is that a foreign ship may only carry coastal cargo in the course of an international journey to load exports or discharge imports at New Zealand ports. The text of the relevant subsections, however, can be interpreted differently. This ambiguity leads to uncertainty and confusion within the maritime transport sector about the conditions on foreign ships carrying coastal cargo.

### **Objective**

15. The objective is to ensure that the MTA is clear, consistent and effective.

### **Alternative options**

16. No non-regulatory measures exist that would be capable of achieving the specified objective. Because the problems that the proposal addresses are created by the wording of or omissions from the MTA, they can only be addressed by amending the Act.
17. An alternative option is to not amend the legislation to address the various identified problems, and simply leave the Act as it stands.
18. Retaining the status quo will continue to present a range of minor to moderate risks. These relate principally to the inconsistent treatment of behaviours that impact on maritime safety, gaps in the ability to regulate commercial vessel operations, enforceability and the ambiguity of provisions relating to the carriage of coastal cargo. This option is not favoured because it does not fulfil the objective.

### **Preferred option**

19. The preferred option is to amend the MTA to specifically address the problems described under the heading *Status Quo and Problem Definition*. While the issues in question are not significant enough to justify a stand-alone Bill, the proposed Maritime Transport Amendment Bill provides an ideal vehicle to address these matters cost-effectively and with relatively little effort. Collectively, changes proposed will provide useful improvements in the clarity, consistency and effectiveness of the MTA.

20. The amendments will involve as few changes as reasonably necessary to remedy the identified problems. Where new penalty provisions or updated penalties are involved, the penalty levels specified will be consistent with those for comparable offences under the MTA and other pertinent legislation.
21. The only costs incurred in the implementation of this option will be the cost of officials' time spent working on this option as part of the Maritime Transport Amendment Bill. These costs are minimal and will be met within existing baselines.
22. None of the proposals will result in new or additional compliance costs, though closing gaps in the commercial regulatory regime will remove the ability for a small number of operators to avoid compliance. New offence provisions and increased penalties will increase the potential financial consequences of non-compliance.
23. There is no significant risk associated with this option.
24. The impact of this option on the stock of regulation is that some new provisions will be added to the MTA and a number of existing provisions will be amended.

### **Implementation and review**

25. The preferred option will be implemented through amendments to the MTA, to be included in a Maritime Transport Amendment Bill, to be drafted in 2008 for passage by late 2009. Officials will, where relevant (as in the case of the coastal shipping provisions), monitor the functioning of the amended provisions to assess their effectiveness.

### **Consultation**

26. The following Government agencies were consulted on this Regulatory Impact Statement and associated Cabinet paper: the Ministry for the Environment, the Ministry of Economic Development, the Ministry of Fisheries, the Ministry of Agriculture and Forestry, Treasury, New Zealand Customs Service, the Ministry of Civil Defence and Emergency Management, the Department of Internal Affairs, the Ministry of Justice, the New Zealand Defence Force, the Ministry of Defence, the Department of Conservation, the Department of Labour, the Ministry of Foreign Affairs and Trade, Te Puni Kōkiri, the Environmental Risk Management Agency, Maritime New Zealand, and the New Zealand Fire Service. The Department of Prime Minister and Cabinet was informed.