

Maritime Security Bill

Government Bill

Explanatory note

General policy statement

The purpose of this Bill is to establish in New Zealand a maritime security framework that will reduce the risk of security incidents affecting merchant ships or port facilities, particularly those used in international trade. In doing so, the Bill enables New Zealand to fulfil its obligations under a new international agreement for maritime security.

The new treaty obligations were established through the adoption in December 2002 of amendments to the Annex to the International Convention for the Safety of Life at Sea 1974 (the **Convention**) and an International Code for the Security of Ships and of Port Facilities (the **Code**). New Zealand is a party to the Convention. These new treaty obligations take effect for all Convention parties from 1 July 2004. The Convention applies to an estimated 55 000 ships worldwide and 15 000 ports.

New Zealand's implementation of the Convention amendments and the Code will ensure that it continues to be part of multilateral efforts to combat terrorism, and that it remains in step with accepted international maritime practice. It will reduce the risk of a terrorist incident involving New Zealand's ports and ships serving its international trade and tourism, and will ensure the continued confidence of trading partners and tourist markets in the security of New Zealand ports.

The Bill specifies several functional requirements to maintain effective maritime security and comply with the new international regime, including—

- assessing security risks for individual ships and port facilities:

- developing ship and port facility security plans based on risk assessments:
- specifying security levels at which ships and port facilities must operate:
- maintaining communication protocols for ships and port facilities:
- preventing unauthorised access to ships, port facilities, and restricted areas:
- preventing the introduction of unauthorised weapons, incendiary devices, or explosives to ships and port facilities.

This Bill sets out the respective roles and responsibilities of the Government and the merchant shipping and port industries to fulfil these requirements. It also includes related offences and penalties, and regulation-making powers so that regulations covering matters of detail may be made. The Bill will apply to international passenger ships, international cargo ships over 500 gross tonnes, mobile offshore drilling units, fixed and floating platforms, and port facilities. Certain types of other ships may be included in the system by notice in the *Gazette*.

The Bill's provisions also contribute to the Government's transport objectives, expressed in the "New Zealand Transport Strategy" (released December 2002), as follows:

- assisting economic development (reducing risk of a terrorist attack and ensuring continued confidence in the security of New Zealand ports among trading partners and tourist markets):
- assisting personal safety and security (enhancing ship and port security):
- ensuring environmental sustainability (reducing risk of a terrorist attack on a ship or port facility that may lead to environmental degradation).

Clause by clause analysis

Clause 1 sets out the Title of the Bill.

Part 1

Preliminary provisions

Clause 2 relates to the commencement of the Bill.

Clause 3 sets out the purpose of the Bill, which is to—

- enable New Zealand to meet its obligations under the Convention arising from amendments to the Annex to the Convention; and
- enhance ship and port security; and
- prevent international terrorism.

Clause 4 relates to the application of the Bill.

Clause 5 relates to the interpretation of the Bill.

Clause 6 provides that the Act binds the Crown.

Part 2

Ship and port facility security

Designated Authority

Clause 7 provides for the appointment of the Designated Authority.

Clause 8 sets out the principal objectives of the Designated Authority.

Clause 9 sets out the functions and duties of the Designated Authority.

Chief executive

Clause 10 sets out the functions and duties of the chief executive.

Clause 11 provides that the chief executive may delegate certain functions to employees of the Designated Authority and to recognised security organisations.

Clause 12 sets out the circumstances in which the chief executive may require a declaration of security.

Clause 13 sets out the circumstances in which the master or a port facility security officer may request a declaration of security.

Clause 14 sets out the requirements applicable to alternative security arrangements.

Clause 15 sets out the requirements applicable to equivalent security arrangements.

Clause 16 requires the chief executive to specify security levels for ships registered in New Zealand and for port facilities within New Zealand.

Clause 17 requires the chief executive to ensure the provision of security level information to the relevant ships and port facilities.

Clause 18 requires the chief executive to test the effectiveness of port facility security plans and ship security plans.

Ship security

Clause 19 provides that masters and companies must comply with the ship security levels set for their ships or their classes of ship.

Clause 20 requires companies to ensure that security assessments of their ships are carried out by a person with the appropriate skills.

Clause 21 sets out the requirement for ship security plans.

Clause 22 provides for the approval of ship security plans.

Clause 23 sets out the requirements applicable to amendments to approved ship security plans.

Clause 24 sets out the procedure for reviewing decisions to reject ship security plans.

Clause 25 requires masters and companies to carry ship security plans on board.

Clause 26 requires ships to have ship security alert systems in accordance with the requirements set out in the maritime rules made under the Maritime Transport Act 1994.

Clause 27 provides that the chief executive must notify nearby States of ship security alerts. The chief executive must also notify the ship's administration if the ship is not registered in New Zealand.

Clause 28 requires masters and companies to ensure that certificates are carried on board.

Clause 29 sets out the information required of ships intending to enter New Zealand ports.

Clause 30 sets out the control measures that may be imposed on ships in New Zealand ports.

Clause 31 sets out the circumstances in which ship security plans may be inspected.

Clause 32 provides that companies are liable for the costs of detaining their ships. It also provides that the Designated Authority is liable to pay compensation for any loss resulting from unduly detaining or unduly delaying a ship.

Clause 33 set out the steps that may be taken if a ship is not in compliance with the Act.

Clause 34 provides that *clauses 29(2) and (3) and 33(1)* do not apply if a master withdraws the intention to enter a port.

Clause 35 sets out additional requirements that apply if a control measure is imposed under *clause 30(1)* or a step is taken under *clause 33(1)(b)*.

Clause 36 provides that the master has responsibility for ship safety and security.

Port security

Clause 37 provides that a port facility operator must comply with the security level specified for that operator's port facility.

Clause 38 provides that the chief executive must carry out a port facility security assessment of each New Zealand port.

Clause 39 sets out the requirement for port facility security plans.

Clause 40 provides for the approval of port facility security plans.

Clause 41 sets out the requirements applicable to amendments to approved port facility security plans.

Clause 42 sets out the procedure for reviewing decisions to reject port facility security plans.

Part 3

Preventive security measures

Clause 43 provides for the appointment of maritime security organisations.

Clause 44 provides that the Minister may, by notice in the *Gazette*, designate any area in a port facility as a port security area.

Clause 45 sets out restrictions with respect to port security areas.

Clause 46 provides that the Minister may, by notice in the *Gazette*, direct a maritime security organisation to screen or search passengers or cargo or persons entering a port security area if necessary to

enable New Zealand to be part of a concerted international response to a threat to maritime security.

Clause 47 provides that the chief executive may, by notice in the *Gazette*, direct a maritime security organisation to screen or search passengers or cargo or persons entering a port security area if the chief executive believes on reasonable grounds that a maritime security risk exists.

Clause 48 sets out the time limits on directions made under *clauses 46 and 47*.

Clause 49 provides that a person commits an offence if that person takes, or attempts to take, a weapon on board a ship or into a port security area without lawful authority, reasonable excuse, or the permission of the ship security officer or port security officer.

Clause 50 sets out the circumstances in which passengers, baggage, and vehicles may be searched.

Clause 51 sets out the circumstances in which items may be seized and detained.

Clause 52 provides that the Designated Authority may recover from an owner of a seized item all reasonable costs of that seizure. The Designated Authority is liable to pay the owner of the seized item compensation for any loss resulting from unduly maintaining the seizure or delaying the use of the seized item.

Clause 53 sets out the procedure for dealing with persons who refuse to consent to the screening or searching of their person or baggage.

Clause 54 sets out the circumstances in which a member of the police may search a person or a person's baggage without a warrant.

Clause 55 sets out the circumstances in which a maritime security officer employed by a government department or a Crown entity may arrest a person in the vicinity of a port security area.

Clause 56 requires the police to accept delivery of a person arrested by a maritime security officer if the police have reasonable grounds to suspect that person of having committed an offence.

Clause 57 provides that maritime security officers may enter port security areas for the purpose of carrying out their duties.

Clause 58 provides that the chief executive may declare exclusion zones for ships.

Clause 59 sets out the time limits for declarations made under *clause 58*.

Clause 60 provides that no person, craft, or vessel may enter or leave an exclusion zone unless authorised by the chief executive.

Part 4

Miscellaneous provisions

Maritime security documents

Clause 61 provides that the chief executive must accept any maritime security document unless the relevant ship does not correspond with the document, is no longer in compliance with the requirements leading to the issue of the document, or has been altered, or the document was obtained fraudulently.

Appeal rights

Clause 62 provides a right of appeal against decisions made by the chief executive under *clause 21*, *clause 24*, *clause 39*, or *clause 41*.

Offences

Clause 63 sets out the penalties for masters who fail to comply with *clause 14(2)*, *clause 19*, *clause 28(3)(a) or (b)*, or *clause 29(1) or (2)*.

Clause 64 sets out the penalties for companies that fail to comply with *clause 20*.

Clause 65 sets out the penalties for masters and companies that breach *clause 23(2)*, *clause 25(2)*, or *clause 28(1)*.

Clause 66 sets out the penalties for every person who, without reasonable excuse, fails to comply with a control measure imposed under *clause 30(1)*.

Clause 67 sets out the penalties for every person who, without reasonable excuse, fails to comply with a step taken under *clause 33(1)(b)*.

Clause 68 sets out the penalties for port facility operators who fail to comply with *clause 37(1)(a)*, *(b)*, *(c)*, or *(d)*.

Clause 69 sets out the penalties for every person who fails or refuses to provide a maritime officer with satisfactory evidence of his or her name and address or authorisation to be in a port security area under *clause 45(2)*.

Clause 70 sets out the penalties for every person who fails or refuses to leave a port security area when ordered to do so by an authorised person under *clause 45(3)*.

Clause 71 sets out the penalties for every person who contravenes *section 60* by entering or leaving an exclusion zone without authorisation.

Regulations

Clause 72 sets out the regulation-making powers.

Clause 73 provides that the chief executive may exempt persons, ships, or port facilities from requirements prescribed in regulations made under this Act in certain circumstances.

Clause 74 provides that the Minister may, in certain circumstances and for a limited period, extend the application of the Act to ships and port facilities not covered by the Act.

Miscellaneous

Clause 75 provides that the chief executive may, with respect to an inspection or audit, require information from any person or require that person to demonstrate familiarity with shipboard security, operational, maintenance, or servicing procedures.

Clause 76 provides that, if any instructions given by the chief executive conflict with instructions given by a harbourmaster, the chief executive's instructions prevail.

Clause 77 sets out consequential amendments to the Maritime Transport Act 1994.

Schedule

The Schedule sets out the consequential amendments to the maritime rules.

Regulatory impact and compliance cost statement

Statement of problem and need for action

New Zealand has been a party to the International Convention for the Safety of Life at Sea 1974 (the **Convention**) since 1990 and is obliged to make laws to give the Convention full and complete effect. In December 2002, amendments were made to the Convention to enhance maritime security. The amendments will establish an

international framework to detect security threats and take preventive measures against security incidents affecting ships or port facilities used in international trade. This will primarily be achieved through undertaking security risk assessments of all affected ships and ports and then developing security plans that address the risks and include contingency measures for dealing with a heightened threat level.

These amendments will come into force on 1 July 2004 (except in the extremely unlikely event that, prior to 1 January 2004, objections are lodged by at least one-third of the 146 Contracting Governments to the Convention or by Contracting Governments the combined merchant fleets of which constitute not less than half the gross tonnage of the world's merchant fleet). The amendments must have enabling legislation in order to be given effect in New Zealand.

Apart from the need to fulfil its international treaty obligations, if New Zealand did not implement the Convention amendments, New Zealand ports, and ships using them, would become more vulnerable to the risk of a terrorist incident as other ports around the world increased security. International trading partners may also refuse to allow ships travelling from New Zealand ports to enter their ports, which would likely result in the withdrawal of many international shipping services from New Zealand. Non-implementation would significantly increase risks to tourism and trade transported by sea. By weight, 99% of New Zealand cargo exports and imports were transported by sea in the year ended June 2002. By value, this equated to 85% of cargo exports, worth \$28 billion, and 77% of cargo imports, worth \$24 billion. Cruise ships and their passengers visiting New Zealand during the 2001/02 season generated \$181 million in direct expenditure.

Statement of the public policy objective

The objective is to ensure that New Zealand is fully able to give effect to its international obligations under the Convention. Underlying objectives are to reduce risks from terrorism in the maritime environment and to protect New Zealand's trade and tourism.

Statement of options for achieving the desired objective

Status quo

Government agencies, in particular the Customs Service, the Ministry of Agriculture and Forestry, and the New Zealand Police, are

present at ports and carry out border security and policing functions that contribute to and complement the preventive security objectives of the Convention amendments. Maritime safety inspectors are present at ports for port control and safe ship management. However, these functions do not fulfil the new requirements for port facility and ship security assessments to be carried out and for security plans to be developed and implemented. Therefore, maintaining the status quo will not meet the policy objectives.

Legislation (preferred option)

The proposal is to enact a Maritime Security Bill, which will include the core functions, powers, and duties necessary to establish a government regulatory authority for maritime security and to give effect to the amendments to the Convention.

The functions and duties of the regulatory authority will include carrying out port facility security assessments, ensuring that security plans are developed for port facilities and ships and approving those plans, specifying the operational security level for port facilities and ships, and exercising control measures over ships in port or intending to enter port that are not in compliance with the maritime security legislation.

Powers will be included for the chief executive of the regulatory authority to impose the control measures. These measures range from inspection of the ship and detention of the ship to expulsion from port or denial of entry to port if it poses a serious threat to the safety of people or property. Separate powers will enable authorised persons to screen or search, by consent, people, goods, or vehicles at designated port security areas for the purpose of preventing unauthorised weapons or dangerous items from being introduced. For this purpose, authorised persons will include police officers, Customs officers, and maritime security officers. A maritime security officer could be from another government department or Crown entity, or from a port company, that has been appointed as a maritime security organisation by the Governor-General. It has yet to be determined which departments, entities, or companies will be appointed as maritime security organisations.

All matters of detail to implement the amendments to the Convention, eg, technical standards, performance standards, procedures, and operational requirements, will be addressed through the development of regulations and maritime rules. The Bill will therefore also include regulation-making powers to enable the detailed

security requirements to be legislated, such as the contents of security assessments and plans, procedures for the appointment of maritime security officers, etc, and to enable fees and charges to be fixed to recover the cost of regulatory functions or security services. The regulations will be subject to regulatory impact analysis.

The Bill will apply to international passenger ships, international cargo ships of 500 gross tonnage or more, and international mobile offshore drilling units, and to the port facilities serving such ships. In addition, the Bill will include a provision giving the Government the flexibility to extend the maritime security regime by making regulations to include domestic passenger, cargo, and fishing ships, and other port facilities, should a risk be identified that warrants it.

The Bill will place obligations on New Zealand shipping companies and port facility operators. The key requirements will be to have an approved security plan based on a security assessment (risk analysis) and to then maintain security operations at a level specified by the regulatory authority.

Other options considered

In relation to the need for preventive screening and searching powers, consideration was given to relying on the powers of Customs officers in the Customs and Excise Act 1996 by deeming employees of another government department or Crown entity, or port company employees, as customs officers. This option was discarded because Customs powers are far-reaching and it would be inappropriate for these to be used by port company employees to undertake routine screening and searching activities. A further consideration was that this may not be a transparent application of the Customs powers, which are for the purpose of administering and enforcing Customs controls at the border.

Regarding the establishment of the role of maritime security officer, consideration was given to extending the mandate of the Aviation Security Service to include preventive maritime security screening, as this is similar to the functions it performs in the aviation sector. This option was discarded as it would not give the Government the flexibility to designate another department or Crown entity to provide maritime security services if required.

Statement of the net benefit of this proposal

Maritime sector

Port facility operators and shipping companies will face direct costs in meeting their obligations under the regime, as well as compliance costs. The direct costs are not yet fully quantifiable as they will result from requirements determined through a risk assessment process, such as additional barriers, surveillance equipment, lighting, alarms, or additional staff. Some capital costs for ships' equipment specified in the Convention amendments are known, as follows:

- Automatic Identification System (a VHF-based short range tracking system): approximately \$12,000 per system; and
- ship security alert system: approximately \$20,000 per system.

The benefits to this sector will come from the reduced risk of a terrorist incident at a New Zealand port and the ability to continue to trade internationally or to provide services to international ships.

Government

Administrative costs to the Crown from the enactment of the Maritime Security Bill will come from the regulatory authority's performance of its functions. The 2003/04 Budget has provided \$950,000 (excluding GST) to Vote Transport to cover these costs. The assumption has been made that the ongoing annual cost in outyears will be \$750,000 (excluding GST).

There may be further direct costs if the Government determines that a government department or Crown entity should perform any maritime security functions at ports, such as preventive screening. The cost would depend on the nature and scale of the activities, whether there was a permanent deployment or activities were undertaken on an as-required basis, and the degree of cost recovery.

The Government will benefit from implementing the amendments by continuing to meet its international obligations under the Convention, and therefore continuing to be a member in good standing of the international maritime community. Were the Government not to implement the amendments, New Zealand would be in breach of its obligations under the Convention.

Economy

Legislating to give effect to the Convention amendments is the first step to fulfilling New Zealand's international obligations. Effective

implementation of the new requirements will reduce the risk of a terrorist incident at a New Zealand port, particularly as other ports around the world introduce tighter security. This will ensure continued confidence among trading partners and tourist markets in the security of New Zealand ports, and consequently, continued shipping traffic between New Zealand and other countries.

Business compliance cost statement

Sources of compliance costs

There will be one-off costs primarily related to the requirement to prepare security plans, both for port facilities and for ships. This will include the cost of becoming familiar with the new regulatory requirements, doing the planning, and preparing a document to seek approval of the plan by the regulatory authority. In the case of ships, there will be the additional cost of undertaking a ship security assessment, which is to inform the development of the ship security plan.

Recurring and ongoing costs will include training security officers, port staff, and ships' crew, maintaining the security plans (periodic reviews and updates for business changes), undergoing audits by the Designated Authority, and conducting security exercises. Many of these requirements will be detailed in regulations, but compliance costs have been included in estimates to give a fuller picture.

Parties likely to be affected

Two companies owning merchant ships (1 ship and 2 ships respectively) that take international voyages, and 19 companies that operate port facilities that serve ships on international voyages, are likely to be affected. The companies operating port facilities can be grouped generally as operating many facilities (1 company), several facilities (10 companies), and few facilities (8 companies).

Estimated compliance costs of the proposal

Costs listed below are per company.

Shipping companies

Estimated costs	Owning 1 ship	Owning 2 ships
One-off costs	\$13,000	\$20,000
Annual ongoing costs	\$18,700	\$33,700

Port facility operators

Estimated costs	Operating few facilities	Operating several facilities	Operating many facilities
One-off costs	\$17,000	\$23,700	\$33,700
Annual ongoing costs	\$26,000	\$47,000	\$75,000

Longer-term implications of the compliance costs

There will be a higher one-off cost to the affected parties during the initial period of complying with obligations, and then lower ongoing costs for maintaining the security plans. Ongoing compliance costs are unlikely to reduce over time and may increase if any regulatory charges are introduced once the regime has been implemented.

Level of confidence in compliance cost estimates

The level of confidence is low to medium. Costs are based largely on assumptions about the time involved in the range of activities that will be required to comply with the Bill and elements of the regime to be included in regulations, eg, time to attend meetings, conduct staff training, participate in audits, conduct security exercises, and maintain security plans. A standard hourly rate of \$150 has been used to factor costs. In the case of the one-off cost of developing a security plan, costs have been extrapolated based on a quote received from a private sector security company to prepare a security plan for a port with several facilities.

Key compliance cost issues identified in consultation

Consultation has not identified compliance cost issues.

Overlapping compliance requirements

No overlapping compliance requirements have been identified.

Steps taken to minimise compliance costs

The Government will provide guidance to shipping and port companies to assist with compliance. The regulatory authority will consult with industry on the implementation of the requirements to ensure that appropriate solutions are developed for the New Zealand situation and individual ports. The regulatory authority will undertake security risk assessments of port facilities and provide written guidelines on various elements of compliance, eg, preparation of security plans.

Consultation

Port companies and affected shipping companies have been provided with information about the Convention amendments and the Government's proposed approach to implementation. Industry has generally expressed the view that it is essential for the Government to indicate as quickly as possible what their obligations will be. There have been no objections to the Bill itself. However, there has been general concern about the potential direct costs to industry. The port and shipping industries and other stakeholders will continue to be consulted on the detailed requirements for implementing the Convention amendments, which will be specified through regulations once the enabling legislation is passed.

The following government departments and Crown entities were consulted on the Maritime Security Bill: the Ministries of Foreign Affairs and Trade, Defence, Economic Development, Tourism, Agriculture and Forestry, Civil Defence and Emergency Management, Fisheries, Health, and Justice; the Departments of Prime Minister and Cabinet, Labour (New Zealand Immigration Service and Occupational Safety and Health), and Internal Affairs; the New Zealand Customs, Aviation Security, and Security Intelligence Services; the Maritime Safety, Civil Aviation, and New Zealand Food Safety Authorities; the New Zealand Police; the New Zealand Defence Force; the State Services Commission; and the Treasury. No significant issues were raised.

Hon Harry Duynhoven

Maritime Security Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Maritime Security Act **2003**.

Part 1
Preliminary provisions

2 Commencement

- (1) **Sections 12, 13, 15, 16, 19, 25, 26, 28 to 35, and 37** come into force on **1 July 2004**.
- (2) The rest of this Act comes into force on the day after the date on which this Act receives the Royal assent.

5

- 3 Purpose**
 The purpose of this Act is to—
- (a) enable New Zealand to meet its obligations under the Convention arising from amendments to the Annex to the Convention; and 5
 - (b) enhance ship and port security; and
 - (c) prevent international terrorism.
- 4 Application**
- (1) This Act applies to—
- (a) the following types of ships: 10
 - (i) passenger ships, including high-speed passenger craft, engaged on international voyages; and
 - (ii) cargo ships, including high-speed craft, of 500 gross tonnage or more engaged on international voyages; and 15
 - (iii) mobile offshore drilling units that are not on location within New Zealand continental waters; and
 - (b) port facilities within the territorial limits of New Zealand that serve a ship, or a mobile offshore drilling unit, of a type specified in **paragraph (a)**; and 20
 - (c) fixed and floating platforms within New Zealand continental waters; and
 - (d) mobile offshore drilling units that are on location within New Zealand continental waters.
- (2) This Act does not apply to— 25
- (a) warships; or
 - (b) naval auxiliaries; or
 - (c) other ships that are—
 - (i) owned or operated by the Crown; and
 - (ii) used on Government non-commercial service; or 30
 - (d) pleasure craft (as defined in section 2(1) of the Maritime Transport Act 1994).

Compare: Annex to the Convention, Chapter XI-2 r 2; Code, Part A s 3

- 5 Interpretation**
 In this Act, unless the context otherwise requires,— 35
- authorised person** means—
- (a) a maritime security officer acting on a direction of the Minister or chief executive under **section 46 or section 47**; or

- (b) a member of the police; or
- (c) a Customs officer

certificate means a valid International Ship Security Certificate issued under section 19.2 of the Code or a valid Interim International Ship Security Certificate issued under section 19.4 of the Code 5

chief executive means the person who for the time being is the chief executive officer of the Designated Authority

Code means the International Code for the Security of Ships and of Port Facilities, consisting of Part A (the provisions of which are mandatory) and Part B (the provisions of which are recommendatory), as adopted, on 12 December 2002, by resolution 2 of the Conference of Contracting Governments to the Convention, and as may be amended by the International Maritime Organization, provided that— 10

- (a) amendments to Part A of the Code are adopted, are brought into force, and take effect in accordance with article VIII of the Convention concerning the amendment procedures applicable under the Annex of the Convention other than Chapter I of that Annex; and 15
- (b) amendments to Part B of the Code are adopted by the Maritime Safety Committee of the International Maritime Organization in accordance with its Rules of Procedure 20

company means the owner of the ship or any other organisation or person who has assumed the responsibility for the operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code 25

Convention means the International Convention for the Safety of Life at Sea, done at London on 1 November 1974; and includes— 30

- (a) the Annex and Appendix to that Convention; and
- (b) all amendments of that Convention; and 35
- (c) all protocols to that Convention

customs officer has the same meaning as in section 2(1) of the Customs and Excise Act 1996

- declaration of security** means an agreement between a ship and a port facility, or another ship, with which it interfaces that specifies the security measures each must implement
- Designated Authority** means the authority appointed under **section 7** 5
- high-speed craft** means a craft capable of a maximum speed in metres per second equal to or exceeding—
- $$3.7\sqrt{\nabla}^{0.1667}$$
- where ∇ is the displacement corresponding to the design waterline (m³) 10
- in writing** means printed, typewritten, or otherwise visibly represented, copied, or reproduced, including by fax or email or other electronic means 15
- International Safety Management Code** means the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the International Maritime Organization by Resolution A.741(18), as amended from time to time by the International Maritime Organization 20
- maritime security document** means a document issued or approved by a party to the Convention for the purposes of the Code
- maritime security officer** means an employee of a maritime security organisation who has been appointed, in accordance with requirements specified in regulations made under this Act, to carry out maritime security functions 25
- maritime security organisation** means an organisation appointed by the Governor-General by Order in Council under **section 43** to carry out maritime security activities under **section 46 or section 47** 30
- master** has the same meaning as in section 2(1) of the Maritime Transport Act 1994
- medical officer of health** has the same meaning as in section 2(1) of the Health Act 1956 35
- Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

mobile offshore drilling unit means a mechanically propelled unit or vessel that is capable of engaging in drilling operations for the exploration for, or exploitation of, resources beneath the seabed such as liquid or gaseous hydrocarbons, sulphur, or salt

5

New Zealand continental waters has the same meaning as in section 222(1) of the Maritime Transport Act 1994

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

oil tanker means an oil tanker as defined in regulation 1 of Annex 1 of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships 1973

10

passenger ship means a ship that carries more than 12 passengers

port has the same meaning as in section 2(1) of the Maritime Transport Act 1994

15

port facility means a location, as determined by the chief executive, where the ship–port interface takes place, including areas such as anchorages, waiting berths, and approaches from seaward

20

port facility operator means—

- (a) the owner of the port facility; or
- (b) if the owner is not responsible for the management of the port facility,—
 - (i) the manager of the port facility; or
 - (ii) any other person who is, for the time being, responsible for the management of the port facility

25

port facility security officer means the person designated by the operator of a port facility as responsible for the development, implementation, revision, and maintenance of the port facility security plan and for liaison with the ship security officer

30

port facility security plan means a plan developed to ensure the application of measures designed to protect the port facility and ships, persons, cargo, cargo transport units, and ship's stores within the port facility from the risks of a security incident

35

port security area means an area designated under **section 44** as a port security area

40

- recognised security organisation** means an organisation with appropriate expertise in security matters and with appropriate knowledge of ship and port operations that is authorised under **section 9(j)** to carry out an assessment, a verification, or an approval or certification activity required by Chapter XI-2 of the Annex to the Convention or by Part A of the Code 5
- security incident** means any suspicious act or circumstance threatening the security of a—
- (a) ship, including a mobile offshore drilling unit and high-speed craft; or 10
 - (b) port facility; or
 - (c) fixed and floating platform; or
 - (d) mobile offshore drilling unit; or
 - (e) ship–port interface; or
 - (f) ship-to-ship activity 15
- security level** means the quantification of the degree of risk that a security incident will be attempted or will occur
- security level 1** means the level for which minimum appropriate protective security measures must be maintained at all times 20
- security level 2** means the level for which appropriate additional protective security measures must be maintained for a period of time as a result of heightened risk of a security incident
- security level 3** means the level for which further specific protective security measures must be maintained for a limited period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target 25
- ship** means every description of boat or craft used in navigation, whether or not it has any means of propulsion; and includes— 30
- (a) a barge, lighter, or other like vessel;
 - (b) a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates: 35
 - (c) a submarine or other submersible;
 - (d) a high-speed craft;
 - (e) a mobile offshore drilling unit that is not on location

ship–port interface means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons, goods, or the provisions of port services to or from the ship

ship security officer means the person on board the ship who is accountable to the master and designated by the company as responsible for the security of the ship, including the implementation and maintenance of the ship security plan, and for liaison with the port facility security officer 5

ship security plan means a plan developed to ensure the application of measures on board the ship designed to protect persons on board, cargo, cargo transport units, ship’s stores, or the ship from the risks of a security incident 10

ship-to-ship activity means any activity not related to a port facility that involves the transfer of goods or persons from one ship to another 15

ship’s administration means the government of the State in which the ship is registered.

Compare: Annex to the Convention, Chapter XI-2 r 1; Code, Part A s 2

- 6 **Act binds the Crown** 20
This Act binds the Crown.

Part 2 Ship and port facility security

Designated Authority

- 7 **Appointment of Designated Authority** 25
The Governor-General may, by Order in Council, appoint a Crown entity as the Designated Authority.
- 8 **Principal objectives of Designated Authority**
The principal objectives of the Designated Authority are to ensure that— 30
- (a) the chief executive undertakes the activities that the Designated Authority considers necessary for the effective implementation of the Code; and
 - (b) its decisions and the actions of the chief executive are consistent with the Convention and the Code. 35

9 Functions and duties of Designated Authority

In furtherance of its principal objectives, the Designated Authority must ensure that the chief executive,—

- (a) with respect to each port facility within the territorial limits of New Zealand, ensures that— 5
 - (i) port facility security assessments are carried out, reviewed, and approved in accordance with **section 38**; and
 - (ii) port facility security plans are developed, implemented, and maintained in accordance with **section 39** and approved in accordance with **section 40**; and 10
- (b) with respect to New Zealand ships, ensures that—
 - (i) ship security assessments are carried out, reviewed, and approved in accordance with **section 20**; and 15
 - (ii) ship security plans are developed, implemented, and maintained in accordance with **section 21** and approved in accordance with **section 22**; and
- (c) specifies, in accordance with **section 16**, the appropriate security level for— 20
 - (i) port facilities within the territorial limits of New Zealand; and
 - (ii) ships—
 - (A) registered in New Zealand; or 25
 - (B) using port facilities within the territorial limits of New Zealand; or
 - (C) conducting ship-to-ship activities within New Zealand continental waters; and
 - (iii) fixed and floating platforms within New Zealand continental waters; and 30
 - (iv) mobile offshore drilling units that are on location within New Zealand continental waters; and
- (d) approves—
 - (i) any ship security plan in accordance with **section 22**; and 35
 - (ii) any amendment to an approved ship security plan that is specified in regulations as requiring the approval of the Designated Authority in accordance with **section 22**; and 40

- (e) specifies and communicates the measures that must be addressed in a port facility security plan or a ship security plan for each security level; and
- (f) determines—
 - (i) whether a declaration of security is required; and 5
 - (ii) the requirements for any declaration of security; and
- (g) approves—
 - (i) any port security assessment carried out by a recognised security organisation in accordance with **section 38**; and 10
 - (ii) any port facility security plan in accordance with **section 40**; and
 - (iii) any amendment to an approved port facility security plan that is specified in regulations as requiring the approval of the Designated Authority in accordance with **section 40**; and 15
- (h) exercises the control measures specified in **section 30(1)** or takes 1 or more steps under **section 33(1)(b)**; and
- (i) for the purpose of providing further information, publishes standards and codes of practice; and 20
- (j) authorises recognised security organisations in accordance with regulations made under this Act; and
- (k) undertakes any other functions or duties specified in regulations made under this Act; and 25
- (l) carries out any lawful direction of the Designated Authority.

Compare: Annex to the Convention, Chapter XI-2 r 10

Chief executive

- 10 Functions and duties of chief executive** 30
- The chief executive must—
- (a) discharge the functions and duties specified in **section 9**; and
 - (b) carry out, execute, or act on any lawful direction given by the Designated Authority under this Act or under any regulations made under this Act. 35

- 11 Chief executive may delegate certain functions and powers**
- (1) The chief executive, either generally or particularly, may delegate to any employee of the Designated Authority any of the chief executive's functions and powers under this Act or under any regulations made under this Act. 5
- (2) The chief executive may delegate any of his or her functions and powers under this Act or any regulations made under this Act to a recognised security organisation with the exception of the following functions and powers: 10
- (a) specifying the applicable security level for any port facility or ship; and
- (b) approving—
- (i) any port facility security assessment; or
- (ii) any amendment to an approved port facility security assessment; or 15
- (iii) any port facility security plan; or
- (iv) any amendment to an approved port facility security plan; and
- (c) exercising the control measures specified in **section 30(1)** or taking a step under **section 33(1)(b)**; and 20
- (d) specifying the requirements for a declaration of security.
- (3) A delegation—
- (a) must be in writing; and 25
- (b) must be given for a specified period but in any event is revocable at will; and
- (c) may not be made without the prior written consent of the Minister; and
- (d) does not affect or prevent the performance of any function or the exercise of any power by the chief executive; and 30
- (e) may not be delegated; and
- (f) does not affect the responsibility of the chief executive for the actions of any person acting under the delegation. 35

Compare: Code, Part A s 4.3; 1994 No 104 ss 443(1), 444(3), (4), (8), (9)

12 When declaration of security required

The chief executive may require a declaration of security if—

- (a) he or she is satisfied that the ship–port interface or ship-to-ship activity poses a risk to persons, property, or the environment; or 5
- (b) the chief executive—
 - (i) has received a request under **section 13**; and
 - (ii) is satisfied that the ship–port interface or ship-to-ship activity poses a risk to persons, property, or the environment. 10

Compare: Code, Part A s 5

13 Request for declaration of security

(1) The master of a ship may lodge a request with the chief executive for a declaration of security, or the modification of a declaration of security, if— 15

- (a) that ship is operating at a higher security level than the port facility or ship with which it is interfacing; or
- (b) that ship—
 - (i) is registered in a State that is a party to the Convention; and 20
 - (ii) can cite an agreement on a declaration of security between that State and New Zealand covering certain international voyages or specific ships on those voyages; or
- (c) a security incident involving that ship, or the port facility it intends to use, has occurred; or 25
- (d) that ship is at a port that is not required to have and implement an approved port facility security plan; or
- (e) that ship is conducting ship-to-ship activities with another ship that is not required to have and implement 30 an approved ship security plan.

(2) A port facility security officer may, before a ship–port interface takes place, lodge a request with the chief executive for a declaration of security, or the modification of a declaration of security, if— 35

- (a) the port facility security plan identifies the ship–port interface as being susceptible to a security incident; or
- (b) the port facility is operating at a higher security level than the ship with which it is interfacing. 40

Compare: Code, Part A s 5

14 Alternative security agreements

- (1) If New Zealand has entered into an alternative security agreement in accordance with the Convention, the chief executive must supervise the alternative security arrangement for a ship or a port facility covered by that agreement. 5
- (2) A master of a ship covered by an alternative security agreement may not conduct any ship-to-ship activity with a ship not covered by that agreement.
- (3) The chief executive must review each alternative security agreement— 10
- (a) periodically—
- (i) at an interval specified by the Minister; or
- (ii) in the absence of a specification by the Minister, at an interval specified by the alternative security agreement under review; or 15
- (b) in the absence of a specification by the Minister or by the alternative security agreement under review, every 5 years.
- (4) The review must take into account— 20
- (a) the experience gained from the agreement; and
- (b) any changes in the particular circumstances of the ships, port facilities, or routes covered by the agreement; and
- (c) any changes in the assessed threats to the security of the ships, port facilities, or routes covered by the agreement. 25

Compare: Annex to the Convention, Chapter XI-2 r 11

15 Equivalent security arrangements

- (1) The chief executive may authorise a ship or group of ships registered in New Zealand to implement other security measures equivalent to those prescribed in Chapter XI-2 of the Annex to the Convention or Part A of the Code if those security measures are at least as effective as the specified measures. 30
- (2) The chief executive may authorise a port facility or group of port facilities within the territorial limits of New Zealand to implement other security measures equivalent to those prescribed in Chapter XI-2 of the Annex to the Convention or Part A of the Code if those security measures are at least as effective as the specified measures. 35

- (3) If the chief executive authorises an equivalent security arrangement, the chief executive must report the particulars of that arrangement to the International Maritime Organization as soon as practicable.
- (4) **Subsection (2)** does not apply if the port facility or group of port facilities is covered by an alternative security agreement. 5
Compare: Annex to the Convention, Chapter XI-2 r 12
- 16 Chief executive must specify security levels for ships and port facilities**
- The chief executive must— 10
- (a) specify, as security level 1, security level 2, or security level 3, the security level of every—
- (i) New Zealand ship; and
- (ii) port facility within the territorial limits of New Zealand; and 15
- (b) change the security level specification if the chief executive considers it necessary to reduce the risk of a security incident; and
- (c) periodically review, and update as necessary, any security level that the chief executive specifies. 20
- Compare: Annex to the Convention, Chapter XI-2 r 3; Code, Part A ss 4.1, 7; 1994 No 104 s 55(8)
- 17 Chief executive must ensure provision of security level information**
- (1) The chief executive must ensure the provision of— 25
- (a) security level information to—
- (i) every New Zealand ship; and
- (ii) any other ship intending to operate, or operating, within the territorial limits of New Zealand; and
- (iii) every port facility within the territorial limits of New Zealand; and 30
- (b) updated security level information to any—
- (i) New Zealand ship whose security level has been changed; and
- (ii) other ship intending to operate, or operating, within the territorial limits of New Zealand; and 35
- (iii) port facility within the territorial limits of New Zealand if the port facility's security level has been changed; and

- (c) with respect to each security level 3 specification under section 16, appropriate instructions, as necessary, to—
- (i) every affected New Zealand ship; and
 - (ii) any other ship affected intending to operate, or operating, within the territorial limits of New Zealand; and 5
 - (iii) every affected port facility within the territorial limits of New Zealand; and
- (2) For the purpose of this section, the chief executive must notify the master of the ship, as the chief executive considers necessary, by any means of communication, whether or not of a permanent nature, that the chief executive considers appropriate in the circumstances. 10
- Compare: Annex to the Convention, Chapter XI-2 r 3; Code, Part A ss 4.2, 7; 1994 No 104 s 55(8) 15

18 Chief executive must test security plans

- (1) The chief executive must, to the extent that he or she considers appropriate, test the effectiveness of—
- (a) each approved port facility security plan; and
 - (b) any amendment to an approved port facility security plan; and 20
 - (c) each approved ship security plan of a New Zealand ship to which this Act applies; and
 - (d) any amendment to an approved ship security plan of a New Zealand ship to which this Act applies. 25
- (2) If, after testing, the chief executive is satisfied that a plan or an amendment to a plan is not effective, the chief executive may require an amendment to be—
- (a) made to that plan or that amendment to a plan; and
 - (b) submitted to him or her for approval. 30

Compare: Code, Part A s 4.4

Ship security

19 Masters and companies must comply with ship security levels

- The master of a ship and the company must comply with any requirements specified in regulations made under this Act for the security level specified for that ship or class of ship— 35
- (a) before entering a port within the territorial limits of New Zealand; and

- (b) while in a port within the territorial limits of New Zealand.

Compare: Annex to the Convention, Chapter XI-2 rr 3, 4; Code, Part A s 7

20 Ship security assessment

- (1) The company of a New Zealand ship must ensure that a security assessment of that ship is carried out by a person with the appropriate skills to evaluate the security of that ship, taking into account the guidance given in Part B of the Code. 5
- (2) A company may engage a recognised security organisation to carry out the security assessment of a ship. 10
- (3) A ship security assessment must comply with any requirements prescribed in regulations made under this Act.

Compare: Code, Part A s 8

21 Ship security plans

- (1) The company of a New Zealand ship must develop, implement, and maintain a ship security plan for the ship based on the ship security assessment of that ship. 15
- (2) A recognised security organisation may prepare the ship security plan.
- (3) A ship security plan or amendments to a previously approved ship security plan must be approved by the chief executive before effect may be given to that plan or amendments to that plan. 20
- (4) The chief executive may engage a recognised security organisation to review and approve a ship security plan if that recognised security organisation has not been involved in the preparation of that ship's— 25
- (a) security assessment; or
- (b) security plan; or
- (c) ship security plan amendments. 30

22 Ship security plan approval

The chief executive, or a recognised security organisation engaged under **section 21(4)**, must approve a ship security plan or any amendment to the plan if it—

- (a) is consistent with the— 35
- (i) purposes of this Act; and
- (ii) security assessment for that ship; and

- (b) complies with the—
 - (i) requirements of this Act; and
 - (ii) requirements prescribed in regulations made under this Act.

- 23 Amendments to approved ship security plans** 5
- (1) An amendment to a ship security plan approved under **section 22**, or a change to any security equipment specified in a security plan approved under **section 22**,—
- (a) must be at least as effective as those measures prescribed in Chapter XI-2 of the Annex to the Convention and Part A of the Code; and 10
 - (b) may not be implemented unless the amendment or change is given written approval by the chief executive or a recognised security organisation engaged under **section 21(4)**. 15
- (2) The master and the company must ensure that the written approval—
- (a) is held on board the ship; and
 - (b) presented when required by the chief executive.
- (3) If written approval is given for a temporary amendment to an approved ship security plan or for a temporary change to any security equipment specified in an approved plan, once the original approved measures or equipment are reinstated, retention of the written approval for the temporary amendment or temporary change is no longer required. 25
- Compare: Code, Part A s 9
- 24 Review of decisions to not approve ship security plans**
- (1) If the chief executive decides not to approve a ship security plan, or an amendment to a previously approved ship security plan, the company may request the chief executive to review his or her decision. 30
- (2) If the chief executive receives a request to review his or her decision, the chief executive must carry out his or her review and report the results of the review to the requesting company within 15 working days of the date on which the chief executive received the request. 35
- (3) If, after a review, the chief executive or recognised security organisation declines to approve a ship security plan, the

company may appeal against that decision to a District Court under **section 62**.

25 Ship must have ship security plan on board

The master and the company of a ship must ensure that the ship has on board a ship security plan that—

- (a) the chief executive, or a recognised security organisation, has approved under **section 21(4)**; and
- (b) provides for security level 1, security level 2, and security level 3; and
- (c) is protected from unauthorised access or disclosure.

Compare: Code, Part A s 9

26 Ships required to have ship security systems

(1) A ship must have a ship security alert system, an automatic identification system, a continuous synopsis record, and a ship identification number in accordance with the requirements set out in the maritime rules made under the Maritime Transport Act 1994.

(2) Before a master takes responsibility for a ship, the ship's company must ensure that the ship has the required security alert system.

(3) When a master takes responsibility for a ship, the master must ensure that the ship has the required security alert system.

Compare: Annex to the Convention, Chapter XI-2 r 6

27 Chief executive must notify alert

(1) If the chief executive receives notification of a ship security alert, he or she must immediately notify the States in the vicinity of which the ship is operating.

(2) If the chief executive receives notification of a ship security alert from a ship that is not registered in New Zealand, he or she must immediately notify—

- (a) the ship's administration; and
- (b) if appropriate, the States in whose vicinity the ship is operating.

Compare: Annex to the Convention, Chapter XI-2 r 6

28 Certificate must be held on board

- (1) The master and the company must ensure that a certificate is held on board the company's ship.
- (2) The chief executive may verify that a certificate is on board a ship if that ship is in a port within the territorial limits of New Zealand. 5
- (3) The master of a ship in a port within the territorial limits of New Zealand must,—
- (a) on the request of the chief executive, produce the certificate; and 10
- (b) co-operate with the chief executive in any other respect if the chief executive is acting lawfully.

29 Information required of ships intending to enter ports

- (1) The master must keep a record of the information specified in **subsection (2)** for the last 10 calls at port facilities. 15
- (2) A master intending to enter a port within the territorial limits of New Zealand must, prior to entry into that port, provide the following information to the chief executive to ensure compliance with this Act:
- (a) evidence that the ship possesses a certificate; and 20
- (b) evidence of the security level at which the ship is currently operating; and
- (c) evidence of the security level at which the ship operated in any previous port where it conducted a ship-port interface during the period of its last 10 calls at port; and 25
- (d) evidence of any special or additional security measures that were taken by the ship in any previous port where it conducted a ship-port interface during the period of its last 10 calls at port; and 30
- (e) evidence that the appropriate ship security procedures were maintained during any ship-to-ship activity during the period of its last 10 calls at port; and
- (f) any other practical security-related information, excluding details of the ship security plan, taking into account the guidance given in Part B of the Code. 35
- (3) If the chief executive requests confirmation of the information specified in **subsection (2)**, the master or the company must provide confirmation that is acceptable to the chief executive.

- (4) If a master or company declines to provide the information or confirmation specified in **subsection (2) or subsection (3)**, the chief executive may deny the ship entry to the port.

30 Control of ships in ports

- (1) If a certificate is not produced when required under **section 28** without a lawful or justifiable excuse, or if the chief executive has clear grounds to believe that a ship is not in compliance with the requirements of this Act, the chief executive must, for the purpose of ensuring compliance with this Act, impose 1 or more of the following control measures:
- (a) inspection of that ship for the purpose of ascertaining compliance with the certification requirements of this Act, including (but not limited to) requiring the master to—
- (i) provide the information that the chief executive considers relevant to the inspection; and
- (ii) demonstrate to the chief executive that—
- (A) the master or the relevant crew are familiar with essential shipboard security procedures; and
- (B) any shipboard security procedure is capable of being carried out in a competent manner:
- (b) delay of that ship:
- (c) detention of that ship:
- (d) restriction of the operations of that ship, including movement within the port:
- (e) expulsion of that ship from the port if—
- (i) the chief executive has reasonable grounds to believe that the ship poses an immediate threat to the security or safety of persons, ships, or other property; and
- (ii) there are no other appropriate means for removing that threat; and
- (iii) the chief executive has complied with **section 35(4)**.
- (2) A ship may be expelled under **subsection (1)(e)** despite the provisions of any other enactment.
- (3) A control measure that is imposed under **subsection (1)**—

- (a) must be proportionate, taking into account the guidance given in Part B of the Code; and
 - (b) may additionally or alternatively include other lesser administrative or corrective measures.
- (4) A control measure imposed under **subsection (1)** may continue until the non-compliance that gave rise to the control measure is corrected to the satisfaction of the chief executive, taking into account actions proposed (if any) by the ship or the chief executive. 5
- (5) If a ship is expelled from a port under **subsection (1)(e)**,— 10
- (a) the chief executive may require the ship to proceed to a specified location within New Zealand’s territorial sea or internal waters; and
 - (b) the port facility operator must cease providing services to that ship if the chief executive directs the port facility operator to cease providing services to that ship; and 15
 - (c) all possible efforts must be made to avoid a ship being unduly detained or delayed; and
 - (d) a person may be allowed to leave the ship, or access to the ship must be allowed, for— 20
 - (i) emergency reasons; or
 - (ii) humanitarian reasons; or
 - (iii) security purposes.

Compare: Annex to the Convention, Chapter XI-2 r 9(1), (3)

- 31 Inspection of security plans** 25
- (1) The chief executive may inspect ship security plans to carry out control measures if—
- (a) the chief executive has reasonable grounds to believe that the ship is not in compliance with the requirements of Chapter XI-2 of the Annex to the Convention or Part A of the Code; and 30
 - (b) the only means to verify or to rectify the non-compliance is to review the relevant requirements of the ship security plan; and
 - (c) consent for the inspection to review the relevant requirements of the ship security plan is obtained from— 35
 - (i) the master; or
 - (ii) the ship’s administration, if the State is a party to the Convention. 40

- (2) The chief executive may only have access to the specific sections of the plan that relate to the suspected non-compliance.
- (3) Despite **subsections (1) and (2)**, the provisions of a ship security plan that are specified as confidential in regulations made under this Act may not be subject to inspection unless agreed to by—
- (a) the chief executive; and
 - (b) the ship's administration, if the State is a party to the Convention.
- (4) Despite **subsection (3)(b)**, if the ship is registered in New Zealand or if the ship is registered in a State that is not a party to the Convention, the chief executive may authorise the inspection.
- Compare: Code, Part A s 9

32 Costs of detention

- (1) If a ship is detained under **section 30(1)(c)**,—
- (a) the company is liable to pay to the Designated Authority the costs of, and incidental to, the detention and any inspection and audit under this Act; and
 - (b) those costs are, without prejudice to any other remedy, recoverable as a debt due to the Designated Authority in a court of competent jurisdiction.
- (2) The Designated Authority is liable to pay to the company compensation for any loss resulting from unduly detaining or unduly delaying the ship.
- (3) If a ship is detained under **section 30(1)(c)** on the information of a complainant and the information is subsequently found to be frivolous or vexatious, the complainant is liable to indemnify the Designated Authority for all costs for which the Designated Authority is liable under **subsection (2)**.

Compare: 1994 No 104 s 56

33 Steps to take if ship does not comply with Act

- (1) If, after receipt of the information specified in **section 29(2)**, the chief executive has reason to believe that a ship is not in compliance with this Act, the chief executive—

- (a) must attempt to establish communication with the master and the ship's administration to rectify the non-compliance; and
- (b) if the communication does not result in rectification, may take 1 or more of the following steps: 5
- (i) require rectification of the non-compliance:
- (ii) require the ship to proceed to a specified location within New Zealand's territorial sea or internal waters, if the chief executive has complied with **section 35(4)**: 10
- (iii) inspect the ship for the purpose of ascertaining compliance with the certification requirements of this Act, if the ship is within the territorial limits of New Zealand:
- (iv) deny the ship entry, if— 15
- (A) the chief executive has reasonable grounds to believe that the ship poses an immediate threat to the security or safety of persons, ships, or other property; and
- (B) there are no other appropriate means for removing that threat; and 20
- (C) the chief executive has complied with **section 35(4)**.
- (2) Before taking a step specified in **subsection (1)(b)**, the chief executive must inform the master of the ship of the chief executive's intention to take the step by giving notice to the master as the chief executive considers necessary by the means of communications, whether or not of a permanent nature, as the chief executive considers appropriate in the circumstances. 25 30
- (3) A step that is taken under **subsection (1)(b)**—
- (a) must be proportionate, taking into account the guidance given in Part B of the Code; and
- (b) may additionally or alternatively include other lesser administrative or corrective measures. 35
- (4) A ship may be denied entry under **subsection (1)(b)(iv)** despite the provisions of any other enactment.
- (5) If a ship is denied entry under **subsection (1)(b)(iv)**,—
- (a) all possible efforts must be made to avoid a ship being unduly detained or delayed; and 40

- (b) a person may be allowed to leave the ship, or access to the ship must be allowed, for—
- (i) humanitarian reasons; or
 - (ii) emergency reasons; or
 - (iii) security purposes. 5
- (6) On receiving the information under **subsection (2)**, the master may withdraw the intention to enter the port.
- (7) If a ship is denied entry to the port under **subsection (1)(b)(iv)** or **section 29(4)**, a port facility operator must cease providing services to that ship if the chief executive directs the port facility operator to cease providing services to that ship. 10
- (8) A step taken under **subsection (1)** may be imposed until the non-compliance that gave rise to the step is corrected to the satisfaction of the chief executive, taking into account actions proposed (if any) by the ship or the chief executive. 15
- Compare: Annex to the Convention, Chapter XI-2 r 9(2), (3); 1994 No 104 s 55(8)
- 34 Certain provisions do not apply if master withdraws intention to enter port**
- If the master withdraws the intention to enter the port, **sections 29(2) and (3) and 33(1)** do not apply. 20
- 35 Additional requirements**
- (1) If a control measure is imposed under **section 30(1)** or if a step is taken under **section 33(1)(b)**, the chief executive must—
- (a) advise, in writing, the ship's administration of—
 - (i) the control measure imposed or step taken; and 25
 - (ii) the reasons for imposing the control measure or taking the step; and
 - (b) provide written notice, specifying when the control measure was imposed or the step taken, to—
 - (i) the International Maritime Organization; and 30
 - (ii) either—
 - (A) the recognised security organisation that issued a certificate to the ship concerned; or
 - (B) if a recognised security organisation did not issue a certificate, the ship's administration. 35

- (2) If a ship is expelled from a port under **section 30(1)(e)**, or entry into a port is denied under **section 33(1)(b)(iv)**, the chief executive must communicate the appropriate facts to the relevant authorities of—
- (a) the State of the next appropriate port of call, if known; 5
and
 - (b) any other appropriate coastal State.
- (3) The communication must—
- (a) take into account any relevant guidelines promulgated by the International Maritime Organization; and 10
 - (b) be secure and confidential.
- (4) The chief executive may not take any action under **section 30(1)(e) or section 33(1)(b)(ii) or (iv)** without consulting—
- (a) the chief executives of— 15
 - (i) the New Zealand Police; and
 - (ii) the New Zealand Customs Service; and
 - (iii) the Ministry of Health; and
 - (iv) the Department of Labour; and
 - (v) any other department of State whose operations may, in the opinion of the chief executive, be 20
affected by the action; and
 - (b) the local medical officer of health.

Compare: Annex to the Convention, Chapter XI-2 r 9(3); 1993 No 95 s 37D

- 36 Master's responsibilities for ship safety and security** 25
- (1) A company, a charterer, or any other person may not interfere with a decision of a master that is necessary to maintain the safety and security of a ship, including (but not limited to)—
- (a) denial of access to persons (except those persons identified as authorised by the chief executive) or their effects; and 30
 - (b) refusal to load cargo, including containers or other closed cargo transport units.
- (2) A company of a New Zealand ship must ensure that the master and the ship security officer are given the necessary support to fulfil their duties and responsibilities under this Act. 35
- (3) If, in the professional judgment of the master, a conflict between any safety and security requirements applicable to the ship arises during its operations, the master—
- (a) must give effect to those requirements necessary to maintain the safety of the ship; and 40

- (b) may implement temporary security measures commensurate with the prevailing security level; and
 - (c) must inform the chief executive as soon as practicable; and
 - (d) in the case of a New Zealand registered ship that enters a port outside of the territorial limits of New Zealand, must inform the government of the State in which the port is located. 5
- (4) A person on official duties acting under a statutory power to board a ship to carry out his or her statutory functions or duties— 10
- (a) may board a ship; and
 - (b) if requested by the master or the ship security officer, must present his or her warrant or certificate of employment to that master or officer. 15

Compare: Annex to the Convention, Chapter XI-2 r 8; Code, Part A s 6

Port security

37 Duties of port facility operators

- (1) A port facility operator must— 20
- (a) act on the security level specified by the chief executive; and
 - (b) apply security measures and procedures in a manner that minimises interference with, or delay to, passengers, ships, the personnel of ships, visitors, goods, and services; and 25
 - (c) appoint port facility security officers in accordance with regulations made under this Act; and
 - (d) comply with any requirements specified in regulations made under this Act for the security level specified for that port facility or class of port facility. 30
- (2) The port facility security officer and the ship security officer must liaise and co-ordinate appropriate actions—
- (a) if that port facility security officer is advised that a ship is encountering difficulties in— 35
 - (i) complying with the requirements of this Act; or
 - (ii) implementing the appropriate security measures and procedures specified in the ship security plan; or

- (iii) in the case of security level 3, following any security instructions given by the chief executive;
or
- (b) if a ship has a higher security level than that of the port facility. 5
- (3) If a ship has a higher security level than that of the port facility, the port facility security officer must report the matter to the chief executive.
- Compare: Code, Part A s 14
- 38 Port facility security assessments** 10
- (1) The chief executive must carry out a port facility security assessment of each port facility within the territorial limits of New Zealand.
- (2) The chief executive may authorise a recognised security organisation to carry out a port facility security assessment. 15
- (3) If a port facility security assessment is carried out by a recognised security organisation, the chief executive—
- (a) must review it for compliance with **subsection (5)**; and
- (b) if satisfied that it complies with **subsection (5)**, may approve the assessment. 20
- (4) A port facility security assessment must—
- (a) be periodically reviewed and updated, taking into account changing threats or minor changes in the port facility; and
- (b) if major changes take place to the port facility, be reviewed and updated as soon as practicable. 25
- (5) A port facility security assessment must include any elements specified in regulations made under this Act.
- (6) A port facility security assessment may cover more than 1 port facility if— 30
- (a) the operator, location, operation, equipment, and design of those port facilities are similar; and
- (b) the chief executive agrees.
- (7) When a port facility security assessment is completed, the person carrying out the port facility security assessment must prepare a report for the Designated Authority that consists of— 35
- (a) a summary of how the assessment was conducted; and

- (b) a description of each vulnerability found during the assessment; and
 - (c) a description of countermeasures that could be used to address each vulnerability.
- (8) The report must be protected from unauthorised access or disclosure. 5

Compare: Code, Part A s 15

39 Port facility security plans

- (1) A port facility operator must—
- (a) develop, implement, and maintain a port facility security plan based on the port facility security assessment of that port facility; and 10
 - (b) update that port facility security plan as required by a review of that plan under **section 38(4)**.
- (2) A recognised security organisation may prepare the port facility security plan for a port facility. 15
- (3) A port facility security plan or amendments to a previously approved port facility security plan must be approved by the chief executive before effect may be given to that plan or amendments to that plan. 20

40 Port facility security plan approval

The chief executive must approve a port facility security plan, or its amendments, if it—

- (a) is consistent with—
 - (i) the purposes of this Act; and 25
 - (ii) the security assessment for that port facility; and
- (b) complies with the—
 - (i) requirements of this Act; and
 - (ii) requirements prescribed in regulations made under this Act. 30

Compare: Code, Part A s 16

41 Amendments to approved port facility security plans

- (1) An amendment to an approved port facility security plan, or a change to any security equipment specified in an approved plan,— 35

- (a) must be at least as effective as those measures prescribed in Chapter XI-2 of the Annex to the Convention and Part A of the Code; and
- (b) may not be implemented unless the amendment or change is given written approval by the chief executive. 5
- (2) The written approval must be—
- (a) kept at the port facility; and
- (b) presented when required by the chief executive.
- (3) If written approval is given for a temporary amendment to an approved port facility security plan or for a temporary change to any security equipment specified in an approved plan, once the original approved measures or equipment are reinstated, retention of the written approval for the temporary amendment or temporary change is no longer required. 10
- 42 Review of decision not to approve port facility security plans 15**
- (1) If the chief executive decides not to approve a port facility security plan, or an amendment to a previously approved port facility security plan, the company may request the chief executive to review his or her decision. 20
- (2) If the chief executive receives a request to review his or her decision, the chief executive must carry out the review and report the results of the review to the requesting company within 15 working days of the date on which the chief executive received the request. 25
- (3) If, after a review, the chief executive declines to approve a port facility security plan, the company may appeal against that decision to a District Court under **section 62**.

Part 3

Preventive security measures 30

- 43 Appointment of maritime security organisations**
- The Governor-General may, by Order in Council, on the recommendation of the Minister,—
- (a) appoint a government department, Crown entity, or port facility operator as a maritime security organisation: 35
- (b) assign particular port security functions to a government department or Crown entity appointed as a maritime security organisation.

44 Designation of port security areas

- (1) The Minister or the chief executive may, by notice in the *Gazette*, designate a port facility, any area in a port facility, or any other area in a port as a port security area.
- (2) Any designation under **subsection (1)** may be revoked, in whole or in part, or amended by the Minister or the chief executive, as the case may be, by notice in the *Gazette*.

5

Compare: 1990 No 98 s 82

45 Restrictions with respect to port security areas

- (1) No person other than a person on official duties acting in accordance with **subsection (7)** may enter or remain in a port security area unless authorised by the chief executive or the port facility operator. 10
- (2) Every person in a port security area must, on the request of an authorised person, state his or her name and address, the purpose of his or her presence in the port security area, and his or her authority to enter it, and must produce satisfactory evidence of the correctness of his or her stated name and address. 15
- (3) If a person fails or refuses to provide an authorised person with satisfactory evidence of his or her name and address when requested by the authorised person, or if a person fails to satisfy the authorised person that he or she is authorised to be there, the authorised person may order that person to leave the port security area. 20
- (4) An authorised person, and any person whom he or she calls to his or her assistance, may use any force that is reasonably necessary to remove from any port security area any person who fails or refuses immediately to leave the port security area after having been ordered by an authorised person to do so under **subsection (3)**. 25
- (5) A person who refuses to comply with **subsection (2)** or **subsection (3)** and, after having been warned that he or she commits an offence, persists in its commission may be forcibly detained by an authorised person, and in that case he or she must, as soon as may be practicable, be delivered to a member of the police. 35
- (6) A passenger or crew member embarking or disembarking directly through gateways or thoroughfares in a port facility

approved for that purpose by the port facility operator is deemed to be authorised by the chief executive to pass through any port security area forming part of those gateways or thoroughfares.

- (7) A person on official duties acting under a statutory power to enter an area to carry out his or her statutory functions or duties— 5
- (a) may enter a port security area; and
 - (b) if requested by an authorised person, must present his or her warrant or certificate of employment to the authorised person. 10

Compare: 1990 No 98 s 84

46 Powers and duties of Minister to require screening and searching

- (1) The Minister may, if necessary to improve or enhance maritime security to enable New Zealand to be part of a concerted international response to a threat to maritime security or if it is in the national interest, direct a maritime security organisation, by notice in the *Gazette*,— 15
- (a) to screen— 20
 - (i) any person boarding a ship; and
 - (ii) any thing to be carried by a ship; and
 - (iii) any thing in a port security area; and
 - (iv) any person (including that person's personal effects) or vehicle entering, or within, a port security area; and 25
 - (b) if necessary, to undertake reasonable searches of—
 - (i) any person boarding a ship; or
 - (ii) any thing to be carried by a ship; or
 - (iii) any thing in a port security area; or 30
 - (iv) any person (including that person's personal effects) or vehicle entering, or within, a port security area; and
 - (v) any (as specified in the *Gazette* notice)—
 - (A) ship or class of ship; or 35
 - (B) port facility or class of port facility.
- (2) The *Gazette* notice must specify—
- (a) which of the screenings under **subsection (1)(a)** and which of the searches under **subsection (1)(b)** are part of the Minister's directive; and 40

- (b) the permitted extent of those screenings and searches.
- (3) Before directing a maritime security organisation under **subsection (1)**, the Minister must, to determine whether the direction is necessary to improve or enhance maritime security to enable New Zealand to be part of a concerted international response to a threat to maritime security or whether it is in the national interest, consult—
- (a) the chief executive; and
- (b) as the Minister in each case considers appropriate, representative groups in the maritime industry, government departments, and Crown entities.
- (4) Nothing in this section empowers the Minister to exercise the powers of the chief executive under **section 47**.
- Compare: 1990 No 98 s 77A
- 47 Powers and duties of chief executive to require screening and searching**
- (1) The chief executive may, if he or she believes on reasonable grounds that there is a risk of a security incident occurring, direct a maritime security organisation, by notice in the *Gazette*,—
- (a) to screen—
- (i) any person boarding a ship; or
- (ii) any thing to be carried by a ship; and
- (iii) any thing in a port security area; and
- (iv) any person (including that person's personal effects) or vehicle entering, or within, a port security area; and
- (b) if necessary, to undertake reasonable searches of—
- (i) any person boarding a ship; or
- (ii) any thing to be carried by a ship; or
- (iii) any thing in a port security area; or
- (iv) any person (including that person's personal effects) or vehicle entering, or within, a port security area; and
- (v) any (as specified in the *Gazette* notice)—
- (A) ship or class of ship; or
- (B) port facility or class of port facility.
- (2) The *Gazette* notice must specify—

- (a) which of the screenings under **subsection (1)(a)** and which of the searches under **subsection (1)(b)** are part of the chief executive's directive; and
 - (b) the permitted extent of those screenings and searches.
- (3) Before directing a maritime security organisation under **subsection (1)**, the chief executive must, to determine whether the direction is necessary to meet the maritime security risk, consult, as the chief executive in each case considers appropriate, representative groups in the maritime industry, government departments, and Crown entities. 5 10

Compare: 1990 No 98 s 77B

48 Duration of directions

- (1) A direction made under **section 46(1)** takes effect on the date specified in the notice, which may be a date before the notice is published in the *Gazette* if the Minister— 15
- (a) considers on reasonable grounds that urgent action is required; and
 - (b) has consulted the chief executive before that date; and
 - (c) has notified all affected parties (other than persons boarding a ship) before that date. 20
- (2) A direction made under **section 47(1)** takes effect on the date specified in the notice, which may be a date before the notice is published in the *Gazette* if the chief executive—
- (a) considers on reasonable grounds that urgent action is required; and 25
 - (b) has notified all affected parties (other than persons boarding a ship) before that date.
- (3) If a direction made under **section 46(1)** or **section 47(1)** takes effect on a date before the notice is published in the *Gazette*,—
- (a) the direction expires 28 days after that date unless the notice is published in the *Gazette* within 28 days of that date; and 30
 - (b) if the notice is published in the *Gazette* within 28 days of that date, the direction expires 90 days after that date unless, before the expiry of the 90-day period,— 35
 - (i) the Minister, after complying with **subsection (1)(b) and (c)**, extends the period for a further specified period not exceeding 90 days (the aggregate period may not exceed 180 days); or

- (ii) the chief executive, after complying with **subsection (2)(b)**, extends the period for a further specified period not exceeding 90 days (the aggregate period may not exceed 180 days).
 - (4) If a direction takes effect on a date on or after the notice is published in the *Gazette*, the notice is a regulation for the purposes of the Regulations (Disallowance) Act 1989. 5
 - (5) A direction may,—
 - (a) if made under **section 46(1)**, be rescinded by the Minister; or 10
 - (b) if made under **section 47(1)**, be rescinded by the chief executive.
 - (6) Subject to **subsection (3)**, a direction remains in effect until it is rescinded. 15
- Compare: 1990 No 98 ss 77A, 77B

49 Taking weapons on to ships or into port security areas

- (1) A person commits an offence, and is liable on conviction on indictment to imprisonment for a term not exceeding 5 years, who, without lawful authority or reasonable excuse, or without the written permission of the ship security officer (with respect to boarding a ship) or the port facility security officer (with respect to entering a port security area), intentionally takes, or attempts to take, on board a ship or into a port security area— 20
 - (a) a firearm, or any other dangerous or offensive weapon or instrument of any kind; or 25
 - (b) any ammunition; or
 - (c) an explosive, incendiary, biological, or chemical substance or device, or any other injurious substance or device of any kind, that could be used to endanger the safety of— 30
 - (i) the ship; or
 - (ii) persons on board the ship; or
 - (iii) the port security area; or
 - (iv) persons in the port security area. 35
- (2) A person who has obtained the written permission of a ship security officer or a port facility officer must, upon the request of an authorised person, present the written permission to that authorised person.

- (3) To avoid doubt, a passenger or crew member may take an item covered by **subsection (1)** on board a ship without the written permission of the port facility security officer if that passenger or crew member has obtained the written permission of that ship's ship security officer. 5
- (4) For the purposes of this section, **firearm** means any gun, rifle, or pistol, whether acting by force of explosives or not; and includes any gun, rifle, or pistol that—
- (a) is not capable of discharging any shot, bullet, or other missile, but that by its completion or by the replacement of any component part or parts or by the correction or repair of any defect or defects, would be so capable; or 10
- (b) is dismantled.
- Compare: 1972 No 137 s 11
- 50 Screening and searching powers** 15
- (1) An authorised person may—
- (a) screen, using a detector dog, or a mechanical or electronic device or similar mechanism,—
- (i) any person boarding a ship; and
- (ii) any thing to be carried by a ship; and 20
- (iii) any thing in a port security area; and
- (iv) any person (including that person's personal effects) or vehicle entering, or within, a port security area; and
- (b) if there are reasonable grounds to believe that an offence against this Act has been, is being, or is likely to be committed, search— 25
- (i) any person boarding a ship; or
- (ii) any thing to be carried by a ship; or
- (iii) any thing in a port security area; or 30
- (iv) any person (including that person's personal effects) or vehicle entering, or within, a port security area; or
- (v) any ship or class of ship specified in a *Gazette* notice issued under **section 46** or **section 47**; or 35
- (vi) any port facility or class of port facility specified in a *Gazette* notice issued under **section 46** or **section 47**.
- (2) The powers in—
- (a) **subsection (1)** may only be exercised— 40

- (i) for the purposes of preventing the commission of an offence against **section 49**; and
 - (ii) at a port security area or on a ship; and
 - (iii) in the case of a person, or his or her vehicle or things, who is to be screened or searched, with the consent of that person or the person in control of the vehicle or things; and
- (b) **subsection (1)(b)(i) and (iv)** may only be exercised if—
 - (i) the person has consented; or
 - (ii) the authorised person has a search warrant; and
- (c) **subsection (1)(b)(v)** may only be exercised if—
 - (i) the company or master has consented; or
 - (ii) the authorised person has a search warrant.
- (3) If a search is conducted under a search warrant by an authorised person who is not a member of the police, that authorised person must be accompanied by a member of the police.
- (4) If a person allows his or her person to be searched,—
 - (a) that person may not be required to remove any article of clothing (other than a coat or similar article) for the purposes of being searched; and
 - (b) if the search is not made by means of a mechanical or electronic device or similar mechanism, that person must be searched by an authorised person of the same gender.
- (5) An authorised person exercising the power to screen or search under **subsection (1)** must, before the screening or search is conducted, and on any subsequent request,—
 - (a) provide evidence of his or her identity to the person to be screened or searched; and
 - (b) inform the person to be screened or searched that the screening or search is authorised under this section; and
 - (c) if not in uniform, provide evidence that he or she is an authorised person to the person to be screened or searched if that person asks for it.
- (6) To avoid doubt, things, personal effects, and vehicles may be screened or searched without consent if they are unattended.
- (7) Despite **subsection (1)(a)(ii) and (b)(ii)**, goods subject to the control of Customs may not be screened or searched without the authorisation of New Zealand Customs Service.

- (8) **Subsection (7)** does not apply if the chief executive has specified that security level 3 applies to the port security area where the screening or searching is to be done.

51 Power to seize and detain items

- (1) If an authorised person detects an item specified in **section 49(1)**, and has reasonable grounds to believe that the item may not lawfully be taken on board a ship or into a port security area, the authorised person may seize the item for the purpose of determining whether the item may lawfully be taken on board a ship or into a port security area. 5
10
- (2) If an item is seized under **subsection (1)**, the authorised person must—
(a) make an inventory of the item; and
(b) make available to the owner or the person from whom the item was seized a copy of the inventory. 15
- (3) If the authorised person determines that the item may lawfully be taken on board a ship or into a port security area, the authorised person must, as far as practicable, return the item to the person from whom the item was seized under **subsection (1)**.
- (4) If the authorised person determines that the item may not lawfully be taken on board a ship or into a port security area, the authorised person must allow the person from whom the item was seized under **subsection (1)** to arrange for the item to be—
(a) taken off the ship; or 25
(b) taken out of the port security area; or
(c) taken off the ship and taken out of the port security area.
- (5) Despite **subsection (4)**,—
(a) if the authorised person has reasonable grounds to believe that the seized item poses an imminent risk to safety, the authorised person may— 30
(i) destroy or otherwise dispose of the item; or
(ii) deliver the item to the police; or
(b) if the authorised person has reasonable grounds to believe that the seized item may not be lawfully possessed, the authorised person may deliver the item to the police. 35

52 Costs of seizures

- (1) If an authorised person has seized an item under **section 51(1)**, the Designated Authority may recover from either the owner of the item or the person who was in possession of the item all reasonable costs of and incidental to that seizure. 5
- (2) The Designated Authority is liable to pay to the owner of the item compensation for any loss resulting from an authorised person unduly—
- (a) maintaining the seizure of the item; or
 - (b) delaying the use of the item. 10
- (3) If the authorised person has taken action under **section 51(1)** on the information of a complainant and the information is subsequently found to be frivolous or vexatious, the complainant is liable to indemnify the Designated Authority for all costs for which the Designated Authority is liable under this section. 15

Compare: 1994 No 104 s 56

53 Persons who refuse to consent to be screened or searched

- (1) If a person refuses to consent to the screening or searching of his or her person or baggage, an authorised person may require that person to leave the ship or port security area or both. 20
- (2) If a person required to leave refuses to leave, an authorised person, and any one asked to assist, may use any force that is reasonably necessary to remove that person. 25
- (3) A person who refuses to leave as required under **subsection (1)** and, after being warned that he or she commits an offence by not leaving, persists in its commission,—
- (a) may be forcibly detained by an authorised person; and
 - (b) if detained, must be delivered to a member of the police as soon as practicable. 30
- (4) If the person who refuses to consent is a passenger or a crew member, a company or master may refuse to allow that passenger or crew member to board that company's ship.
- (5) A company or master who refuses to carry a passenger who refuses consent is not liable to any civil proceedings, other than a proceeding in respect of any right that the passenger may have for the recovery of the fare or part of the fare. 35

Compare: 1990 No 98 s 84; 1974 No 116 s 18(6)

54 Search of persons refusing consent to be searched

- (1) A member of the police may, without a warrant, search a person and that person's baggage, and may detain that person for the purposes of that search, and may take possession of any article referred to in **section 49(1)** found in the course of that search, if— 5
- (a) a company or master refuses to carry a person who has refused to consent to the searching of his or her person or baggage; and
- (b) the member of the police has reasonable grounds to suspect that an offence against this Act has been, is being, or is likely to be, committed, whether by that person or by any other person. 10
- (2) The refusal of a person to consent to the searching of his or her person or baggage does not of itself constitute reasonable grounds for suspecting that an offence against this Act has been, is being, or is likely to be, committed. 15
- (3) A member of the police exercising the power of search under **subsection (1)** must, before the search is conducted, and on any subsequent request,— 20
- (a) provide evidence of his or her identity to the person to be searched; and
- (b) inform the person to be searched that the search is authorised under this section; and
- (c) if not in uniform, provide evidence that he or she is a member of the police to the person to be searched if that person asks for it. 25
- (4) If a member of the police exercises the power of search under **subsection (1)**, he or she must, within 3 days after the day on which he or she exercises the power, furnish to the Commissioner of Police a written report on the exercise of the power and the circumstances in which it came to be exercised. 30

Compare: 1972 No 137 s 13

55 Powers of arrest

- (1) An authorised person employed by a government department or Crown entity may, without a warrant, arrest any person in, or in the vicinity of, a port security area or on board a ship or in an exclusion zone if that authorised person has reasonable grounds to believe that the person has committed, or is committing, an offence against any of the following enactments: 35 40

- (a) **section 49:**
 - (b) **section 71:**
 - (c) section 45 of the Arms Act 1983 (which relates to unlawful carriage of firearms or explosives):
 - (d) section 4 of the Maritime Crimes Act 1999. 5
- (2) A person may, in good faith, assist an authorised person in arresting any person if called upon to do so by that authorised person.
- (3) An authorised person who is not a member of the police must, as soon as practicable, deliver any person that he or she arrests to a member of the police. 10
- (4) An authorised person exercising the power of arrest under **subsection (1)** must—
- (a) provide evidence of his or her identity to the person to be arrested; and 15
 - (b) inform the person to be arrested that the arrest is authorised under this section; and
 - (c) if not in uniform, provide evidence that he or she is an authorised person to the person to be arrested if that person asks for it. 20
- (5) An authorised person who arrests a person and delivers him or her to a member of the police, and any person who at his or her request and in good faith assists an authorised person in doing so, is justified in so arresting and delivering that person and in using any force that may be reasonably necessary in doing so. 25
- Compare: 1990 No 98 ss 85, 86(3)

56 Arrest of persons delivered to police

- (1) A member of the police must accept delivery of a person that an authorised person arrests under **section 55(1)** or detains under **section 45(5) or section 53(3)** if that member of the police has reasonable grounds to suspect that person of having done, or having omitted to do, any thing that constitutes an offence under this Act or any enactment specified in **section 55(1)**. 30
- (2) A member of the police who accepts delivery of a detained person may arrest that person. 35
- Compare: 1990 No 98 s 86

57 Right of access to port security areas and ships

- (1) An authorised person while on duty may, at any time, enter a port security area, or any building, vehicle, or place in any part of a port security area, or any ship, for the purpose of exercising and carrying out his or her powers, functions, and duties under this Act. 5
- (2) Unless a maritime security officer is accompanied by a member of the police, the power of entry conferred by **subsection (1)** is limited to peaceful and non-forcible entry.
- (3) If the police have taken command of any situation at a port security area, the right of a maritime security officer to enter any part of the port facility or any ship, building, or place is subject to the limitations that the senior member of the police present at the port facility specifies. 10
- (4) If a ship, building, vehicle, or place is not being used for commercial purposes, **subsection (1)** does not apply unless the authorised person believes on reasonable grounds that a person or thing likely to endanger the port security area or any of its facilities or any person is in that ship, building, vehicle, or place. 15
20
- (5) An authorised person may not enter a dwellinghouse, crew quarters, or a passenger cabin without—
- (a) a search warrant; or
 - (b) the consent of the occupier of that dwellinghouse, crew quarters, or passenger cabin. 25
- (6) An authorised person exercising the power of entry under **subsection (5)** must, before the entry takes place, and on any subsequent request,—
- (a) provide evidence of his or her identity to the occupier; and 30
 - (b) inform the occupier that the entry is authorised under this section; and
 - (c) if not in uniform, provide evidence that he or she is an authorised person to the occupier if the occupier asks for it. 35

Compare: 1990 No 98 s 83

58 Chief executive may declare exclusion zones for ships

- (1) The chief executive may declare an exclusion zone around a ship if—

- (a) the chief executive—
- (i) considers it necessary for the maintenance of effective security for that ship; and
 - (ii) has consulted the chief executives of—
 - (A) the New Zealand Police; and 5
 - (B) the New Zealand Customs Service; and
 - (C) the Ministry of Agriculture and Forestry; and
 - (D) the New Zealand Immigration Service; and
 - (E) the Ministry of Health; and 10
 - (F) any other department of State whose operations may, in the opinion of the chief executive, be affected by the action; and
 - (iii) has consulted the local—
 - (A) harbourmaster; and 15
 - (B) port facility operator; and
 - (C) medical officer of health; and
- (b) that ship is—
- (i) berthed in port or is at an anchorage; or
 - (ii) moored at a buoy; or 20
 - (iii) in the approaches to a port.
- (2) If the chief executive makes a declaration under **subsection (1)**, the chief executive must notify the master, the port facility security officer, the port facility operator, and the harbourmaster by the means of communication, whether or not of a permanent nature, that the chief executive considers appropriate in the circumstances. 25

59 Duration of declarations

- (1) A declaration made under **section 58(1)** takes effect on the date that it is communicated to the master. 30
- (2) The declaration expires 5 days after the date on which it takes effect unless, before the expiry of the 5-day period, the chief executive extends the period for a further specified period not exceeding 5 days (the aggregate period may not exceed 10 days). 35
- (3) Despite **subsection (2)**, the chief executive may revoke a declaration at any time.

- 60 No person, craft, or vessel may enter or leave exclusion zones without authorisation**
- (1) No person, craft, or vessel may enter or leave an exclusion zone unless authorised by the chief executive.
- (2) **Subsection (1)**— 5
- (a) applies to all craft and vessels whether or not **section 4(1)** applies to them; but
- (b) does not apply to the craft and vessels referred to in **section 4(2)(a) and (b)**.

Part 4 10

Miscellaneous provisions

Maritime security documents

- 61 Acceptance of Convention documents**
- (1) The chief executive must accept any maritime security document. 15
- (2) Despite **subsection (1)**, the chief executive may not accept, or must suspend acceptance of, any maritime security document if it has clear grounds to believe that—
- (a) the relevant ship or company—
- (i) does not correspond substantially with the particulars of that maritime security document; or 20
- (ii) is no longer in compliance with the provisions of any requirements—
- (A) leading to the issue of that maritime security document; or 25
- (B) imposed by that maritime security document; or
- (b) the relevant ship has been materially altered without the sanction of the State that issued or approved that maritime security document; or 30
- (c) the maritime security document has been fraudulently obtained or the holder of that maritime security document is not the person to whom the maritime security document was originally issued.
- (3) This section applies in respect of— 35
- (a) every ship, other than a New Zealand ship, registered in a State that is a party to the Convention:

- (b) the company and the crew of every ship referred to in **paragraph (a)**.

Compare: 1994 No 104 s 42

Appeal rights

- 62 Right of appeal to District Court** 5
- (1) A person has a right of appeal to a District Court if affected by a decision of the chief executive under **section 21, section 24, section 39, or section 42**.
- (2) The Court may confirm, reverse, or modify the decision appealed against. 10
- (3) Every decision appealed against under this section continues in force pending the determination of the appeal, and no person is excused from complying with any of the provisions of this Act on the ground that any appeal is pending.
- (4) Even though an appeal under this section may have been determined in favour of the appellant, the chief executive may, subject to the like right of appeal, revoke the District Court's approval of a ship security plan or a port facility security plan if the chief executive has sufficient grounds supported by facts or evidence discovered since the hearing of the appeal. 15 20

Compare: 1990 No 98 ss 27P, 66

Offences

- 63 Offences by masters**
- (1) Every master who fails to comply with— 25
- (a) **section 14(2) or section 19** commits an offence and is liable to—
- (i) imprisonment for a term not exceeding 1 year; and
- (ii) a fine not exceeding \$20,000: 30
- (b) **section 28(3)(a) or (b) or section 29(1) or (2)** is liable to a fine not exceeding \$5,000.
- (2) Every master who provides false information under **section 29(2)** commits an offence and is liable to a fine not exceeding \$5,000. 35

- 64 Offences by companies**
 Every company that fails to comply with **section 20 or section 21** commits an offence and is liable—
- (a) in the case of an individual, to a fine not exceeding \$5,000; or 5
 - (b) in the case of a body corporate, to a fine not exceeding \$30,000.
- 65 Offences by masters and companies**
- (1) The master and the company each commits an offence if—
 - (a) a ship security plan is not held on board the company's ship as required under **section 24**; or 10
 - (b) written approval for an amendment to a ship security plan is not held on board the company's ship as required under **section 23(2)**; or
 - (c) a certificate is not held on board the company's ship as required under **section 28(1)**. 15
 - (2) If an offence is committed against **subsection (1)(a) or (b)**,—
 - (a) the master is liable to a fine not exceeding \$5,000; and
 - (b) the company is liable,—
 - (i) in the case of an individual, to a fine not exceeding \$5,000; or 20
 - (ii) in the case of a body corporate, to a fine not exceeding \$30,000.
 - (3) If an offence is committed against **subsection (1)(c)**,—
 - (a) the master is liable to a fine not exceeding \$5,000; and 25
 - (b) the company is liable,—
 - (i) in the case of an individual, to a fine not exceeding \$7,500; or
 - (ii) in the case of a body corporate, to a fine not exceeding \$30,000. 30
- 66 Failure to comply with control measures**
 Every person who, without reasonable excuse, acts in contravention of, or fails to comply with, a control measure imposed by the chief executive under **section 30(1)** commits an offence and is liable,— 35
- (a) in the case of an individual, to—
 - (i) a term of imprisonment not exceeding 1 year; and
 - (ii) a fine not exceeding \$10,000; or

- (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- 67 Failure to comply with steps** 5
 Every person who, without reasonable excuse, acts in contravention of, or fails to comply with, a step taken by the chief executive under **section 33(1)(b)** commits an offence and is liable,—
- (a) in the case of an individual, to—
 (i) a term of imprisonment not exceeding 1 year; and
 (ii) a fine not exceeding \$10,000; or 10
- (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- 68 Offences by port facility operator**
 (1) Every port facility operator who fails to comply with **section 37(1)(a), (b), (c), or (d)** commits an offence and is liable to a fine not exceeding \$100,000. 15
- (2) Every port facility operator who fails to put in place a port facility security plan under **section 39** that complies with a port facility security assessment carried out under **section 38** commits an offence and is liable,— 20
- (a) in the case of an individual, to a fine not exceeding \$5,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$30,000.
- 69 Failure to provide satisfactory evidence of name and address or authorisation to be in port security area** 25
 Every person who intentionally fails or refuses to provide a maritime officer with satisfactory evidence of his or her name and address or authorisation to be in a port security area under **section 45(2)** commits an offence and is liable,— 30
- (a) in the case of an individual, to a fine not exceeding \$5,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$30,000.
- 70 Failure to leave port security area** 35
 Every person who intentionally fails or refuses to leave a port security area when ordered by an authorised person to do so

under **section 45(3) or section 53(3)** commits an offence and is liable,—

- (a) in the case of an individual, to a fine not exceeding \$5,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$30,000. 5

71 Entering or leaving exclusion zone without authorisation

Every person who intentionally contravenes **section 60** by entering or leaving an exclusion zone without authorisation commits an offence and is liable,— 10

- (a) in the case of an individual, to a fine not exceeding \$10,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$100,000.

Regulations 15

72 Regulations

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister, make regulations for all or any of the following purposes:
 - (a) prescribing, or providing for the fixing of, fees and charges payable in respect of security functions provided by, or security activities undertaken by, a government department or government agency: 20
 - (b) prescribing the security requirements for a ship or port facility, including (but not limited to)— 25
 - (i) a declaration of security, a ship security plan:
 - (ii) a port facility security plan:
 - (iii) an assessment of a ship security plan or a port facility security plan:
 - (iv) an identification system for accessing a specified port security area or a specified port facility: 30
 - (c) providing for any other matters that are contemplated by, or necessary for giving full effect to, the provisions of this Act or for its due administration.
- (2) Any regulations made under this section may prescribe offences and penalties for contravention of, or non-compliance with, their provisions, on the summary conviction of any offender, not exceeding,— 35
 - (a) in the case of an individual, a fine of \$5,000; and

(b) in the case of a body corporate, a fine of \$30,000.

73 Exemptions from regulations

- (1) The chief executive may, if he or she considers it appropriate and on the conditions that he or she considers appropriate, exempt any person, ship, or port facility from any requirement specified in regulations made under this Act. 5
- (2) The chief executive may not grant an exemption under **subsection (1)** unless he or she is satisfied in the circumstances that—
- (a) the exemption will not breach New Zealand's international obligations under any maritime convention; and 10
- (b) 1 or more of the following applies:
- (i) the prescribed requirements have been substantially complied with and that further compliance is unnecessary; or 15
- (ii) the action taken or provision made in respect of the matter to which the prescribed requirements relate is as effective or more effective than actual compliance with the prescribed requirements; or
- (iii) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or 20
- (iv) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case; and
- (c) the risk to safety will not be significantly increased by the granting of the exemption. 25
- (3) The number and nature of any exemptions granted under **subsection (1)** of this section must be notified as soon as practicable in the *Gazette*.
- (4) Nothing in this section applies in any case where a maritime rule specifies that exemptions may not be granted. 30

Compare: 1994 No 104 s 47

74 Minister may extend application of Act

- (1) If the Designated Authority has reasonable cause to believe that a security risk exists that may warrant the extension of this Act to a ship or port facility to enhance ship or port security or to prevent terrorism, the Designated Authority may— 35
- (a) conduct a security assessment of that ship; or

- (b) require a security assessment of that ship to be carried out.
- (2) For the purposes of **subsection (1)**, reasonable cause to believe that a security risk exists may be based on—
- (a) the receipt of threat or security information; or 5
- (b) the results of a security assessment of a ship under this Act.
- (3) If, following a security assessment under **subsection (1)**, the Designated Authority considers that the Act should be extended to a ship or class of ship, the Designated Authority must make a recommendation to that effect to the Minister. 10
- (4) Following a recommendation by the Designated Authority under **subsection (3)**, the Minister may extend the application of this Act to a ship or port facility by notice in the *Gazette*.
- (5) A *Gazette* notice under **subsection (4)**— 15
- (a) must—
- (i) clearly identify the ship or port facility concerned; and
- (ii) state which sections of this Act apply to that ship or port facility; and 20
- (iii) state the time period for the extension of this Act; and
- (b) may cover—
- (i) more than 1 ship or port facility; and
- (ii) any combination of ships and port facilities. 25
- (6) For the purposes of **subsections (1) to (5)**,—
- port facility**—
- (a) means a port facility that is not included in **section 4(1)(b)**; and
- (b) includes fixed and floating platforms and mobile off-shore drilling units referred to in **section 4(1)(c) and (d)** 30
- ship** means a ship that is not included in **section 4(1)(a)**.
- (7) To avoid doubt, the Minister may not extend the application of this Act to— 35
- (a) warships; or
- (b) naval auxiliaries; or
- (c) other ships that are—
- (i) owned or operated by the Crown; and
- (ii) used on government non-commercial service; or

- (d) pleasure craft (as defined in section 2(1) of the Maritime Transport Act 1994).

Miscellaneous

75 Inspections and audits

For the purposes of any inspection or audit carried out in respect of any person under this Act, the chief executive may, in writing,—

- (a) require from that person the information that the chief executive considers relevant to the inspection or audit: 5
- (b) require that person to demonstrate to the chief executive the familiarity of the master or crew with essential shipboard procedures for the security of the ship: 10
- (c) require that person to demonstrate to the chief executive that any operational, maintenance, or servicing procedure in respect of the security of a ship is capable of being carried out in a competent and timely manner. 15

Compare: 1994 No 104 s 54(3)

76 Instructions of chief executive under certain provisions that conflict with other instructions

- (1) If a harbourmaster or any other person gives, under the Local Government Act 1974, instructions (**harbourmaster's instructions**) that conflict with instructions given by the chief executive under **section 29(4), section 30(1), or section 33(1) (chief executive's instructions)**, the chief executive's instructions prevail. 20 25
- (2) If the chief executive becomes aware of any conflict between any chief executive's instructions and any harbourmaster's instructions, the chief executive must, as soon as practicable, advise the person who has made the harbourmaster's instructions of the conflict, and that person must immediately upon being so advised withdraw those instructions or alter them so as to remove the conflict. 30
- (3) The chief executive must not issue chief executive's instructions that conflict with the exercise of a power by— 35
- (a) a person under Part 5 of the Civil Defence Emergency Management Act 2002; or
- (b) a Recovery Co-ordinator appointed under section 29 of the Civil Defence Emergency Management Act 2002 and acting under that Act; or

- (c) any member of the police under section 10 of the International Terrorism (Emergency Powers) Act 1987; or
 (d) a person under Part 4 of the Health Act 1956.

Compare: 1994 No 104 s 254

- 77 Consequential amendments** 5
- (1) Section 430(1) of the Maritime Transport Act 1994 is amended by inserting, after paragraph (a), the following paragraph:
 “(ab) promote maritime security; and”.
- (2) Section 431(1)(a) of the Maritime Transport Act 1994 is amended by inserting, after the word “safety”, the words “and security”. 10
- (3) Section 431(1)(a) of the Maritime Transport Act 1994 is amended by inserting, after the word “shipping”, the words “and maritime security”. 15
- (4) Section 431(1)(b) of the Maritime Transport Act 1994 is amended by inserting, after the word “safety”, the words “and security”.
- (5) Section 431(1)(c) of the Maritime Transport Act 1994 is amended by inserting, after the word “safety”, the words “and security”. 20
- (6) Section 431(1)(i) of the Maritime Transport Act 1994 is amended by inserting, after the words “promote safety”, the words “and security”.
- (7) Section 431(1)(i) of the Maritime Transport Act 1994 is amended by inserting, after the words “marine safety”, the words “and maritime security”. 25
- (8) Section 431(1)(j) of the Maritime Transport Act 1994 is amended by inserting, after the word “incidents”, the words “and maritime security breaches and incidents”. 30
- (9) The Maritime Rules are amended in the manner set out in the Schedule as from the date of commencement specified in, or appointed under, **section 2(2)**.
-

s 77(9)

Schedule**Consequential amendments to Maritime Rules****Rule 40B.32**

Add, after rule 40B.32, the following rules:

5

“40B.33 Automatic identification system

“(1) The owner of a ship must ensure that an automatic identification system is fitted on board the ship in accordance with the requirements of regulation 19 of Chapter V of SOLAS (as amended in December 2002).

10

“(2) The master of a ship must ensure that an automatic identification system is in operation at all times.

“40B.34 Ship identification number

The owner of a ship must ensure that the ship is permanently marked with the ship’s identification number in accordance with regulation 3 of Chapter XI of SOLAS (as amended in December 2002).

15

“40B.35 Continuous synopsis record

“(1) The owner of a ship must ensure that the ship carries a continuous synopsis record in accordance with regulation 5 of Chapter XI of SOLAS (as amended in December 2002).

20

“(2) The master of a ship must ensure a continuous synopsis record is maintained in accordance with regulation 5 of Chapter XI of SOLAS (as amended in December 2002).

“40B.36 Ship security alert system

25

The owner of a ship must ensure that the ship is fitted with a ship security system in accordance with regulation 6 of Chapter XI-2 of SOLAS (as amended in December 2002).”