

# **Maritime Security Bill**

Government Bill

As reported from the Government Administration  
Committee

## **Commentary**

### **Recommendation**

The Government Administration Committee has examined the Maritime Security Bill and recommends that it be passed with the amendments shown.

### **Introduction**

The bill establishes a maritime security framework in New Zealand to reduce the risk of security incidents affecting ships or port facilities, particularly those used in international trade. It reflects New Zealand's adoption of the requirements under the amendments to the International Convention for the Safety of Life at Sea (SOLAS), 1974 and under the International Ship and Port Facility Security Code (ISPS Code) adopted by the International Maritime Organization in December 2002. These requirements contribute to broader anti-terrorism measures being implemented in New Zealand and overseas in response to an increased security-risk environment.

Issues arising in our consideration included the extent of the bill's compliance with security requirements under SOLAS and the ISPS Code, and the costs involved. We also considered the regulation making powers in the bill. We considered this bill alongside the Border Security Bill and were alerted to the need to avoid duplicating existing systems and processes of government agencies. We

were also mindful of the need not to impose unduly onerous requirements and to preserve the liberties essential to New Zealand as a free and democratic society.

This report comments on our key amendments in view of the above issues. We do not comment on other minor recommended amendments.

## **New Zealand Bill of Rights Act 1990**

We recommend that a definition of ‘suspicious act’ be inserted to clarify that legitimate demonstration, protest and strike action is exempt from the bill’s definition of ‘security incident’. We consider that the fundamental rights protected in the New Zealand Bill of Rights Act 1990, subject to justified limitations, should be preserved, despite the threat of terrorism.

The definition of ‘security incident’ in the bill as introduced is based on the ISPS Code. The definition places emphasis on ‘suspicious’ in the sense of covert and clandestine activity, not overt and public activity. SOLAS contemplates that the security responses will have implications as to where activities may be carried out in a port area. We note the Ministry of Justice’s Bill of Rights Act report on the bill considers that it is consistent with that Act. We understand the security risk response required by a port facility and ship at security level 2 and security level 3 could place constraints on the location and conduct of lawful demonstrations, protests, or strikes in a port.

We accept that the constraints imposed are necessary and justified limitations under section 5 of the Bill of Rights Act. We nevertheless believe that rights of legitimate demonstration, protest and strike action should be preserved and consider that the definition of ‘suspicious act’ in the bill should explicitly protect these rights.

## **Definitions**

### **Defining ‘security’**

We gave careful consideration to the difficulty posed by the absence of a definition of ‘security’ in the bill, given that it aims to enhance maritime security. We understand that the term is referenced frequently in New Zealand legislation in a commercial, financial, or societal context but that it is defined only three times in a context similar to that of the bill—section 82(2) of the Immigration Act 1987, section 2(1) of the New Zealand Security Intelligence Service Act 1989, and section 133A(3)(b) of the Radiocommunications Act

1989. Because these definitions are tailored for and used in the context of the organisations that the Acts apply to, they are of little assistance for the purposes of this bill.

Furthermore, we note that the International Maritime Organization did not define 'security' in SOLAS or the ISPS Code.

On balance, and after careful consideration, we accepted that the meaning of 'security' is implicit in the context and purpose of the bill as reflected in SOLAS and the ISPS Code, and concluded that it was inappropriate to define.

### **Maritime security officer**

We recommend that the definition of 'maritime security officer' be amended to remove any possible misinterpretation.

As introduced, the bill states that the requirements for appointment will be specified by regulations under the bill. We expect regulations to be made. We are also advised that the requirement for an employee to be appointed to carry out maritime security functions may be inappropriate, for example, a member of the police would not be specifically appointed to conduct such functions but, nonetheless, could act as a maritime security officer.

### **Barges and other vessels that are not self-propelled**

We recommend that the definition of ship be amended to exclude a barge or lighter under tow and other vessels that are not self-propelled.

### **Powers of detention, search and seizure**

We carefully considered the powers of detention, search and seizure in the bill, in particular, clauses 50 to 56. Our concern was that these powers would be exercised properly and that proper safeguards were put in place to protect people who may be subject to these powers. We note that any unreasonable use of the powers would be subject to judicial review as a matter of law. We note that the Ministry of Justice considers that the bill complies with the Bill of Rights Act. The bill also contains provision for compensation where the seizure of an item is unduly maintained or delayed. We reiterate our concern to protect essential freedoms, balanced against the need for protection against the threat of terrorism or other threats to security.

## **Regulations empowering the extension of the Act**

We recommend that clause 74 be amended to require that the extension of the Act's provisions to ships and port facilities, other than those already specified in the Act, be made by Order in Council except in emergency situations.

The amendments we propose arise from issues drawn to our attention by the Regulations Review Committee in its report to us on the regulation-making powers contained in clause 74.

Clause 74 as introduced empowers the Minister, in certain circumstances, to extend the application of the Act by notice in the *Gazette*. The bill provides that the Act can only be extended where there is reasonable cause to believe that a security risk exists and the extension will enhance ship or port security or prevent terrorism. Clause 74 requires the Designated Authority to carry out a security assessment before a recommendation to extend the application of the Act is made to the Minister.

The Regulations Review Committee noted that the broad-ranging effect of clause 74 raised the question of whether the bill contains sufficient checks and balances on the exercise of the power to extend the application of the Act. As introduced, clause 74 allows an extension of the Act to be applied long term, without consultation with the parties affected, and in non-urgent or non-emergency situations.

The amendments we recommend to clause 74 aim to ensure that an exercise of the power to extend the bill's provisions is subject to adequate checks and balances, as detailed below.

### **Extension of Act by *Gazette* notice or Order in Council**

Where the extension is required because of an emergency we recommend that the Minister, on the recommendation of the Designated Authority, be allowed to extend the Act by notice in the *Gazette* provided that the notice expires after 90 days. We recommend new clause 74(5C) be inserted to provide that the notice may be replaced by an Order in Council. We recommend that new clause 74(4)(b) be inserted to require that if there is no emergency the Act may only be extended by Order in Council.

A notice by *Gazette* will be subject to the Regulations (Disallowance) Act 1989, to ensure that the exercise of the power to extend the Act is open to proper scrutiny.

Additionally, we recommend the bill be amended to provide that any Order in Council, if made on or before 30 June in any year, expires on 31 December of that year unless confirmed by Act of Parliament passed during that year. If an Order in Council is made on or after 1 July in any year, it expires on 31 December in the following year, unless expressly confirmed by Act of Parliament passed before the end of that following year.

We also recommend that the bill be amended to ensure that before any extension is made by Order in Council, the affected ships and port facilities must be consulted.

In relation to the above, we further recommend that a new clause 4(1)(c) be inserted drawing attention to the ability for the bill to be extended to other ships and port facilities under clause 74.

### **Urgent circumstances**

We recognise that although no immediate need exists to apply the Act to ships and facilities not covered by the ISPS Code, this may change with little or no warning. Flexible and quick processes to extend the Act in emergency situations are therefore essential. We envisage that any extension of the Act under clause 74 would be specific and targeted to a particular risk. Only if an urgent response is necessary would the Minister be authorised to exercise the power to extend the Act by notice in the *Gazette*. Any extension to the *Gazette* notice, and any extension in non-urgent or non-emergency circumstances, must be subject to the proper scrutiny for regulation making powers.

### **Detention of persons**

We recommend clause 45 be amended to stipulate expressly that the force used by an authorised person to remove or detain a person who fails or refuses to leave a port security area after being warned must be 'reasonable'.

It was suggested that clause 45(5), which states that a detained person must 'as soon as maybe practicable' be delivered to a member of the police, may result in indefinite detention. This provision is intended to cover situations where a member of the police may not be in or near a port security area when a person fails to comply with clause 45. We were concerned to ensure that this provision is interpreted strictly. We were advised that the wording in the bill would

not allow for indefinite detention under the Bill of Rights Act or the common law.

### **Mobile offshore drilling sites**

We recommend clause 4 be amended to classify a mobile offshore drilling unit as a ship, whether on location or not, and a fixed or floating platform as a port facility.

Currently, clause 4 provides that the bill applies to mobile offshore drilling units, whether on location or not, and to fixed and floating platforms within New Zealand's continental waters. The amendment we recommend will make clear how the bill will apply to mobile offshore drilling units and to fixed and floating platforms. In turn, this will enable clause 15 relating to equivalent security measures to be applied to mobile offshore drilling units and to fixed and floating platforms. It will also clarify how the bill will apply to fixed platforms like Maui, and floating platforms like the Whakaropai.

### **Ship-to-ship activity permitted in search and rescue operations**

We recommend clause 14 be amended to make explicit that a ship covered by an alternative security agreement can participate in search and rescue activities associated with ships not covered by such an agreement.

Currently, clause 14 prohibits any such ship-to-ship activity and serious penalties would arise from a breach of this provision. It was suggested that such a prohibition, which does not allow for search and rescue activities, contradicts international maritime law. We consider the bill should not prohibit ship-to-ship activity in search and rescue operations, regardless of whether both ships are covered by the alternative security agreement envisaged.

### **Declaration of security**

We recommend clause 13 be amended to allow for a declaration of security to be made between the ship and the port facility without the approval of the chief executive. This will also give rise to consequential amendments to clauses 9, 12 and 13. In particular, we recommend clause 13 be amended to permit a ship security officer or a master to lodge a request with the port facility security officer or with the master of another ship or its ship security officer, before or

during a ship-port interface. Similarly, a port facility security officer could lodge a request with the master of a ship or with its ship security officer.

We do not agree with the view of some submitters that the company security officer should be allowed to lodge a request for a declaration of security, or that the port facility security officer should be required to notify the company security officer if any such declarations are made. Officials advised us that the ISPS Code is clear that the master is responsible for the safety and security of a ship. As a declaration is between the port facility and the ship concerned and the majority of company security officers will be based overseas, significant administrative and operational complexities would result if the role were transferred to the company security officer.

### **International ship security certificate**

We recommend clause 9 be amended to require the chief executive to issue International Ship Security Certificates (and interim certificates) and to carry out verification of certificates. The Ministry of Transport advised us that while the detail regarding these certificates and verifications will be set out in regulation, the bill requires a high-level reference to this important function of the chief executive.

### **Control measures to be reasonable**

We recommend clause 30 be amended to ensure that any control measure imposed should be reasonable, and of the minimum severity and duration necessary to rectify or mitigate any non-compliance. We note that paragraph 4.43 Part B of the ISPS Code contains appropriate wording which should be included in clause 30.

### **Liability to meet costs**

We recommend clause 32(1)(a) be amended to clarify that a company (that is, the owner or operator of a ship) is liable for costs arising if a ship is detained, including costs met by the port facility operator. This recommendation is in response to concerns raised by submitters that costs covered by the Designated Authority include costs sustained by the port facility operator resulting from any detention of the ship.

We also recommend amendments to clause 32 because we do not consider the wording appropriate. The use of the words 'frivolous

and vexatious' describe a person's actions, and are not suitable to describe the nature of the information that the person may provide.

### **Conflict between safety and security**

We recommend clause 36 be amended to clarify the process to be followed should a conflict arise between safety and security concerns. This is to ensure that when the chief executive is informed of such a conflict by the master, the chief executive meets with the master to agree on the nature of the conflict as a basis for determining the appropriate resolution. Where the conflict involves implications for the security of a port facility, the port facility security officer is to be involved in both processes.

### **Port facility operators**

We recommend clause 43(1)(a) be amended to remove 'port facility operator' from the list of possible maritime security organisations.

Otherwise, employees of or contractors to a private company may be able to exercise powers, including the screen, search, detain and arrest powers outlined in Part 3. We do not consider this situation acceptable. These powers should only be exercised by the appropriate Government employees.

### **Aviation Security Service**

We recommend clause 43 be amended to enable the Aviation Security Service to be empowered to conduct maritime security under the bill.

### **Designation of port security areas in urgent circumstances**

We recommended clause 44 be amended to state that a designation by the Minister or chief executive may take effect on a date before the notice is published in the *Gazette*. Where necessary, a port security area may be designated and that designation takes effect on the same date as the direction made under section 46(1) or 47(1). In an urgent situation clause 48 allows for screening and searching to begin before the *Gazette* notice is published. However, if a port security area has not yet been designated under clause 44, then without the proposed change, the screening and searching could not occur in an area where it may be required (that is, a 'quarantined'



area within the port), until the port security area has been designated by *Gazette* notice.

### **Consultation with the New Zealand Defence Force**

We recommend clauses 46(3)(b) and 47(3) be amended to include the New Zealand Defence Force as one of the parties to be consulted (where appropriate) before a direction is issued. Currently, clauses 46(3) and 47(3) require consultation with certain organisations, before the Minister or chief executive can direct screening and searching take place. We consider that where screening and searching may take place on land owned or operated by the New Zealand Defence Force, it would be appropriate to ensure they are consulted.

### **Authorisation to take weapons**

We recommend that clause 49(3) be deleted to remove an anomaly. As currently drafted, clause 49(3) allows a ship security officer to authorise a passenger or crew member to take a weapon, explosive or certain dangerous devices through a port security area or port facility without the permission of the port facility security officer. We consider this may represent a security risk. Port security is the responsibility of the port operator and the port facility security officer, and a ship security officer should not be able to disturb port security.

### **Screening and searching powers**

We recommend that clause 50 be amended to cover situations where screening alone cannot provide assurance that an offence against the Act has not been or is not likely to be committed. This amendment is intended to apply to situations where the screening device may be malfunctioning or where a positive identification of an object is not possible on the x-ray screen and a search of items is required.

### **Offence to impersonate or obstruct an authorised person**

We recommend new clause 71A be inserted to make it an offence to impersonate or obstruct an authorised person. This would be similar to section 55 of the Civil Aviation Act 1990, which specifies that it is an offence to impersonate or obstruct an authorised person.

### **Enforcement of the exclusion zone**

We recommend clause 60 be amended to provide that an authorised person may, with reasonable force and if necessary to protect the exclusion zone, either remove, or prevent from leaving a person or vessel that has entered or attempted to leave the exclusion zone without authority.

### **Maritime security officers**

We recommend that the definitions of ‘authorised person’ and ‘maritime security organisation’, be amended to allow a maritime security officer to enforce a port security area under clause 45 and an exclusion zone under clause 60. As currently drafted, the bill does not permit a maritime security officer who is not a member of the police or a Customs officer to enforce a port security area or an exclusion zone.

### **Competence of port facility and ship security officers**

We recommend clause 72 be amended to give the Designated Authority the ability to approve training courses. This will enable the Designated Authority to approve courses developed or approved by the International Maritime Organization. Similarly, training courses offered by other organisations that have earned a reputation for quality could be approved. We note that proposed regulations under the bill includes the Part B provisions of the ISPS Code that lists the knowledge that appointees to both positions should have, but would not require that they pass pre-qualification vetting by the chief executive.

### **Identification systems**

We further recommend clause 72 be amended to enable identification systems, including those for seafarers, to be set down by regulation. We are aware that the International Labour Office adopted in June 2002 an updated Convention on Seafarers’ Identity Documents (ILO 185) in response to concerns about security. Also, a submitter advised us that work was being done on an international initiative that would include photo identification. The amendment proposed would permit such initiatives, and others, to be introduced if they were assessed to enhance maritime security.

## **Offences and penalties for amendments to Maritime Rules**

We recommend that the Maritime (Offences) Regulations be consequentially amended to provide for penalties for non-compliance with the Maritime Rules which incorporate amendments to the SOLAS Convention relating to a ship's equipment. We are advised that the penalty levels proposed at \$30,000 for the ship company and \$5,000 for individuals are consistent with the bill and the Maritime (Offences) Regulations. There should be no infringement fee for these offences.

### **Key issues raised by submitters**

A number of issues raised by submitters that, after our careful consideration, have not resulted in any amendments to the bill, are discussed below.

#### **Company security officer**

Some submitters requested the inclusion in the bill of the position of company security officer, which is referred to in the mandatory Part A of the ISPS Code. It was also suggested that functions additional to those outlined in the ISPS Code be assigned to the position. The Ministry of Transport acknowledged that the position is important and will be specified, along with other positions, by regulations made under the bill. The bill contains minimal detail on operational functions because it will enact an enabling framework upon which the amendments to SOLAS can be constructed primarily by regulation. Combined, the bill and the regulations will contain all the mandatory provisions of SOLAS, along with some guidance material from Part B. We are advised that the International Maritime Organization is expected to expand or alter these functions as the result of experience gained in the operation of the SOLAS amendments. Regulations will be adjusted accordingly should the need arise. We accept, therefore, that the role and requirements of the company security officer would be appropriately specified under regulations to be made under the bill.

#### **Point of contact for ship**

Submitters suggested that the primary point of contact for the ships should be the company security officer, as the master already has other important responsibilities. This proposal could pose logistical

problems, given that foreign-flagged SOLAS ships, whose company security officers are not usually on board, predominantly carry New Zealand's external maritime trade. Further, functions of the position relate largely to oversight, administration and management, not to the interfaces between the chief executive or port facility and the ship. The ISPS Code references to the 'ship' in the context of these interfaces are reflected in the bill by references to the master. In view of the above, we consider that the master is primarily responsible for the safety and security of the ship and therefore is best placed to be responsible for ship-to-shore communication.

### **Whole-of-Government approach**

Submitters advocated that a key feature in complying with SOLAS in the most cost-effective manner possible is through the adoption of a whole-of-Government approach. It was submitted that the Designated Authority should be required to work closely and cooperatively with other border control agencies to ensure that requirements and standards are consistent and information is shared.

We note the submitters concerns, and expect government agencies to communicate and to work cooperatively on the development of maritime security requirements.

### **Compliance and direct costs**

We understand that the direct costs of implementation requirements under the bill will not be known until the risk assessments and security plans have been completed. It was suggested that they would be much higher than estimated. It was also suggested that the costs incurred by the Government in complying with the international maritime obligations should be borne from general taxation revenue, as they are activities in the national interest.

We acknowledge the concerns expressed by submitters. However, we are also aware of the repercussions to New Zealand's overseas trade should we fail to comply with the international maritime security regime. We note the comment that compliance costs will depend on the separate security response that each ship and port facility will need to make, and note that this makes it difficult to provide any meaningful broad and general indication of such costs. We are advised by the Ministry of Transport that every effort has been made to reduce compliance costs.

### **Domestic voyages**

It was suggested that the term 'international voyages' required definition, because the bill does not state whether it would apply to foreign registered ships operating domestically in New Zealand, particularly inter-island ferries. It was also suggested that the bill be extended to cover all foreign-flag fishing vessels and vessels manned by foreign nationals.

SOLAS amendments do not automatically cover inter-island ships or coastal traders because they are not normally engaged on international voyages. Where such ships are registered overseas, the authorities in the country of registration will determine how such ships are dealt with if they engage in an occasional international voyage. In view of the above, we do not consider that the bill requires amendment to cover ships not specified by SOLAS and the ISPS Code.

### **Commencement date**

Submitters pointed out the 1 July 2004 deadline for implementation would require companies to lodge their draft port facility security plans in good time to enable the Designated Authority to approve them by 31 March 2004. We are aware that it is recognised internationally that the time frame is compressed. We note the Ministry of Transport's advice that the approach being taken under the bill will ensure that the deadline is met. We expect the Designated Authority to process the draft port facility security plans in a timely manner to enable companies to put appropriate measures in place before the 1 July 2004 deadline.

### **Harbour works**

One submission stated that port companies which have inherited leases from former Harbour Boards retain the right to resume the land for 'harbour works' as defined under the repealed Harbours Act 1950. The submission suggests that the definition of 'harbour works' would not include the resumption or purchase of land that may be required for security purposes, and so should be extended to expressly include such purposes. Concern was also expressed that a port company may not be able to re-acquire any areas needed by the deadline of 1 July 2004 if the suggested change is not made.

As yet, no port facility security assessment has indicated that it is necessary for a port company to resume or acquire land in order for the company to have an adequate port facility security plan prepared

and approved, as required by the bill. Furthermore, the suggested amendment would give rise to implications for the commercial and land-holding rights of any party that may be affected by such a change to the legislation governing these relationships with a port company.

## **Appendix**

### **Committee process**

The Maritime Security Bill was referred to the committee on 10 September 2003. The closing date for submissions was 17 October 2003. We received and considered 13 submissions from interested groups and individuals. We heard 8 submissions. Hearing of evidence took one hour and 25 minutes and consideration took two hours and 36 minutes.

We received advice from the Ministry of Transport and the Maritime Safety Authority. The Regulations Review Committee reported to the committee on the powers contained in clause 74.

### **Committee membership**

Dianne Yates (Chairperson)

Shane Ardern (Deputy Chairperson)

Steve Chadwick

Hon David Cunliffe

Lindsay Tisch

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## Key to symbols used in reprinted bill

### As reported from a select committee

#### **Struck out (unanimous)**

<b>Subject to this Act,</b>	Text struck out unanimously
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#### **New (unanimous)**

Subject to this Act,	Text inserted unanimously
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*{Subject to this Act,}* Words struck out unanimously

Subject to this Act, Words inserted unanimously

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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.

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**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 or continental waters of New Zealand that serve a ship~~(, or a mobile offshore drilling unit.)~~ of a type specified in **paragraph (a)**; and 20

**Struck out (unanimous)**

- (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. 25

**New (unanimous)**

- (c) ships and port facilities identified under **section 74**.

(2) This Act does not apply to—

- (a) warships; or
- (b) naval auxiliaries; or 30
- (c) other ships that are—
  - (i) owned or operated by the Crown; and

- (ii) used on (*Government*) non-commercial govern-  
ment service; or
- (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

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## 5 Interpretation

In this Act, unless the context otherwise requires,—

**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

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**certificate** means a valid International Ship Security Certifi-  
cate issued under (*section 19.2 of the Code*) **section 9(1)(ka)** or a  
valid Interim International Ship Security Certificate issued  
under (*section 19.4 of the Code*) **section 9(1)(ka)**

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**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 reso-  
lution 2 of the Conference of Contracting Governments to the  
Convention, and as may be amended by the International  
Maritime Organization, provided that—

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- (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 amend-  
ment procedures applicable under the Annex of the  
Convention other than Chapter I of that Annex; and
- (b) amendments to Part B of the Code are adopted by the  
Maritime Safety Committee of the International Mari-  
time Organization in accordance with its Rules of  
Procedure

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**company** means the owner of the ship or any other organisa-  
tion 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

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

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

**high-speed craft** means a craft capable of a maximum speed in metres per second equal to or exceeding—

$$3.7\sqrt{0.1667}$$

where  $\nabla$  is the displacement corresponding to the design waterline ( $\text{m}^3$ )

**in writing** means printed, typewritten, or otherwise visibly represented, copied, or reproduced, including by fax or email or other electronic means

**International Safety Management Code** means the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted on 4 November 1993 by the International Maritime Organization by Resolution A.741(18), as amended from time to time by the International Maritime Organization

**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*) carries out maritime security functions

**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***)

**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 5

**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 10

**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 15

**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 20

**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 25

**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; and includes fixed and floating platforms 30

**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 35
  - (ii) any other person who is, for the time being, responsible for the management of the port facility

**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 5

**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 10

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

**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*) 15

**security incident** means any suspicious act or circumstance threatening the security of a— 20

- (a) ship, including a (*mobile offshore drilling unit and*) high-speed craft; or
- (b) port facility; or

**Struck out (unanimous)**

- (c) fixed and floating platform; or
- (d) mobile offshore drilling unit; or 25

- (e) ship-port interface; or
- (f) ship-to-ship activity

**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 30

**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 35

**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

5

**ship** means every description of self-propelled boat or craft used in navigation, (*whether or not it has any means of propulsion;*) and includes—

**Struck out (unanimous)**

(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:

10

(c) a submarine or other submersible:

(d) a high-speed craft:

(e) a mobile offshore drilling unit (*that is not on location*)

15

**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*)provision 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

20

**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

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**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

30

**ship's administration** means the government of the State in which the ship is registered



**New (unanimous)**

**suspicious act** does not include the lawful exercise of any right to demonstrate, protest, or strike.

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

- 6 Act binds the Crown** 5  
This Act binds the Crown.
- Part 2**  
**Ship and port facility security**  
*Designated Authority*
- 7 Appointment of Designated Authority** 10  
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—
- (a) the chief executive undertakes the activities that the Designated Authority considers necessary for the effective implementation of the Code; and 15
  - (b) its decisions and the actions of the chief executive are consistent with the Convention and the Code.
- 9 Functions and duties of Designated Authority** 20
- (1) 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—
      - (i) port facility security assessments are carried out, reviewed, and approved in accordance with **section 38**; and 25
      - (ii) port facility security plans are developed, implemented, and maintained in accordance with **section 39** and approved in accordance with **section 40**; and 30
    - (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
- (ii) ship security plans are developed, implemented, and maintained in accordance with **section 21** and approved in accordance with **section 22**; and 5
- (c) specifies, in accordance with **section 16**, the appropriate security level for—
  - (i) port facilities within the territorial limits or continental waters of New Zealand; and 10
  - (ii) ships—
    - (A) registered in New Zealand; or
    - (B) using port facilities within the territorial limits or continental waters of New Zealand; or 15
    - (C) conducting ship-to-ship activities within New Zealand continental waters; and

**Struck out (unanimous)**

- (iii) fixed and floating platforms within New Zealand continental waters; and
  - (iv) mobile offshore drilling units that are on location within New Zealand continental waters; and 20
- (d) approves—
    - (i) any ship security plan in accordance with **section 22**; and
    - (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**)~~**section 23**; and 25
  - (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 30
  - (f) determines, in accordance with **section 12**,—
    - (i) whether a declaration of security is required; and
    - (ii) the requirements for any declaration of security; and 35
  - (g) approves—

- (i) any port security assessment carried out by a recognised security organisation in accordance with **section 38**; and
- (ii) any port facility security plan in accordance with **section 40**; and 5
- (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
- (h) exercises the control measures specified in **section 30(1)** or takes 1 or more steps under **section 33(1)(b)**; and 10
- (i) for the purpose of providing further information, publishes standards and codes of practice; and
- (j) authorises recognised security organisations in accordance with regulations made under this Act; and 15
- (k) undertakes any other functions or duties specified in regulations made under this Act; and

**New (unanimous)**

- (ka) issues certificates; and
  - (kb) carries out the verification process necessary to issue certificates; and 20
  - (kc) issues continuous synopsis records; and
- (l) carries out any lawful direction of the Designated Authority.

**New (unanimous)**

- (2) In accordance with regulations made under this Act, the Designated Authority may approve— 25
  - (a) training courses relevant to the Convention or the Code; and
  - (b) the providers of those training courses.

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

*Chief executive***10 Functions and duties of chief executive**

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.

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**11 Chief executive may delegate certain functions and powers**

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(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.

(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:

15

- (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
  - (iii) any port facility security plan; or
  - (iv) any amendment to an approved port facility security plan; and

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(c) exercising the control measures specified in **section 30(1)** or taking a step under **section 33(1)(b)**; and

(d) specifying the requirements for a declaration of security.

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(3) A delegation—

- (a) must be in writing; and
- (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

35

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- (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.

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

5

## 12 When declaration of security required

### Struck out (unanimous)

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
- (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.

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### New (unanimous)

The chief executive may require a declaration of security if he or she is satisfied that the ship–port interface or ship-to-ship activity poses a risk to persons, property, or the environment.

Compare: Code, Part A s 5

## 13 Request for declaration of security

20

- (1) The master of a ship or the ship security officer may lodge a request with the ~~(chief executive)~~ port facility security officer, or with the master of another ship or the ship security officer of another ship for a declaration of security, or the modification of a declaration of security, if—
  - (a) ~~(that)~~ the ship is operating at a higher security level than the port facility or the other ship with which it is interfacing or intends to interface; or
  - (b) ~~(that)~~ the ship—
    - (i) is registered in a State that is a party to the Con-

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30

- (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)* the ship, or the port facility it is using or intends to use, has occurred; or
- (d) that ship is at a port that is not required to have and implement an approved port facility security plan.

**Struck out (unanimous)**

- (e) that ship is conducting ship-to-ship activities with another ship that is not required to have and implement an approved ship security plan.

**New (unanimous)**

- (1A) The master of a ship or the ship security officer may lodge a request with the master of another ship for a declaration of security or the modification of a declaration of security if that ship is conducting ship-to-ship activities with that other ship, being a ship that is not required to have and implement 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)* or during a ship–port interface, lodge a request with the master of a ship or the ship security officer for a declaration of security, or the modification of a declaration of security, if—
  - (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 or intends to interface.

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.

- (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 unless that ship-to-ship activity is part of a search and rescue operation.
- (3) The chief executive must review each alternative security agreement— 5
- (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 10
- (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— 15
- (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. 20

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)* this Act or regulations made under this Act if those security measures are at least as effective as *(the specified measures)* those prescribed. 25 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)* this Act or regulations made under this Act if those security measures are at least as effective as *(the specified measures)* those prescribed. 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.  
Compare: Annex to the Convention, Chapter XI-2 r 12 5
- 16 Chief executive must specify security levels for ships and port facilities**  
The chief executive must—
- (a) specify, as security level 1, security level 2, or security level 3, the security level of every— 10
- (i) New Zealand ship; and
- (ii) port facility within the territorial limits or continental waters of New Zealand; and
- (b) change the security level specification if the chief executive considers it necessary to reduce the risk of a security incident; and 15
- (c) periodically review, and update as necessary, any security level that the chief executive specifies.
- Compare: Annex to the Convention, Chapter XI-2 r 3; Code, Part A ss 4.1, 7; 1994 No 104 s 55(8) 20
- 17 Chief executive must ensure provision of security level information**
- (1) The chief executive must ensure the provision of—
- (a) security level information to— 25
- (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
- (b) updated security level information to any— 30
- (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
- (iii) port facility within the territorial limits of New Zealand if the port facility's security level has been changed; and 35
- (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
  - (iii) every affected port facility within the territorial limits of New Zealand; and 5
- (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)

### **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— 15
- (a) each approved port facility security plan; and
  - (b) any amendment to an approved port facility security plan; and
  - (c) each approved ship security plan of a New Zealand ship to which this Act applies; and 20
  - (d) any amendment to an approved ship security plan of a New Zealand ship to which this Act applies.
- (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— 25
- (a) made to that plan or that amendment to a plan; and
  - (b) submitted to him or her for approval.

Compare: Code, Part A s 4.4

### *Ship security* 30

### **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)* in any requirements specified in regulations made under this Act. 5 10
- (2) A company may engage a recognised security organisation to carry out the security assessment of a New Zealand ship.
- (3) A ship security assessment must comply with any requirements prescribed in regulations made under this Act.

### New (unanimous)

- (4) The company of a New Zealand ship must ensure that each ship security assessment is— 15
- (a) periodically reviewed and updated, taking into account changing threats or minor changes in the ship; and
- (b) if major changes take place to the ship, reviewed and updated as soon as practicable. 20

Compare: Code, Part A s 8

## 21 Ship security plans

### Struck out (unanimous)

- (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. 25

### New (unanimous)

- (1) The company of a New Zealand ship must—

## New (unanimous)

- |  |   |   |
|--|---|---|
|  | <ul style="list-style-type: none"> <li>(a) develop, implement, and maintain a ship security plan for the ship based on the ship security assessment of that ship; and</li> <li>(b) update that ship security plan as required by a review of that plan under <b>section 20(4)</b>.</li> </ul> | 5 |
|--|---|---|
- 
- (2) A recognised security organisation may prepare the New Zealand 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. 10
  - (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— 15
    - (a) security assessment; or
    - (b) security plan; or
    - (c) *(ship)* security plan amendments.
- 22 Ship security plan approval** 20
- 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— 25
    - (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** 30
- (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)* 35

- and Part A of the Code) this Act or regulations made under this Act; and*
- (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)**. 5
- (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. 10
- (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. 15
- 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. 20
- (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. 25
- (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**. 30
- 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))section 22**; and 35
- (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. 5
- (2) Before a master takes responsibility for a ship, the ship's company must ensure that the ship has the required security alert system. 10
- (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. 15
- (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— 20
- (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

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## **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. 30
- (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 35
  - (b) co-operate with the chief executive (*in any other respect if the chief executive is acting lawfully*).

- 29 (Information) Advice required of ships intending to enter ports**
- (1) The master must keep a record of the *(information) advice* specified in **subsection (2)** for the last 10 calls at port facilities.
- (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) advice on the following matters* to the chief executive to ensure compliance with this Act:
- (a) *(evidence that) whether or not* the ship possesses a certificate; and 10
- (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 15
- (d) *(evidence of) whether or not* 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 taking into account any requirements prescribed in regulations made under this Act; and 20
- (e) *(evidence that) whether or not* the appropriate ship security procedures were maintained during any ship-to-ship activity during the period of its last 10 calls at port taking into account any requirements prescribed in regulations made under this Act; and 25
- (f) any other practical security-related *(information) matters*, excluding details of the ship security plan, taking into account (the guidance given in Part B of the Code) any requirements prescribed in regulations made under this Act. 30
- (3) If the chief executive requests *(confirmation of the information) evidence to confirm the advice* specified in **subsection (2)**, the master or the company must provide confirmation that is acceptable to the chief executive. 35
- (4) If a master or company declines to provide the *(information) advice* or confirmation specified in **subsection (2) or subsection (3)**, the chief executive may deny the ship entry to the port.

## New (unanimous)

Compare: Annex to the Convention, chapter XI-2 r 9

**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, as set out in regulations made under this Act, 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 reasonable, and of the minimum severity and duration necessary to rectify or mitigate any non-compliance; and 5
  - (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. 10
- (5) If a ship is expelled from a port under **subsection (1)(e)**,—
- (a) the chief executive may require the ship to proceed to a specified location within New Zealand’s territorial sea or internal waters; and 15
  - (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*) do so; and 20
  - (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— 25
    - (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

- (1) The chief executive may inspect ship security plans to carry out control measures if— 30
- (a) the chief executive has (*reasonable*) clear 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) this Act or regulations made under this Act; and 35
  - (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—
- (i) the master; or
  - (ii) the ship's administration, if the State is a party to the Convention. 5
- (2) The chief executive may only have access to the specific sections of the ship security 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— 10
- (a) the chief executive; and
  - (b) the ship's administration, if the State is a party to the Convention. 15
- (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. 20
- 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, including any costs that the port facility operator has met as the result of the detention; and 25
  - (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. 30
- (2) The Designated Authority is liable to pay to the company compensation for any loss resulting from unduly detaining or unduly delaying the ship.

#### Struck out (unanimous)

- (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 35

**Struck out (unanimous)**

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)**.

**New (unanimous)**

- (3) The complainant is liable to indemnify the Designated Authority for all costs for which the Designated Authority is liable under **subsection (2)**, if— 5
- (a) a ship is detained under **section 30(1)(c)** on the information of a complainant; and
  - (b) the information is subsequently found to be false; and
  - (c) the complainant knew that the information was false at the time he or she provided it. 10
- (4) Despite **subsection (3)**, the complainant is not liable to indemnify the Designated Authority for any costs arising from the detention of a ship incurred on or after a date 2 days after the Designated Authority determines that the information provided by the complainant was false. 15

Compare: 1994 No 104 s 56

**33 Steps to take if ship does not comply with Act**

- (1) If, after receipt of the *(information)* advice or confirmation specified in **section 29(2) and (3)**, the chief executive has *(reason)* clear grounds, as set out in regulations made under this Act, to believe that a ship is not in compliance with this Act, the chief executive— 20
- (a) must attempt to establish communication with the master and the ship's administration to rectify the non-compliance; and 25
  - (b) if the communication does not result in rectification, may take 1 or more of the following steps:
    - (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)**: 30

- (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— 5
- (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 10
- (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. 20
- (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 reasonable, and of the minimum severity and duration necessary to rectify or mitigate any non-compliance; and 25
- (b) may additionally or alternatively include other lesser administrative or corrective measures.
- (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)**,— 30
- (a) all possible efforts must be made to avoid a ship being unduly detained or delayed; and
- (b) a person may be allowed to leave the ship, or access to the ship must be allowed, for—
- (i) humanitarian reasons; or 35
- (ii) emergency reasons; or
- (iii) security purposes.
- (6) On receiving the *(information)* notice 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 40

services to that ship if the chief executive directs the port facility operator to *(cease providing services to that ship)* do so.

- (8) A step taken under **(subsection (1))subsection (1)(b)** 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. 5

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** 10

If the master withdraws the intention to enter the port, **sections 29(2) and (3) and 33(1)** do not apply.

**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— 15
- (a) advise, in writing, the ship's administration of—
- (i) the control measure imposed or step taken; and
- (ii) the reasons for imposing the control measure or taking the step; and 20
- (b) provide written notice, specifying when the control measure was imposed or the step taken, to—
- (i) the International Maritime Organization; and
- (ii) either— 25
- (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. 30
- (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; 35
- 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
- (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— 5
- (a) the chief executives of—
- (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 10
- (v) any other department of State whose operations may, in the opinion of the chief executive, be 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 15
- 36 Master's responsibilities for ship safety and security**
- (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 20
- (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. 25
- (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— 30
- (a) must give effect to those requirements necessary to maintain the safety of the ship; and
- (b) may implement temporary security measures commensurate with the prevailing security level; and
- (c) must inform the chief executive as soon as practicable; and 35
- (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. 40

**New (unanimous)**

- |      |   |    |
|------|---|----|
| (3A) | If the chief executive is informed under <b>subsection (3)(c)</b> , the chief executive must meet with the master of the ship to agree—   |    |
|      | (a) the nature of the conflict; and   |    |
|      | (b) the most appropriate resolution of the conflict.  | 5  |
| (3B) | If the conflict identified under <b>subsection (3)</b> involves a port facility, the master and the chief executive must consult the port security officer of that port facility before taking the steps specified in <b>subsection (3)</b> . |    |
| (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*

- |           |   |    |
|-----------|---|----|
| <b>37</b> | <b>Duties of port facility operators</b>  |    |
| (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.
- (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

- (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.
- (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.
- (4) (A) The chief executive must ensure that each port facility security assessment (must) is—
  - (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)* in the port facility, *(be)* reviewed and updated as soon as practicable.
- (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—
  - (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—
- (a) a summary of how the assessment was conducted; and
  - (b) a description of each vulnerability found during the assessment; and 5
  - (c) a description of countermeasures that could be used to address each vulnerability.
- (8) The report must be protected from unauthorised access or disclosure. 10
- 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 15
  - (b) update that port facility security plan as required by a review of that plan under **section 38(4)**; and
- New (unanimous)**
- (c) protect that port facility security plan from unauthorised access or disclosure.

(1A) A port facility security plan— 20

  - (a) must—
    - (i) be adequate for the ship-port interface; and
    - (ii) provide for security level 1, security level 2, and security level 3; and
  - (b) may cover more than 1 port facility if— 25
    - (i) the operator, location, operation, equipment, and design of those port facilities are similar; and
    - (ii) the chief executive agrees.
- (2) A recognised security organisation may prepare the port facility security plan for a port facility. 30
- (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.



**40 Port facility security plan approval**

The chief executive must approve a port facility security plan, or *(its amendments)* any amendment to the plan, if it—

- (a) is consistent with—
  - (i) the purposes of this Act; and 5
  - (ii) the security assessment for that port facility; and
- (b) complies with *(the)*—
  - (i) the requirements of this Act; and
  - (ii) requirements prescribed in regulations made under this Act. 10

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,— 15
  - (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)* this Act or regulations made under this Act; and
  - (b) may not be implemented unless the amendment or change is given written approval by the chief executive. 20
- (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. 25 30

**42 Review of decision not to approve port facility security plans**

- (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. 35
- (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.

- (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**.

5

### **Part 3**

#### **Preventive security measures**

#### **43 Appointment of maritime security organisations**

- (1) 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*) department or Crown entity as a maritime security organisation:
- (b) assign particular port security functions to a government department or Crown entity appointed as a maritime security organisation.

10

15

#### **New (unanimous)**

- (2) For the purposes of this section, **Crown entity** includes the Aviation Security Service established under the Civil Aviation Act 1990.

#### **44 Designation of port security areas**

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- (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.

#### **Struck out (unanimous)**

- (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*.

25

**New (unanimous)**

- (2) A designation made under **subsection (1)** takes effect on the date specified in the notice which may be a date before the notice is published in the *Gazette*.
- (3) A designation made under **subsection (1)** by—
- (a) the Minister may be revoked, in whole or in part, or amended by the Minister by notice in the *Gazette*: 5
  - (b) the chief executive may be revoked, in whole or in part, or amended by the chief executive by notice in the *Gazette*.

Compare: 1990 No 98 s 82

10

**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. 15
- (2) Every person in a port security area must, on the request of an authorised person or a port facility security officer, 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. 20
- (3) If a person fails or refuses to provide an authorised person or a port facility security officer with satisfactory evidence of his or her name and address when requested by the authorised person or port facility security officer, or if a person fails to satisfy the authorised person or port facility security officer that he or she is authorised to be there, the authorised person or port facility security officer may order that person to leave the port security area. 25
- (4) An authorised person or a port facility security officer, 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 immediately after having been ordered by an authorised person or a port facility security officer to do so under **subsection (3)**. 30 35

**Struck out (unanimous)**

- (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. 5

**New (unanimous)**

- (5) A person who refuses to comply with **subsection (2)** or **subsection (3)** and, after being warned that he or she commits an offence by not complying, persists in its commission,— 10
- (a) may be detained, with reasonable force (if necessary), by an authorised person or a port facility security officer; and
- (b) in that case he or she must be delivered to a member of the police as soon as practicable.

- (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. 15  
20

- (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— 25
- (a) may enter a port security area; and
- (b) if requested by an authorised person or a port facility security officer, must present his or her warrant or certificate of employment to the authorised person or port facility security officer.

Compare: 1990 No 98 s 84

**46 Powers and duties of Minister to require screening and searching** 30

- (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*,—
- (a) to screen—
    - (i) any person boarding a ship; and
    - (ii) any thing to be carried by a ship; and 5
    - (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— 10
    - (i) any person boarding a ship; *(or) and*
    - (ii) any thing to be carried by a ship; *(or) and*
    - (iii) any thing in a port security area; *(or) and*
    - (iv) any person (including that person's personal effects) or vehicle entering, or within, a port security area; and 15
    - (v) any (as specified in the *Gazette* notice)—
      - (A) ship or class of ship; or
      - (B) *(port facility or class of port facility)area.*
  - (2) The *Gazette* notice must specify— 20
    - (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
    - (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— 25
    - (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)* Crown entities, and the New Zealand Defence Force. 30
  - (4) Nothing in this section empowers the Minister to exercise the powers of the chief executive under **section 47.** 35

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*,— 5
- (a) to screen—
- (i) any person boarding a ship; *(or) and*
  - (ii) any thing to be carried by a ship; and
  - (iii) any thing in a port security area; and 10
  - (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— 15
- (i) any person boarding a ship; *(or) and*
  - (ii) any thing to be carried by a ship; *(or) and*
  - (iii) any thing in a port security area; *(or) and*
  - (iv) any person (including that person's personal effects) or vehicle entering, or within, a port security area; and 20
  - (v) any (as specified in the *Gazette* notice)—
    - (A) ship or class of ship; or
    - (B) *(port facility or class of port facility)area.*
- (2) The *Gazette* notice must specify— 25
- (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)* Crown entities, and the New Zealand Defence Force. 30 35

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— 40

- (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)) the master of the affected ship and the operator of the affected port facility before that date. 5
- (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 10
- (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*,— 15
- (a) the direction expires 28 days after that date unless the notice is published in the *Gazette* within 28 days of that date; and
- (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,— 20
- (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 25
- (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. 30
- (5) A direction may,—
- (a) if made under **section 46(1)**, be rescinded by the Minister; or 35
- (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. 40
- 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— 5
- (a) a firearm, or any other dangerous or offensive weapon or instrument of any kind; or 10
- (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— 15
- (i) the ship; or
- (ii) persons on board the ship; or
- (iii) the port security area; or
- (iv) persons in the port security area. 20
- (2) A person who has obtained the written permission of a ship security officer or a port facility security officer must, upon the request of an authorised person, present the written permission to that authorised person.

**Struck out (unanimous)**

- (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. 25
- (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— 30
- (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 35
- (b) is dismantled.

Compare: 1972 No 137 s 11



**50 Screening and searching powers**

- (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 5
    - (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 10
  - (b) if *(there are) the screening device or mechanism that is used malfunctions or produces indeterminate results or produces results that provide reasonable grounds to believe that an offence against this Act has been, is being, or is likely to be committed, search—* 15
    - (i) any person boarding a ship; *(or) and*
    - (ii) any thing to be carried by a ship; *(or) and*
    - (iii) any thing in a port security area; *(or) and*
    - (iv) any person (including that person's personal effects) or vehicle entering, or within, a port security area; *(or) and* 20
    - (v) any ship or class of ship specified in a *Gazette* notice issued under **section 46 or section 47**.

**Struck out (unanimous)**

- (vi) any port facility or class of port facility specified in a *Gazette* notice issued under **section 46 or section 47**. 25

**New (unanimous)**

- (1A) Despite **subsection (1)**, a maritime security officer may only exercise the powers in **subsection (1)** if that maritime security officer is employed by a maritime security organisation that is directed by the Minister under **section 46** or by the chief executive under **section 47**. 30

- (2) The powers in—
- (a) **subsection (1)** may only be exercised—
    - (i) for the purposes of preventing the commission of an offence against **section 49**; and 35

- (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 5
- (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— 10
  - (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. 15
- (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. 20

**Struck out (unanimous)**

- (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,— 25
  - (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 30
  - (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.

**New (unanimous)**

- (5) Screening and search may only be undertaken—

**New (unanimous)**

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|--|------------------------------|
| <p>(a) in a port security area in areas that are designated for that purpose by signage that—</p> <p>(i) is posted in the appropriate places; and</p> <p>(ii) states the statutory authority for the screening and searching; and</p> <p>(iii) has lettering of a size sufficient to indicate clearly to all persons on first entry to a port security area that screening and searching is being undertaken; and</p> <p>(b) by an authorised person—</p> <p>(i) dressed in a uniform that clearly displays that person's identity and employer; or</p> <p>(ii) if not in uniform, who provides, if asked, evidence that he or she is an authorised person to the person to be screened or searched.</p> | <p>5</p> <p>10</p> <p>15</p> |
|--|------------------------------|
- (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)(iii) and (b)(ii)**, goods subject to the control of Customs may not be screened or searched without the authorisation of the New Zealand Customs Service. 20
- (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. 25
- (2) If an item is seized under **subsection (1)**, the authorised person must—
- (a) ~~(make an inventory)~~ keep a record of the item; and
- (b) make available to the owner or the person from whom the item was seized a copy of the ~~(inventory)~~ record. 30
- (3) If the authorised person determines that the item may lawfully be taken on board a ship or into a port security area, the 35

- 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
  - (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—
    - (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.
- 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.
- (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.

**Struck out (unanimous)**

- (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.

## New (unanimous)

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| (3) | The complainant is liable to indemnify the Designated Authority for all costs for which the Designated Authority is liable under <b>subsection (2)</b> , if—  |    |
| (a) | an authorised person has taken action under <b>section 51(1)</b> on the information of a complainant; and   | 5  |
| (b) | the information is subsequently found to be false; and  |    |
| (c) | the complainant knew that the information was false at the time he or she provided it.  |    |
| (4) | Despite <b>subsection (3)</b> , the complainant is not liable to indemnify the Designated Authority for any costs arising from the detention of a ship incurred on or after a date 2 days after the Designated Authority determines that the information provided by the complainant was false. | 10 |

Compare: 1994 No 104 s 56

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| <b>53</b> | <b>Persons who refuse to consent to be screened or searched</b>   | 15 |
| (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 <i>(any one)</i> anyone asked to assist, may use any force that is reasonably necessary to remove that person.  |    |
| (3)       | A person who refuses to leave as required under <b>subsection (1)</b> and, after being warned that he or she commits an offence by not leaving, persists in its commission,—  | 25 |
| (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.  |    |
| (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.   | 30 |
| (5)       | A company or master who refuses to carry a passenger who refuses to 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(1); 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
- Struck out (unanimous)**
- (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
- New (unanimous)**
- (b) the member of the police has reasonable grounds to suspect that— 15

(i) an offence against this Act has been, is being, or is likely to be, committed, whether by that person or by any other person; or

(ii) a search of the person refusing to consent is likely to disclose evidence that an offence against this Act has been, is being, or is likely to be, committed, whether by that person or another person. 20
- (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. 25
- (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,— 30
- (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, if asked, that he or she is a member of the police to the person to be searched (*if that person asks for it*).
- (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. 5
- Compare: 1972 No 137 s 13
- 55 Powers of arrest** 10
- (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: 15
- (a) **section 49**;
- (b) **section 71**;
- (c) section 45 of the Arms Act 1983 (which relates to unlawful carriage of firearms or explosives): 20
- (d) section 4 of the Maritime Crimes Act 1999 (which relates to crimes relating to ships).
- (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. 25
- (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.
- (4) An authorised person exercising the power of arrest under **subsection (1)** must— 30
- (a) provide evidence of his or her identity to the person to be arrested; and
- (b) inform the person to be arrested that the arrest is authorised under this section; and
- (c) if not in uniform, provide, if asked, evidence that he or she is an authorised person to the person to be arrested (*if that person asks for it*). 35
- (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*) the request of the authorised person 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*).

Compare: 1990 No 98 ss 85, 86(3)

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## **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)**.

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(2) A member of the police who accepts delivery of a detained person may arrest that person.

Compare: 1990 No 98 s 86

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## **57 Right of access to port security areas and ships**

(1) An authorised person at any time 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.

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(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.

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(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.

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(5) An authorised person may not enter a dwellinghouse, crew quarters, or a passenger cabin without—

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(a) a search warrant; or



- (b) the consent of the occupier of that dwellinghouse, crew quarters, or passenger cabin.
- (6) An authorised person exercising the power of entry under **subsection (5)** must, before the entry takes place, and on any subsequent request,— 5
- (a) provide evidence of his or her identity to the occupier; and
- (b) inform the occupier that the entry is authorised under this section; and
- (c) if not in uniform, provide, if asked, evidence that he or she is an authorised person to the occupier (*if the occupier asks for it*). 10

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— 15
- (a) the chief executive—
- (i) considers it necessary for the maintenance of effective security for that ship following consultation with the master; and 20
- (ii) has consulted the chief executives of—
- (A) the New Zealand Police; and
- (B) the New Zealand Customs Service; and
- (C) the Ministry of Agriculture and Forestry; and 25
- (D) the New Zealand Immigration Service; and
- (E) the Ministry of Health; and
- (F) any other department of State whose operations may, in the opinion of the chief executive, be affected by the action; and 30
- (iii) has consulted the local—
- (A) harbourmaster; and
- (B) port facility operator; and
- (C) medical officer of health; and
- (b) that ship is— 35
- (i) berthed in port or is at an anchorage; or
- (ii) moored at a buoy; or
- (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 40

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.

- 59 Duration of declarations** 5
- (1) A declaration made under **section 58(1)** takes effect on the date that it is communicated to the master.
- (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). 10
- (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** 15
- (1) No person, craft, or vessel may enter or leave an exclusion zone unless authorised by the chief executive.
- (2) **Subsection (1)**—
- (a) applies to all craft and vessels whether or not **section 4(1)** applies to them; but 20
- (b) does not apply to the craft and vessels referred to in **section 4(2)(a) and (b)**.

**New (unanimous)**

- (3) If necessary to protect an exclusion zone, an authorised person may, with reasonable force, remove, or prevent from leaving, a person or vessel that has entered, or attempted to leave, the exclusion zone without authority. 25

**Part 4**  
**Miscellaneous provisions**

*Maritime security documents* 30

- 61 Acceptance of Convention documents**
- (1) The chief executive must accept any maritime security document.

- (2) Despite **subsection (1)**, the chief executive may not accept, or must suspend acceptance of, any maritime security document if *(it)* he or she 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 5
    - (ii) is no longer in compliance with the provisions of any requirements—
      - (A) leading to the issue of that maritime security document; or 10
      - (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 15
  - (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— 20
- (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 25

**New (unanimous)**

*Ceasing work*

**61A Employees may cease work if security level 3 specified**

No employee of a port facility or an organisation servicing a port facility, or the crew member of any ship may be required by his or her employer to work at a port facility, or on a ship when the security level for that port facility or ship is specified as security level 3 under **section 16(a)**. 30

*Appeal rights***62 Right of appeal to District Court**

- (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.** 5
- (2) The Court may confirm, reverse, or modify the decision appealed against.
- (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. 10
- (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

**New (unanimous)**

- (5) If the chief executive revokes the District Court's approval of— 20
- (a) a ship security plan, the chief executive must notify the company in writing; or
- (b) a port facility security plan, the chief executive must notify the port facility operator in writing.

Compare: 1990 No 98 ss 27P, 66

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*Offences***63 Offences by masters**

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

- (2) Every master who provides false (*information*) advice under **section 29(2)** commits an offence and is liable to a fine not exceeding \$5,000.
- 64 Offences by companies** 5
- 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
- (b) in the case of a body corporate, to a fine not exceeding \$30,000. 10
- 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~~)**section 25**; or
- (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)**,— 20
- (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
- (ii) in the case of a body corporate, to a fine not exceeding \$30,000. 25
- (3) If an offence is committed against **subsection (1)(c)**,—
- (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 \$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** 35
- 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,—

- (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.

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### **67 Failure to comply with steps**

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,—

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- (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.

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### **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.

(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,—

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- (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.

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### **69 Failure to provide satisfactory evidence of name and address or authorisation to be in port security area**

Every person who intentionally fails or refuses to provide a maritime security 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,—

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- (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.

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- 70 Failure to leave port security area** 5
- 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.
- 71 Entering or leaving exclusion zone without authorisation** 10
- Every person who intentionally contravenes **section 60** by entering or leaving an exclusion zone without authorisation commits an offence and is liable,—
- (a) in the case of an individual, to a fine not exceeding \$10,000; or 15
  - (b) in the case of a body corporate, to a fine not exceeding \$100,000.

**New (unanimous)**

- 71A Personation or obstruction of authorised person**
- (1) Every person commits an offence who, not being an authorised officer,— 20
- (a) by words, conduct, demeanor, or the assumption of the dress, name, designation, or description of an authorised person, holds himself or herself out as being an authorised person; or
  - (b) wilfully obstructs or invites or encourages any person to obstruct an authorised person in the execution of his or her duties. 25
- (2) Every person who commits an offence against **subsection (1)** is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000. 30
- Compare: 1990 No 98 s 55

- 71B Defence**
- (1) It is a defence in any proceedings for an offence under **section 63, section 64, section 65, section 66, section 67, or section 69** if the defendant proves that— 35
- (a) the failure to comply was due to safety concerns; and

**New (unanimous)**

- (b) the act or omission constituting the failure was the best option to resolve those safety concerns.
- (2) In this section, **best option** means the option that maximises safety.

*Regulations*

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**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)~~ Crown entity: 10
- (b) prescribing the security requirements for a ship or port facility, including (but not limited to)— 15
- (i) a declaration of security, ~~(, a ship security plan)~~: 15
- (ii) a ship security assessment or a port facility security (plan) assessment: 15
- (iii) ~~(an assessment of)~~ a ship security plan or a port facility security plan: 20
- (iv) an identification system for accessing a ~~(specified)~~ port security area or a ~~(specified)~~ port facility: 20

**New (unanimous)**

- (ba) prescribing— 25
- (i) the scope and subject matter of training courses relevant to the Convention or Code; and 25
- (ii) the criteria and process to be used by the Designated Authority to approve— 30
- (A) those training courses (if any); and 30
- (B) the providers of those training courses (if any): 30
- (bb) prescribing the functions and duties of any person under an obligation to carry out responsibilities in accordance with the Convention and the Code:



- (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,—
  - (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.

**New (unanimous)**

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|-----|---|----|
| (3) | For the purposes of this section, <b>Crown entity</b> includes the Aviation Security Service established under the Civil Aviation Act 1990. | 10 |
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**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. 15
- (2) The chief executive may not grant an exemption under **subsection (1)** unless he or she is satisfied in the circumstances that— 20
  - (a) the exemption will not breach New Zealand's international obligations under any maritime convention; and
  - (b) 1 or more of the following applies: 25
    - (i) the prescribed requirements have been substantially complied with and that further compliance is unnecessary; or
    - (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 30
    - (iii) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or
    - (iv) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case; and 35
  - (c) the risk to safety will not be significantly increased by the granting of the exemption.

- (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. 5

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— 10
- (a) conduct a security assessment of that ship or port facility; or
- (b) require a security assessment of that ship or port facility to be carried out. 15
- (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
- (b) the results of a security assessment of a ship under this Act. 20
- (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 or a port facility, the Designated Authority must make a recommendation to that effect to the Minister. 25

#### **Struck out (unanimous)**

- (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*.

#### **New (unanimous)**

- (4) Following a recommendation by the Designated Authority under **subsection (3)**,— 30

## New (unanimous)

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|---|----------|
| <p>(a) in an emergency, the Minister may extend the application of this Act to a ship or port facility by notice in the <i>Gazette</i>; and</p> <p>(b) in any other case, the Governor-General, on the recommendation of the Minister, may extend the application of this Act to a ship or port facility by Order in Council.</p> | 5        |
| <p>(4A) For the purposes of <b>subsection (4)(b)</b>, the Minister must consult with the affected ship (if any) and the affected port facility (if any).</p>  |          |
| <p>(5) A <i>Gazette</i> notice <u>or Order in Council</u> under <b>subsection (4)</b>—</p>  |          |
| <p>(a) must—</p> <p>(i) clearly identify the ship or port facility concerned; and</p> <p>(ii) state which sections of this Act apply to that ship or port facility; and</p> <p>(iii) state the time period for the extension of this Act; and</p>   | 10       |
| <p>(b) may cover—</p> <p>(i) more than 1 ship or port facility; and</p> <p>(ii) any combination of ships and port facilities.</p>   | 15<br>20 |

## New (unanimous)

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|---|----|
| <p>(5A) A <i>Gazette</i> notice issued under <b>subsection (4)(a)</b>—</p>  |    |
| <p>(a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989, but is not a regulation for the purposes of the Acts and Regulations Publication Act 1989; and</p> <p>(b) expires 90 days after the day on which it is published in the <i>Gazette</i>.</p>   | 25 |
| <p>(5B) An Order in Council made under <b>subsection (4)(b)</b>,—</p>   |    |
| <p>(a) if made on or before 30 June in any year, expires on the close of 31 December of that year, except so far as it is expressly confirmed by Act of Parliament passed during that year; and</p> <p>(b) if made on or after 1 July in any year, expires on the close of 31 December in the following year, except so</p> | 30 |

**New (unanimous)**

far as it is expressly confirmed by Act of Parliament passed before the end of that following year.

(5C) A *Gazette* notice issued under **subsection 4(a)** may be replaced by an Order in Council made under **subsection 4(b)**.

(6) For the purposes of **subsections (1) to (5)**,—

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**Struck out (unanimous)**

**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)**

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**New (unanimous)**

**port facility** means a port facility that is not included in **section 4(1)(b)**

**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—

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- (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).

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*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,—

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- (a) require from that person the information that the chief executive considers relevant to the inspection or audit:

- (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:
- (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. 5

Compare: 1994 No 104 s 54(3)

## 76 Instructions of chief executive under certain provisions that conflict with other instructions 10

- (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. 15
- (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. 20
- (3) The chief executive must not issue chief executive's instructions that conflict with the exercise of a power by— 25
  - (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 30
  - (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 35

- (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”.
- (3) Section 431(1)(a) of the Maritime Transport Act 1994 is amended by inserting, after the word “shipping”, the words “and maritime security”. 5
- (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”. 10
- (6) Section 431(1)(i) of the Maritime Transport Act 1994 is amended by inserting, after the words “promote safety”, the words “and security”. 15
- (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”.
- (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”. 20

**New (unanimous)**

(8A) The Maritime (Offences) Regulations 1998 (1998/444) are amended in the manner set out in **Part 1 of the Schedule**.

- (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)** Part 2 of the Schedule*. 25

**Schedule** s 77(8A) and (9)  
**Consequential amendments to Maritime Regulations**  
**and Maritime Rules**

**New (unanimous)**

<b>Provision</b>	<b>Brief Description</b>	<b>Maximum Penalty on Summary Conviction for Individual \$</b>	<b>Maximum Penalty on Summary Conviction for Body Corporate \$</b>	<b>Infringement Fee for Individual \$</b>	<b>Infringement Fee for Body Corporate \$</b>	
<b>Part 1</b>						
<b>Maritime Regulations</b>						<b>5</b>
<b>Maritime (Offences) Regulations 1998</b>						
Add, after Rule 24C.18(5) in Schedule 1, the following offences and penalties:						
Part 40B	Design. Construction and Equipment – SOLAS Ships					10
Rule 40B.33	Responsibilities of owner and master re automatic identification system	5,000	30,000			20
Rule 40B.34	Responsibility of owner re ship identification number	5,000	30,000			25
Rule 40B.35	Responsibilities of owner and master re continuous synopsis record	5,000	30,000			30
						35
						40

## New (unanimous)

## Part 1—continued

## Maritime (Offences) Regulations 1998—continued

Provision	Brief Description	Maximum Penalty on Summary Conviction for Individual \$	Maximum Penalty on Summary Conviction for Body Corporate \$	Infringement Fee for Individual \$	Infringement Fee for Body Corporate \$	
Rule 40B.36	Responsibility of owner re ship security alert system	5,000	30,000			5
						10

## Part 2

## Maritime Rules

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**Rule 40B.32**

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

**“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). 20
- “(2) The master of a ship must ensure that an automatic identification system is in operation at all times.

## New (unanimous)

- “(3) The master of a ship is not in breach of **clause (2)** if the failure to comply is due to reasons beyond the master’s control. 25

**“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-1 of SOLAS (as amended in December 2002). 30



Part 2—*continued***Rule 40B.32**—continued**“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-1 of SOLAS (as amended in December 2002). 5

“(2) The master of a ship must ensure a continuous synopsis record is maintained in accordance with regulation 5 of Chapter XI-1 of SOLAS (as amended in December 2002).

**“40B.36 Ship security alert system**

The owner of a ship must ensure that the ship is fitted with a ship security alert system in accordance with regulation 6 of Chapter XI-2 of SOLAS (as amended in December 2002).” 10

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**Legislative history**

2 September 2003

Introduction (Bill 80-1)

10 September 2003

First reading and referral to Government Administration Committee