

Transport
Law
Reform
1993

Foreword

The Transport Law Reform Bill has been introduced into Parliament - it proposes significant changes to maritime law in New Zealand. It also proposes establishing a Maritime Safety Authority and a Land Transport Authority as joint industry-crown transport regulatory authorities. In addition, provision is made in the Bill to attach the Aviation Security Service to the Civil Aviation Authority while maintaining the separation of operational and regulatory functions. The arrangements that will apply to Ministry of Transport staff moving into the new marine and industrial inspection and land vehicle testing State Owned Enterprises are also included.

The drive for the fundamental reform of maritime law results from scrutiny and work over the last decade. In a fast changing world, the Shipping and Seamen Act 1952 sits uneasily with how maritime business is done today. The 1952 legislation is repealed under the Bill.

The Bill also repeals the Marine Pollution Act 1974, which has similarly fallen out of step with contemporary needs in many respects, and is based around the same outmoded and inherently inflexible structures as the Shipping and Seamen Act.

Greater understanding of and responsiveness to issues of public

accountability is reflected in the establishment of joint industry-crown transport regulatory authorities - a Maritime Safety Authority and a Land Transport Authority. The Bill establishes clear lines of accountability from the maritime and land authorities to the Minister of Transport, to the respective industries, which must meet safety regulatory requirements, and to the public, which demands a high level of transport safety.

Reform of the legislation and the establishment of new regulatory authorities is based on the models developed through the Civil Aviation Act 1990 and the Civil Aviation Authority, which was established last year.

The central theme of the Bill is that those operating in the maritime and land transport systems must take responsibility for running a safe operation. The principal role of the Authorities will be to set safety standards, control the entry and exit of the vehicles, ships and people who have a role in land and maritime transport operations and monitor those operations to ensure the standards are being maintained.

The safety standards will be produced through a process of consultation with the industry, resulting in safety rules which will take the place of the current miscellany of acts, regulations, notices, orders and policy directions.

Key objectives

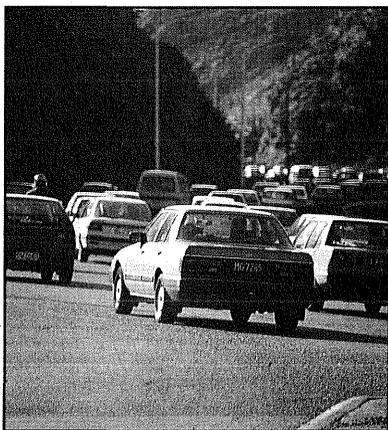
The following is a summary of what the Bill seeks to achieve:

- » clearly define the responsibilities of participants within the maritime and land systems, including the responsibilities of the Authorities;
- » provide the legislative basis for ensuring that individuals and organisations who undertake activities within the land and maritime systems do so in a responsible and safe manner;
- » provide the legislative basis for a system of safety legislation that is developed in consultation with the industry, is administratively simple, enforceable, and easier to use, yet contains adequate safeguards and accountability provisions (commonly known as the “rules” approach);
- » recognise that different safety levels exist and that measures should be taken to consider where resources can best be applied to achieve the greatest safety dividend;
- » provide effective enforcement procedures which differentiate between more serious safety offences and minor infringements;
- » provide the legislative basis for a modern, comprehensive oil pollution response system that promotes the most effective use possible of New Zealand’s resources for marine oil spill preparedness and response;
- » bring New Zealand into line with international conventions that deal with the protection of the marine environment;
- » provide the necessary statutory mechanism for funding marine oil pollution response preparedness;
- » integrate marine pollution law with other relevant statutes;
- » attach the Aviation Security Service to the Civil Aviation Authority, while maintaining its operational and financial independence from other CAA activities;
- » provide for staff in the commercially orientated maritime and land transport activities to move into State Owned Enterprises; and
- » implement the Government’s decision of a three year planning horizon for funding of the National Land Transport Programme.

The Authorities

The establishment of the Land Transport and Maritime Safety Authorities is in line with Government policy that transport regulatory activities be carried out by stand-alone authorities headed by an executive board. The proposed Authorities have a number of advantages over the current government department model. The authorities will:

- » separate the policy and regulatory roles and focus on safety regulation and, in the case of the maritime authority, on the additional tasks of marine oil pollution planning and response;
- » develop a partnership between the land and maritime industries and the regulatory bodies;
- » give the respective industries increased accountability for the cost



of regulation and safety services. Industry will be represented on the boards of the authorities and will have a direct involvement in setting fees and charges, and in the efficiency of the Authorities;

- » give greater accountability resulting in increased efficiencies in the way the industries are regulated and in the operation of the authorities.

Functions of the Land Transport Authority

- » to establish safety standards relating to entry into the land transport system;
- » to monitor adherence to safety standards within the land transport system;
- » to ensure regular reviews of the land transport system to promote the improvement and development of its safety;
- » to investigate and review land transport accidents and incidents in its capacity as the responsible safety authority, subject to any limitations set out in the Transport Accident Investigation Commission Act 1990;
- » to maintain and preserve records and documents relating to activities within the land transport system,

and in particular to maintain the Land Transport Register;

- » to provide the Minister such information and advice as the Minister may from time to time require;
- » to promote safety in the land transport system by providing safety information and advice and fostering safety information and education programmes and carrying out its functions in relation to the Safety (Administration) Programme - in terms of the Transit New Zealand Act;
- » other functions as prescribed in the Gazette by the Minister from time to time.

Functions of the Maritime Safety Authority

- » to develop and monitor safety standards which promote safe shipping;
- » to promote compliance with safety and marine pollution prevention standards in the maritime transport system;
- » to ensure the provision of appropriate distress and safety radio communication systems and navigation aids for shipping;
- » to ensure New Zealand's preparedness for, and ability to respond to, marine oil spills;

- » to license ships, their operation and crews;
- » to ensure the occupational health and safety of seafarers;
- » to promote safety in the maritime transport system by providing marine safety information and advice;
- » to investigate and review maritime transport accidents and incidents in its capacity as the responsible safety authority, subject to the limitations set out in section 14(3) of the Transport Accident Investigation Commission Act 1990;
- » to maintain the New Zealand ship register;
- » to maintain and preserve records and documents relating to the Authority's functions;
- » to advise the Minister on technical maritime safety policy;
- » to perform such other functions as are conferred by the Act or any other Act;
- » to perform other such functions or duties as prescribed by the Minister in the Gazette.

Membership of the Authorities

Five people will be appointed by the Governor General to the Maritime Safety

Authority and three to the Land Transport Authority for a term of up to three years each. The Minister will be required to consult with industry organisations prior to making recommendations on some of the appointments. The Minister appoints the Chairperson and the deputy chairperson.

Performance Agreement

The Authorities will be bodies corporate owned by the Crown. They will be Crown entities for the purpose of the Public Finance Act. They will be required to operate with a performance agreement with the Minister of Transport. The agreement will include requirements related to activity and financial targets. The Authorities will be required to report annually on the impacts and consequences of the outputs they are responsible for.

Chief Executives

The Chief Executive of the Land Transport Authority will be the Director of Land Transport Safety. The Chief Executive of the Maritime Safety Authority will be the Director of Maritime Safety. The Chief Executives will report to the authorities but will also be statutory officers required to exercise the powers that the Act will provide.

Staffing

The Bill provides that the staff in the Ministry of Transport's Land Transport and Maritime Transport Divisions who are employed in the functions that are to become the responsibility of the Authorities will become staff of the LTA and the MSA respectively on the day the authorities are set up.

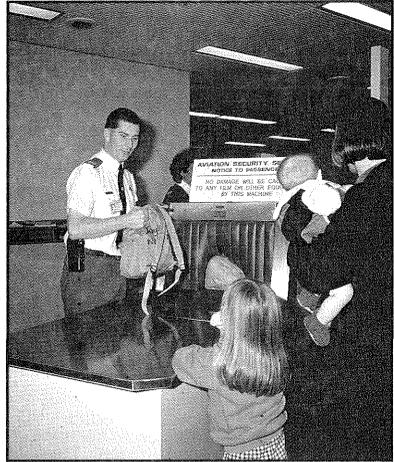
Responsibility for the Aviation Security Service

The Transport Law Reform Bill implements Government policies that;

- » the Government should retain responsibility for providing aviation security services to international civil aviation; and
- » the Aviation Security Service should be attached to the Civil Aviation Authority.

The Service is not however to be integrated into the Authority's regulatory activities. The Authority's prime role will continue to be safety and security regulation of civil aviation; aviation security operations are to be undertaken independent of the Authority's regulatory functions.

- The main provisions are as follows:
- a) the Minister of Transport's ability to direct that the Aviation Security Service be the only authorised providers of aviation security services at designated facilities. This provision means that the Government, not the Aviation Security Service, retains exclusive responsibility. Other parts of the Act already provide for alternative providers, and these have not been changed. They would come into effect if the Government were to withdraw any such direction or directions.
 - b) the transfer of Aviation Security Service staff and assets, from the Ministry of Transport to the CAA, will be on a similar basis as the transfers at the time of the CAA's inception. This will ensure that there will be no "technical redundancies" from the change of employer. The CAA Board will, however, have the opportunity to advertise the most senior position in the Aviation Security Service.
 - c) provisions for the Aviation Security Service to be operationally separate from other CAA activities. These include separate financial accounting, negotiated arrangements for administrative support services, and restrictions on the ability to delegate responsibilities between the Aviation Security Service and the other parts of the CAA.



- d) establishing the position of the General Manager of the Aviation Security Service. The General Manager will be accountable direct to the CAA board, and will be independent of the Director of Civil Aviation regarding operational and administrative issues. Like the Director of Civil Aviation, the General Manager will be independent of both the board and the Minister of Transport in respect of responsibility for exercising statutory functions and powers in particular cases, such as incidents when aviation security requirements are breached.
- e) the Minister of Finance will continue to be able to direct the CAA to return to the Government any surplus of revenue over and above the costs of aviation security. The provision

mirrors section 16 in the Public Finance Act, requiring payment of profits from over 40 other specified Crown entities.

The partnership approach to land transport safety

In keeping with the partnership approach to the way technical requirements and standards are to be established in all transport modes the current framework of acts, regulations, orders, notices, policy statements and exemptions for land transport are to be replaced by essentially a two-tiered structure with acts and rules/regulations. The philosophy behind this approach in as much as it applies to Land Transport is described in the discussion document "Independent Review of the Setting of Vehicle Standards" by the McInnes Group, 1992.

The rules will cover the safety and licensing areas of responsibility in land transport and will be developed by a consultative process. The rules will be approved by the Minister of Transport.

The scope of the rules will include road user behaviour, vehicle standards, loading, registration, identification and maintenance, safety infrastructure standards, driver responsibility, driver training

and licensing standards, responsibilities of vehicle owners, law enforcement and testing devices, standards for and certification of testing and inspection agencies, transport services licensing, and the conduct of audits and inspections.

The Bill provides procedures of public notification, consultation and evaluation (including cost benefit analysis where appropriate).

Offences, penalties, fees and charges as well as matters of policy or principle and matters subject to frequent litigation through the courts will remain in acts and regulations.

Dedication of the Land Transport Fund

The Bill provides for the implementation of a three year dedicated planning and funding horizon for the National Land Transport Programme (NLTP).

Funding of at least 97% in the first year and 95% in the second year out will be guaranteed for NLTP activities.

The partnership approach to maritime safety

A key element of the Bill is the clarification of safety responsibilities within the maritime system. Present legislation is constructed with the unrealistic notion that the state alone is responsible for safety. The opposite view is that the state need not be involved in the safety aspects of maritime transport, as the market will determine acceptable safety levels.

The most sensible answer lies between these two extremes. As a member state of the International Maritime Organisation, the New Zealand Government has obligations to uphold. The most important of these is to provide a national regulatory framework for maritime transport. The Bill sets out a framework that works on meeting the needs of both the industry and the public.

Responsibilities of participants

The Bill places responsibility on participants in the maritime system to undertake a number of duties. These include:

- » duties on every employer of seafarers on a New Zealand ship to take all

practicable steps to ensure the safety of seafarers while on the ship;

- » a number of other health and safety duties placed mainly on employers of seafarers, but also on seafarers themselves. These duties are replicated from the Health and Safety in Employment Act 1992, which excludes seafarers from its cover;
- » duties on every person who holds a maritime document in the system to comply with the Act and carry out any maritime activities or functions safely and in accordance with the relevant prescribed safety standards and practices;
- » duties on masters to notify all accidents, incidents or mishaps to the Maritime Safety Authority, to report dangers to navigation, and to assist persons in danger.

The New Legislative Structure

The Bill lays the foundation for a completely new approach to establishing technical rules for the maritime system. The present Shipping and Seamen Act provides primarily for a three tier system of regulation involving the use of primary legislation, regulations, and Codes of Practice and Standards. The two tier system established in the Bill follows

the model in use in the civil aviation industry, with technical and procedural requirements being set by maritime rules made by the Minister of Transport. These rules will be set only following a detailed consultation and notification procedure.

The Bill provides for:

- » maritime rules to be drafted within the Maritime Safety Authority and published in an easily used form;
- » the Maritime Safety Authority to recommend maritime rules to the Minister of Transport, who will then sign new rules into operation;
- » a system under which all the proposed rules will be subject to at least the same level of scrutiny by Parliament as present regulations;
- » the establishment of criteria that must be taken into account when drafting rules and the procedures to be followed when making rules including provision for adequate consultation.

These rules will achieve a system of maritime safety that is easier to understand and enforce, yet capable of responding to changes that are inevitable in any developed maritime system. Where feasible, the rules will be written to prescribe desired outcomes rather than detailed tasks to be performed.

The development of the proposed maritime rules is closely linked to the concept of shared responsibility. The total volume of rules is expected to be less than the present number of regulations and tertiary level rules. Much of the detail currently prescribed in documents will be eliminated. Organisations will be allowed more flexibility to enable them to develop their own internal means of compliance.

Transitional Provisions with respect to rules

Because much of the administrative and procedural material that will ultimately appear in the Maritime Rules is currently in the Shipping and Seamen Act it has been necessary to carry this over in the new Bill as a transitional provision for a three year period to give time for the Rules to be made.

Offences and Penalties

The main purpose of safety legislation is to provide for the setting and maintenance of safety standards. Restoring performance in the event of non-compliance can be achieved in many ways. This can be done through education, imposing conditions on, suspending or revoking a maritime document, taking corrective action or, possibly, changing the rules.

It is generally accepted by industry that the present legislation is difficult to enforce. The Bill includes several measures aimed at improving this situation. These are:

- simplification of the structure of technical legislation;
- incorporating the most serious offences into the Bill;
- providing for a system of infringement fines for dealing with minor infringements of the rules;
- increasing the level of financial penalties, with penalties for organisations being higher than those for individuals;
- providing additional penalties for offences involving commercial gain.

Offences under the Act

The Bill includes a number of "core"

safety offences. For example, it will be an offence under the Act:

- to do anything for which a maritime document is required if the appropriate document is not held;
- for a maritime document holder to cause unnecessary danger to any other person or to any property;
- to operate, service or maintain a ship or part of a ship in a manner which causes unnecessary danger to any other person or to any property.

Penalties

Offences under the Act would be dealt with through the Courts. Penalties following conviction could be imprisonment and/or fine and/or disqualification from holding any maritime document for such a time as the court sees fit. The Bill proposes to increase maximum fines



applicable in the event of conviction for a core safety offence.

Non-Compliance with Rules

Non-compliance with rules will be dealt with in one of two ways according to the seriousness of the breach.

Minor offences will be dealt with through an infringement penalty system similar to that operating in the road transport area rather than through the court system. The level of fine applicable to a particular offence would be set down in regulations.

More serious offences will be dealt with by court proceedings. Maximum penalties will be specified in regulations.

Certificate Action and Rights of Appeal

In addition to or instead of enforcement action, the Director of Maritime Safety (a new position similar to that of the current Director of Marine) will have the right to take action with respect to the maritime document held or sought by an individual or organisation. Exercise of these powers will be limited to safety considerations. These powers would be balanced by a right of appeal to the District Court.

Accident Investigation

The Bill requires the Director of Maritime Safety to refer certain investigations into accidents and incidents to the

Transport Accident Investigation Commission. Specifically, the Director will notify the Commission of:

- an accident or incident involving New Zealand commercial ships, or a foreign ship in New Zealand waters;
- an accident involving a New Zealand ship, where a person is seriously harmed;
- an incident involving more than one ship, including at least one commercial ship, where it is likely that the occurrence will become an accident.

Coastal shipping

The Bill clarifies the position with respect to New Zealand coastal shipping trades by providing that a ship of any nationality that is able to demonstrate compliance with maritime safety requirements can carry cargo and/or passengers between ports in New Zealand.

Detention of substandard ships

The Bill gives the Director the power to detain ships or seize maritime product where the Director believes on reasonable grounds that: the operation or use of the ship or maritime product - endangers any person or property or is likely to endanger, or is hazardous to the health and safety of any person or - the ship or maritime product has not been issued with the required maritime document.

Health and safety of crew

The Bill takes two approaches in detailing matters of health and safety of employees in the industry. First, it incorporates provisions from the Health and Safety in Employment Act (which does not cover ships' crew), and places employers in the maritime industry under many of that Act's obligations.

Second, the Bill continues to incorporate the Government's obligations under International Labour Organisation conventions that apply to seafarers. The Bill does not, however, continue the Shipping and Seamen Act's prescriptive regulation of this area.

Liability

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

Salvage

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

Marine Pollution

Responsibilities of Participants

The Bill clearly sets out the responsibilities of the various participants in both combating and taking enforcement action against pollution in the marine environment, and responding to marine oil spills. In particular, duties are placed on regional councils in relation to marine oil spill preparedness and response, under a national marine oil spill response system for which the Maritime Safety Authority is responsible.

Prevention of marine pollution

Current law dealing with marine pollution will be strengthened by giving effect in New Zealand law to MARPOL, an international convention containing a wide range of measures that regulate marine pollution. Measures derived from MARPOL will allow effective control to be exercised over both domestic and foreign ships in New Zealand in relation to all types of marine pollution from ships, rather than just oil, as is the case under the present legislation.

MARPOL also provides for strict controls on all types of discharges of marine pollution from ships. The controls on discharges of harmful substances are reinforced by the extensive framework of operational, construction, documentary and equipment standards for ships that must be implemented under MARPOL. The convention also expressly allows for countries to exercise powers of inspection and detention over foreign shipping in relation to marine pollution.

In line with the regulation of technical details for ship safety, detailed technical, procedural and documentary requirements will be given effect through marine protection rules made by the Minister of Transport. The Bill sets out the provisions in respect to the making of rules and describes the matters that rules will be made for. These range from the

detailed requirements of ship construction to the contents of shipboard and regional contingency plans for marine oil spill responses.

Marine Oil Spill Preparedness

The Bill sets out the legislative basis for a detailed, tiered planning and response structure for marine oil spills. This graduates from the individual ships or sites where an oil spill risk exists, through to regional councils at the next level, and then to the Maritime Safety Authority which will, under the Bill, take over oil pollution related functions presently carried out by the Ministry of Transport.

Response action will be guided by plans at each level, with responsibility for control of response action graduating to regional councils and the Maritime Safety Authority, depending on such factors as the severity of a spill, its location, and the effectiveness of response action. There is therefore a shift in emphasis in the use of funding for marine pollution to focus on the preparation for and response to oil spills, rather than meeting costs after the event.

Funding for oil spill preparedness and response

The existing system of funding oil pollution-related activities provides the basis for future funding. Greater flexibility in applying the oil pollution levies that fund the preparedness and response system will be introduced. Although the system of levies provided for under the Marine Pollution Act 1974 will initially be preserved, the Bill contains measures that make it possible to:

- apply levies at differential rates to reflect different risk levels;
- impose a levy directly on total annual oil movements through terminals, rather than a levy on individual oil tankers;
- apply levies to installations or facilities that represent a potential marine oil pollution risk.

The levies will continue to be paid into an oil pollution fund. This fund will be administered by the Maritime Safety Authority, which will need to separately account for the use of these funds.

Aligning application of Marine Pollution and Resource Management Acts

Overlaps, gaps and inconsistencies in the current application of the Marine

Pollution and Resource Management Acts will be fixed. This will be done by providing for the discharge of harmful substances and the dumping of waste into the sea within territorial limits to be dealt with only under the Resource Management Act.

This will consolidate the role of that legislation as the vehicle for resource management within New Zealand territory. Discharges and dumping outside the territorial sea will be dealt with under the marine pollution law contained in this Bill, which carries over from the present legislation the jurisdiction outside territorial waters that is necessary to give effect to international maritime conventions.

Civil Liability for Pollution damage

The Bill continues to provide a statutory civil liability regime for marine pollution damage from ships, offshore installations and undersea pipelines. This gives continued effect to New Zealand's obligations under the International Convention on Civil Liability for Oil Pollution Damage 1969. The owners of oil tankers are, under the Convention, afforded a limitation on their total liability for oil pollution damage if they are adequately insured against pollution damage in accordance with compulsory insurance.



The legislation also allows scope for liability insurance requirements to be applied more widely to cover other marine pollution risks.

The opportunity has been taken to redraft the provisions contained in the Marine Pollution Act 1974 to clarify the operation of the civil liability regime.

Other International Conventions

In addition to giving effect to MARPOL in New Zealand law, the Act will continue to embody measures implementing other international conventions relating to marine pollution. These include the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969, which allows prompt intervention action to be taken to forestall or reduce marine pollution risks posed by shipping accidents.

In addition, the Bill continues to incorporate provisions for the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1969. This contains the measures under which additional assistance in meeting oil pollution damage costs could become available from the International Oil Fund, should New Zealand become a member of and contributor to the Fund. This part of the Bill will be able to be put into effect if it is decided that New Zealand will become party to the Fund Convention.

Penalties

The opportunity has been taken to align offences and penalties relating to marine pollution with offences and penalties in the Resource Management Act 1991.

Ministry staff moving to SOEs

The Bill makes provision for the staff who are currently employed in the land transport commercial activity of vehicle inspection and testing and the Maritime Transport commercial activity of marine and industrial inspections (M&I) to move across to the SOEs that are being set up for the carrying out of these activities.

Conclusion

The measures proposed in the Bill fundamentally reform the approach to maritime safety in New Zealand and complete the organisational reform of the Government's involvement in the transport sector. The Bill promotes a maritime and land transport environment in which every participant has a clear responsibility for safety management and is held appropriately accountable. In addition, the Bill sets out the responsibilities of the various participants in both combating and taking enforcement action against pollution in the marine environment and responding to marine oil spills.

Now that the Transport Law Reform Bill has been introduced, it will be considered by a Select Committee, which will then report back to Parliament.

Submissions to the Select Committee on any aspect of the Bill should be put in writing and 20 copies sent to:

Secretary
Parliamentary Select Committee
(Transport Law Reform Bill)
Parliament Buildings
WELLINGTON

Submissions will close on a date to be advertised in national newspapers.

To make a personal appearance before the Select Committee, advise the Select Committee Secretary when sending in a written submission. The Secretary will contact those people with information concerning the time and place of their appearance.

Queries

The Ministry has set up a toll-free information line to answer enquiries about the Transport Law Reform Bill. If you require further information, please call the Ministry of Transport during business hours on: 0800-500-833



MINISTRY OF
Transport
Te Manatū Waka