

LOCAL GOVERNMENT AMENDMENT BILL (NO. 3)

AS REPORTED FROM THE COMMITTEE OF THE
WHOLE HOUSE

KEY TO SYMBOLS USED IN REPRINTED BILL
AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously

New (Majority)

Subject to this Act,

Text inserted by a majority

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE

Struck Out

Subject to this Act,

Text struck out

New

Subject to this Act,

Text inserted

(Subject to this Act,)

Words struck out

Subject to this Act,

Words inserted

LOCAL GOVERNMENT AMENDMENT (NO. 3)

ANALYSIS

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A BILL INTITULED

An Act to amend the Local Government Act 1974

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Local Government Amendment Act (**No. 3**) 1997, and is part of the Local Government Act 1974* (“the principal Act”). 5

(2) This Act comes into force on the day after the date on which it receives the Royal assent.

*R.S. Vol. 25, p. 1

Amendments: 1991, Nos. 49, 58, 115; 1992, Nos. 42, 56, 71, 74, 113, 139; 1994, No. 68; 1995, Nos. 25, 40; 1996, Nos. 12, 43, 83, 84, 96

2. Interpretation—(1) Section 2 (1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions: 10

“‘Director of Maritime Safety’ means the person for the time being holding the office of Director of Maritime Safety under section 439 of the Maritime Transport Act 1994: 15

Struck Out (Unanimous)

“‘Harbour’ includes any natural or artificial harbour, any haven, estuary, navigable lake or river, and any dock, pier, jetty, berth, or work in or at which ships do or can obtain shelter, or ship or unship goods or passengers: 20

“‘Maritime facilities’ includes moorings, wharves, docks, quays, marinas, areas or places where vessels are maintained, launching ramps, and other launching facilities: 25

“‘Maritime rules’ means maritime rules made under the Maritime Transport Act 1994:

“‘Maritime Safety Authority’ means the Maritime Safety Authority of New Zealand continued by section 429 of the Maritime Transport Act 1994: 30

“‘Navigational aid’ has the same meaning as it has in section 2 (1) of the Maritime Transport Act 1994:

“‘Navigation bylaws’ means bylaws made under **section 684B**: 35

“‘Pleasure craft’ has the same meaning as it has in section 2 (1) of the Maritime Transport Act 1994:

“‘Ship’ has the same meaning as it has in section 2 (1) of the Maritime Transport Act 1994.”

5 (2) Section 2 (1) of the principal Act is amended by adding to the definition of the term “regional council” (as substituted by section 2 (7) of the Local Government Amendment Act 1992) the words “; and, in Part 39A and in sections 684C to 684F, includes the Chatham Islands Council”.

10 **3. Functions of regional councils**—Section 37s of the principal Act (as substituted by section 6 of the Local Government Amendment Act 1992) is amended by repealing paragraph (e), and substituting the following paragraph:

Struck Out (Unanimous)

15 “(e) The functions, duties, and powers of a regional council under any Act in its capacity as the controlling authority of, or a responsible authority for, waters within its region.”

New (Unanimous)

20 “(e) The following functions, duties, and powers in relation to waters within its region or within such area or areas of its region as it may specify for the purpose by bylaws made under this Act, namely,—
“(i) The regulation and control of navigation safety:
25 “(ii) The functions, duties, and powers set out in Part 39A.”

30 **4. Sale or exchange of council land**—Section 230 of the principal Act (as substituted by section 31 (1) of the Local Government Amendment Act 1980) is amended by inserting, after subsection (1), the following subsection:

Struck Out (Unanimous)

35 “(1A) If the sale of any land vested in a council was, immediately before the commencement of this subsection, subject to the Harbours Act 1950,—
“(a) The land may not be sold without the prior written consent of the Minister; and

Struck Out (Unanimous)

“(b) The Minister may give that consent unconditionally or subject to such conditions as the Minister thinks fit.”

New (Majority)

“(1A) In the case of any land that was, immediately before the commencement of this subsection, subject to the Harbours Act 1950 and held by a local authority as an endowment, or on trust, for harbour-related purposes,— 5

“(a) The land may not be sold without the prior written consent of the Minister; and 10

“(b) The Minister may give that consent unconditionally or subject to such conditions as the Minister thinks fit; but

“(c) Nothing in this subsection requires that the money received from the sale of such land be applied for the purpose of purchasing other land for harbour-related purposes.” 15

5. Construction or maintenance of boat haven—Section 616 of the principal Act is amended by omitting the words “to the authority having control of any harbour (as defined in the Harbours Act 1950)”. 20

6. New Part 39A inserted—(1) The principal Act is amended by inserting, after Part XXXIX, the following Part:

“PART 39A

“NAVIGATION 25

“650A. **Councils may carry out harbour works**—

Struck Out (Unanimous)

(1) If the district of a local authority includes any waters of the sea or a creek or river or lake (‘the waters’), the local authority may do all or any of the following things: 30

“(a) Erect and maintain quays, docks, piers, wharves, jetties, launching ramps, navigational aids, and any other

Struck Out (Unanimous)

- works for the improvement, protection, management, or utilisation of the waters:
- 5 “(b) Remove obstructions or impediments to navigation from the bed of the sea, or the banks or bed of any such lake or river, and execute and maintain works which in the opinion of the council tend to improve navigation:
- 10 “(c) Erect and maintain protective works to prevent the encroachment of the waters.

New (Unanimous)

- (1) For the purposes of this Part,—
- 15 “(a) A regional council may—
- “(i) Erect and maintain navigation aids:
- “(ii) Remove obstructions and impediments to navigation, and execute and maintain works which in the opinion of the council tend to improve navigation:
- 20 “(b) A territorial (~~local~~) authority may—
- “(i) Erect and maintain quays, docks, piers, wharves, jetties, launching ramps, and any other works for the improvement, protection, management, or utilisation of waters within its district:
- 25 “(ii) Erect and maintain protective works (other than works undertaken under the Soil Conservation and Rivers Control Act 1941) to prevent the encroachment of waters within its district:
- 30 “(iii) Carry out such other navigation or harbour-related functions and responsibilities as it may have under a local government reorganisation scheme under this Act.

35 “(2) All wharves, jetties, and other works constructed by a council under the authority of this section belong to the council.

“(3) A council or other local authority may not construct wharves or other works, or levy any tolls, on land owned by some other person, without that person’s consent.

“(4) The powers conferred by this section are subject to the Resource Management Act 1991.

“**650B. Appointment of harbourmasters, enforcement officers, and honorary officers**—(1) A regional council may appoint such harbourmasters and enforcement officers (including honorary enforcement officers) as it thinks necessary for the purposes of this Part. 5

“(2) An honorary enforcement officer of a council only has such powers of enforcement officers under this Part as the council specifies in the instrument appointing the person to be an honorary enforcement officer. 10

“(3) Harbourmasters appointed under **subsection (1)** must have such qualifications as may be required by maritime rules.

“**650C. General powers of harbourmasters and enforcement officers**—(1) A harbourmaster or enforcement officer of a regional council (*including an honorary enforcement officer*) may at any time, for the purposes of carrying out his or her duty, enter and remain on any ship in waters within the council’s region. 15

“(2) A harbourmaster or *(person authorised in writing by the harbourmaster)* an enforcement officer (together with such assistants and equipment as are considered necessary) may enter and remain on any maritime facility, or on any land or property of a port company or other operator of a port facility, within the region of the council that appointed the harbourmaster for the purposes of carrying out his or her functions. 20 25

“(3) For the purpose of ensuring navigation safety, a harbourmaster or enforcement officer may give directions regulating— 30

“(a) The time and manner in which any ship may enter into, depart from, lie, or navigate in those waters:

“(b) The position, mooring, unmooring, placing, removing, securing, or unsecuring of any ship within those waters: 35

“(c) The manner in which any ship within those waters, or at any maritime facility, may take in or discharge its cargo or any part of its cargo, and the manner in which cargo is secured or is being handled on a ship where there is a risk of cargo falling overboard and becoming a hazard to navigation. 40

“**650D. Harbourmaster may remove ships**—(1) For the purposes of ensuring navigation safety or enforcing navigation bylaws, a harbourmaster of a regional council may—

- “(a) Direct the master of any ship in waters within the region of the council, or lying at any maritime facility, to moor, unmoor, anchor, weigh anchor, secure, unsecure, place, or move his or her ship; and
- 5 “(b) Cause the ship to be moored or unmoored or to be anchored or to weigh anchor or to be secured or unsecured or to be placed or removed according to the harbourmaster’s directions, and employ a sufficient number of persons for the purpose.

10 *New (Unanimous)*

“(1A) A harbourmaster of a regional council may, in relation to any floating, submerged, or stranded object (other than one to which **section 650K** applies) that the harbourmaster considers is a hazard to navigation, do or cause to be done anything

15 referred to in **subsection (1) (b)** (as if the object were a ship).

“(2) The expenses incurred by a harbourmaster under **subsection (1) or subsection (1A)** are payable by the master and the owner of the ship, or by the owner of the object (as the case may be), and are recoverable as a debt due to the council.

20 *Struck Out (Unanimous)*

“**650E. Harbourmaster may regulate some navigation activities**—A harbourmaster of a regional council may, in the interests of navigation safety, do all or any of the following things in relation to any waters within the council’s region:

- 25 “(a) Reserve any specified waters for use by any specified kind of ship or seaplane, or by any persons; and regulate or prohibit the use of those waters by other ships or persons:
- 30 “(b) Require the person appearing to be in charge of any ship or seaplane to stop, and to give his or her name and address, on being requested to do so by the harbourmaster:
- 35 “(c) Require any person found committing an offence against the council’s navigation bylaws to give his or name and address:
- “(d) On informing the owner or a ship or seaplane of an alleged offence against the council’s navigation bylaws that involves the ship or seaplane, and on requesting the owner to do so, require the owner to

Struck Out (Unanimous)

give the harbourmaster all information in the owner's possession or obtainable by the owner which may lead to the identification of the person by whom the offence is alleged to have been committed: 5

“(e) Subject to directions given by the council, regulate and control the traffic and navigation, and provide specially for the direct and personal control of that traffic on any day or occasion of unusual or extraordinary traffic. 10

New (Unanimous)

“650E. **Harbourmasters and others may regulate some navigation activities**—(1) A harbourmaster of a regional council may, in the interests of navigation safety, do all or any of the following things in relation to any waters within the council's region: 15

“(a) Require the person appearing to be in charge of any ship or seaplane to stop, and to give his or her name and address, on being requested to do so by the harbourmaster: 20

“(b) Require any person found committing an offence against the council's navigation bylaws to give his or her name and address:

“(c) On informing the owner of a ship or seaplane of an alleged offence against the council's navigation bylaws, and on requesting the owner to do so, require the owner to give all information in the owner's possession or obtainable by the owner which may lead to the identification of the person by whom the offence is alleged to have been committed: 25 30

“(d) Regulate and control the traffic and navigation, and provide specially for the direct and personal control of that traffic, on any day or occasion of unusual or extraordinary traffic. 35

“(2) A person authorised by the council, or any member of the Police acting on the request of the harbourmaster or such an authorised person, who—

New (Unanimous)

- “(a) Has received a complaint that there has been a breach of any of the council’s navigation bylaws; and
- 5 “(b) On investigation of the complaint, is of the opinion that there has been a breach of the council’s navigation bylaws,—
- may exercise any power under **subsection (1) (a) to (c)**.
- “(3) If a harbourmaster or enforcement officer of a regional council believes on reasonable grounds that a person has
- 10 committed a breach of maritime rules involving navigation safety, the harbourmaster or enforcement officer may exercise any power under **subsection (1) (a) to (c)**, and those provisions apply with any necessary modifications.
- “(4) No honorary enforcement officer may exercise any
- 15 power under **subsection (1) (c) or (d)**.

Struck Out (Unanimous)

“650F. **Conditions governing exercise of powers**—Every person exercising any power under any of **sections 650C to 650E** must produce evidence of identity and evidence that he or she

20 is a harbourmaster, enforcement officer, or authorised person, whenever reasonably requested to do so.

New (Unanimous)

“650F. **Application of section 710 and other requirements**—(1) Section 710 applies in respect of every

25 harbourmaster, enforcement officer, and honorary enforcement officer.

“(2) In addition to complying with section 710, before entering a place in the exercise of any power under any of **sections 650C to 650E**, a harbourmaster, enforcement officer, or

30 honorary enforcement officer must produce the person’s written warrant under section 710 to any person appearing to be in charge of the place entered—

- “(a) On entering the place (if such a person is then present); and

New (Unanimous)

“(b) At any reasonable time thereafter, if asked to do so by the person.

“(3) If there is no person appearing to be in charge of the place at any time between the time of entry and the time the harbourmaster, enforcement officer, or honorary enforcement officer leaves the place, the harbourmaster or officer must, as soon as is practicable upon leaving the place, give an occupier or person in charge of the place written notice stating that the place has been entered, and specifying the following matters: 5 10

“(a) The time and date of entry:

“(b) The circumstances and purpose of entry:

“(c) The name, office or position, and employer of every person entering:

“(d) Every thing that has been seized, or that nothing has been seized, and every action taken, or that no action has been taken. 15

“(4) This section applies to a member of the Police who exercises any power under **section 650E** as if his or her warrant card or other evidence of appointment were a warrant under section 710. 20

“650G. **Offence**—A person commits an offence against this Act who fails without reasonable cause to comply with a direction or requirement given or made under **section 650C** or **section 650D** or **section 650E**. 25

“650H. **Freedom of passage for officers of Customs, etc**—Officers of Customs, officers of the **Ministry of Agriculture and Forestry**, officers of the Ministry of Fisheries, officers of the Maritime Safety Authority, and persons acting under the authority of the Authority or the Director of Maritime Safety, acting in the execution of their duty, have at all times free ingress, passage, and egress, into, through, and out of waters within the region of a regional council, by land or water, and with ships or otherwise, and over any wharf. 30

Struck Out (Unanimous)

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“650I. **Harbours and facilities controlled by the Crown**—(1) In relation to waters, maritime facilities, and maritime works under its control, the Crown has all the powers

Struck Out (Unanimous)

that a regional council has in relation to waters, maritime facilities, and maritime works under the council's control.

5 “(2) The responsible Minister may appoint such harbourmasters and enforcement officers for the purposes of this section as he or she thinks fit; and such harbourmasters and enforcement officers have the powers of a harbourmaster or enforcement officer (as the case may be) under this Act.

10 “(3) For the purposes of this section, the responsible Minister is,—

“(a) In any case where the waters, facilities, or works are under the control of or managed by the Department of Conservation, the Minister of Conservation; and

15 “(b) In any case where the waters, facilities, or works are under the control of or are managed by the New Zealand Defence Force, the Minister of Defence; and

“(c) In any other case, the Minister of Local Government.

20 **“650j. Delegation and transfer of council's functions, duties, or powers concerning navigation—**(1) A council may, in accordance with this section,—

“(a) Transfer to another public authority any of its functions, duties, or powers (other than this power of transfer) concerning navigation safety:

25 “(b) Delegate to a port company any of those functions, duties, or powers (other than a power to make bylaws).

30 “(2) For the purposes of this section, ‘public authority’ includes any local authority, iwi authority, Government department, or statutory authority.

“(3) Subsections (2) to (7) of section 375C, with any necessary modifications, apply to transfers under this section.

“(4) Subsections (2) to (8) of section 715, with any necessary modifications, apply to delegations under this section.

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New (Unanimous)

“650i. Crown harbours and facilities—(1) This section applies to waters, maritime facilities, and maritime works that—

New (Unanimous)

- “(a) Are owned or operated by the Crown; and
“(b) Are not subject to the jurisdiction of a local authority.
“(2) Where this section applies, the Crown may—
- “(a) Regulate and lease, and charge for, the use of maritime facilities and maritime works: 5
“(b) Exercise navigation safety control over any area:
“(c) Do any other thing that a regional council or other local authority may do in relation to waters, maritime facilities, or maritime works under this Part. 10
- “(3) The responsible Minister may appoint such harbourmasters and enforcement officers for the purposes of this section as he or she thinks fit; and such harbourmasters and enforcement officers have the powers of a harbourmaster or enforcement officer (as the case may be) under this Part. 15
- “(4) For the purposes of this section, the responsible Minister is,—
- “(a) In the case of facilities or works under the control or management of the Department of Conservation, the Minister of Conservation: 20
“(b) In the case of waters, facilities, or works under the control or management of the New Zealand Defence Force, the Minister of Defence:
“(c) In the case of the harbour to which the Milford Sound Harbour Regulations 1983 (S.R. 1983/103) apply, and any Crown-owned or operated facilities or works associated with that harbour, the Minister of Transport: 25
“(d) In any other case, the Minister of Local Government.
- “650J. **Delegation or transfer of council’s functions, duties, or powers under this Part**—(1) A council may, in accordance with this section,— 30
- “(a) Transfer to another public authority any of its functions, duties, or powers (other than this power of transfer) under this Part: 35
“(b) Delegate to a port operator any functions, duties, or powers (other than a power to make bylaws) under this Part that relate to navigation safety.
- “(2) A transferee under **subsection (1) (a)** may delegate to a port operator any of the functions, duties, and powers transferred 40

New (Unanimous)

under that provision to the transferee that relate to navigation safety.

5 “(3) If any functions, duties, or powers delegated under **subsection (1) (b)** are exercisable or required to be performed by a harbourmaster, those functions, duties, and powers may be exercised or performed by employees of the port operator, subject to any conditions set out in the instrument of delegation.

10 “(4) Section 37sc, with any necessary modifications, applies to transfers under **subsection (1) (a)**, but nothing in this section limits any provision of that section that provides for any matter not provided for in this section.

15 “(5) Section 715, with any necessary modifications, applies to delegations under **subsection (1) (b) or subsection (2)**, but nothing in this section limits any provision of section 715 that provides for any matter not provided for in this section.

“(6) In this section,—

20 “ ‘Port operator’ includes a port company under the Port Companies Act 1988 and any other operator of facilities for the loading or unloading of cargo or passengers carried by sea:

25 “ ‘Public authority’ includes any local authority, iwi authority, Government department, or statutory authority.

“Wreck

“650k. **Removal of wreck**—

Struck Out (Unanimous)

30 includes— (1) In this section, ‘wreck’

“ (a) The equipment and any goods in or on a ship or aircraft that is abandoned, stranded, or in distress; and

“ (b) Shipping containers and property lost overboard or otherwise separated from a ship.

New (Unanimous)

(1) In this section, 'wreck' includes—

“(a) Any ship or aircraft which is abandoned, stranded, or in distress, or any equipment or cargo or other articles belonging to or separated from any such ship or aircraft; and 5

“(b) Any derelict ship; and

“(c) Shipping containers and property lost overboard or similarly separated from a ship, other than cargo lost in the course of its unloading or discharge from the ship while the ship is in a port. 10

“(2) If a wreck on or in any land or waters within the region of a regional council is a hazard to navigation, the council may take steps to remove and deal with the wreck in accordance with the following provisions: 15

Struck Out (Unanimous)

“(a) The council must give notice in writing to the owner of the wreck or to an agent of the owner, telling the owner that the owner is required within a time specified in the notice either to remove the wreck in a manner satisfactory to the council, or to undertake, under security satisfactory to the council, to remove the wreck in a manner satisfactory to and within a time to be fixed by the council: 20 25

New (Unanimous)

“(a) The council must, by a written request addressed to the owner of the wreck, or to an agent of the owner, ask the owner to either—

“(i) Remove the wreck within the time specified in the request and in a manner satisfactory to the council; or 30

“(ii) Undertake, under a security satisfactory to the council, to remove the whole of the wreck within a time fixed by and in a manner satisfactory to the council: 35

5 “(b) If the owner or agent cannot be found, or fails within the
time specified in the *(notice)* written request to
remove the whole of the wreck in a way satisfactory
to the council, or to enter into such an undertaking
to remove the wreck, or having undertaken to
remove the wreck, fails to remove it in accordance
with that undertaking, the council may, if the
10 council has made reasonable inquiries to find the
owner or agent, remove the wreck, and may recover
from the owner, in any court of competent
jurisdiction, the expenses incurred in removing it
('the expenses of removal');

15 “(c) The council may, for the purpose of removal, destroy
the wreck or any part of it, and may remove and
take possession of the wreck or any part of it, and
may sell the wreck or any part of it; and may out of
the proceeds (if any) of the sale, without any
reference to the part of the wreck from the sale of
20 which those proceeds may accrue, reimburse itself
for the whole of the expenses of removal, and must
after reimbursing itself pay over the surplus (if any)
to the owner:

25 “(d) If the proceeds of the sale are insufficient to pay the
whole expenses of removal, the council may recover
the balance from the owner of the wreck:

New (Unanimous)

“(da) The council does not have to retain any unsaleable
wreck and may dispose of or destroy it as it thinks
fit:

30 “(e) If the council fails, within 14 days after notice in writing
from the Director to remove or to take steps to
cause the owner of the wreck, to remove the wreck,
the Director may take steps to remove the wreck,
and for that purpose has all the powers of a regional
35 council under this section.

“(3) For the purposes of this section, 'owner' includes not
only the owner of the wreck at the time of the sinking,
stranding, or abandonment, but also includes any purchaser of
any such wreck, or the materials of which the wreck may be or
40 may have been composed, so long as the same remains sunk,
stranded, or abandoned.

“(4) Nothing in this section affects or limits anything in section 110 of the Maritime Transport Act 1994.”

(2) Section 656 of the principal Act, and the heading immediately above that section, are consequentially repealed.

7. New heading and sections inserted—The principal Act is amended by inserting, after section 684A, the following heading and sections: 5

“Navigation Bylaws

“684B. **Bylaws relating to navigation and related activities**—A regional council may from time to time, by bylaw under this Act, do all or any of the following things in relation to waters (*and adjoining land*) within its region: 10

“(a) Generally regulate and control, for the purposes of navigation and safety, the use or management of ships (including the mode and place of their mooring, anchoring, position, unmooring, and removal): 15

“(b) Regulate the placing and maintenance of moorings and maritime facilities (which bylaws may not be inconsistent with the Resource Management Act 1991): 20

“(c) Regulate and control, and prevent nuisances arising from,—

“(a) The speed, use, anchoring, mooring, and management of ships and seaplanes: 25

“(b) The towing of any thing or person:

Struck Out (Unanimous)

“(d) Reserve any specified waters for use by any specified kind of ship or seaplane, or by any persons; and regulate or prohibit the use of those waters by other ships or persons: 30

“(e) On the occasion of boat races, yacht races, launch races, or swimming races, or similar events, provide for the prohibition or regulation of the use of specified classes of ships, and for regulating and charging for admission to specified areas, or authorising the organisers of the event to regulate and charge for admission to specified areas: 35

New (Unanimous)

“(d) If the council is satisfied that such action is necessary in the interests of navigation safety,—

5 “(i) Reserve any specified waters for use by any specified kind of ship or seaplane, or by any persons:

“(ii) Regulate or prohibit the use of those waters by other ships or persons:

10 “(iii) On the occasion of boat races, yacht races, launch races, or swimming races, or similar events,—

“(A) Provide for the prohibition or regulation of the use of specified classes of ships:

15 “(B) Regulate admission to specified areas or authorise the organisers of the event to regulate admission to specified areas:

“(f) Regulate and control the use of any anchorage:

“(g) Put in place ship traffic separation *(and)* schemes and ship traffic management schemes:

Struck Out (Unanimous)

20 “(h) Specify requirements (which may not be inconsistent with maritime rules) for—

“(a) The provision of life jackets and buoyancy aids on pleasure craft:

25 “(b) The wearing of life jackets and buoyancy aids by persons on pleasure craft:

“(c) The marking and identification of pleasure craft:

New (Unanimous)

30 “(h) Specify requirements (which may not be inconsistent with maritime rules) for—

“(i) The provision of life jackets and buoyancy aids on pleasure craft:

“(ii) The wearing of life jackets and buoyancy aids by persons on pleasure craft:

35 “(iii) The marking and identification of personal water craft; and, for the purposes of this

New (Unanimous)

subparagraph, a personal water craft is a power driven ship that—

- “(A) Has a fully enclosed hull; and
- “(B) Does not take on water if capsized; and 5
- “(C) Is designed to be operated by a person standing, sitting astride, or kneeling on it, but not seated within it.

Struck Out (Unanimous)

- “(i) Fix fees and charges for— 10
- “(a) The provision of maritime facilities and navigational aids by the council:
- “(b) Functions, responsibilities, or services carried out or provided by the council in respect of ships or maritime facilities. 15

New (Unanimous)

- “(i) Fix fees and charges in respect of the use of any land, building, equipment, or other property, that is owned by the council and operated for navigation-related purposes, and in respect of navigation-related activities the council undertakes, including (without limitation) bylaws— 20
 - “(i) Fixing fees and charges for any function, duty, power, or service carried out or exercised or provided by the council in respect of any ship, maritime facility, offshore installation, pipeline, oil transfer site, navigational aid, or marine farm, or in respect of navigation generally: 25
 - “(ii) Fix such fees and charges on the basis of the nature of the facility, the location and use of the facility, the size of the vessel, or on any other differential basis: 30
 - “(iii) Specifying the persons who are liable to pay such fees and charges:
- “(j) Exempting specified classes of persons from compliance with any provision of the bylaws or providing for the 35

New (Unanimous)

5 council to exempt any person from compliance with any provision of the bylaws; and providing for the council to suspend the operation of any provision of the bylaws, in any class of case or in any particular case, in circumstances specified in the bylaws.

Struck Out (Unanimous)

10 “684C. **Effect of navigation bylaws on port operations—**
(1) Bylaws made under **section 684B** apply in areas under the control of a port company or operator of a port facility.
15 “(2) Bylaws made by a council under any enactment corresponding to **section 684B** and in force immediately before the commencement of this section apply in areas referred to in **subsection (1)** only to the extent that the bylaws could be made under **section 684B**.

New (Unanimous)

20 “684C. **Navigation bylaws not to affect port operations—**Bylaws made under **section 684B** may not limit or affect the ability of a port company or an operator of a port facility to manage its operations within areas owned or controlled by it, except to the extent the council considers necessary in the interests of navigation safety.

25 “684D. **No marine pollution charges—**(1) Nothing in **section 684B** permits a council to make any (*maritime*) navigation bylaw imposing any charges in respect of its responsibilities in relation to oil pollution.

30 “(2) Any (*maritime*) navigation bylaw in force immediately before the commencement of this section ceases to have effect to the extent that it imposes any charges in respect of a council’s responsibilities in relation to oil pollution.

“(3) In this section, ‘oil’ has the same meaning as in section 222 (1) of the Maritime Transport Act 1994.

“684E. **General provisions relating to navigation bylaws—**(1) Navigation bylaws may apply—

- “(a) Generally to navigation or associated activities in or on waters under the control, and within the region, of a regional council; or
- “(b) To navigation or associated activities in or on *(specified parts of those waters)* specified waters within the region of a regional council or specified parts of such specified waters. 5

Struck Out (Unanimous)

- “(2) Despite section 682 (c), navigation bylaws may not impose licensing requirements in respect of commercial shipping operations that are subject to maritime rules for the safe management of commercial shipping operations. 10
- “(3) Navigation bylaws for ship traffic separation and management schemes may not be made without the approval of the Director of Maritime Safety. 15
- “(4) Except as otherwise provided in this Part, navigation bylaws—
- “(a) May relate to navigation safety in waters within a council’s region; and
- “(b) May not be inconsistent with the Maritime Transport Act 1994 or rules made under that Act, or with the Resource Management Act 1991 or any other enactment. 20

New (Unanimous)

- “(2) Despite section 682 (c), navigation bylaws may not impose licensing requirements in respect of any aspect of commercial shipping operations that is subject to any requirement contained in any maritime rule, but nothing in this subsection prevents navigation bylaws imposing licensing requirements in respect of other aspects of commercial shipping operations. 25 30
- “(3) No navigation bylaw concerning any ship traffic separation scheme or ship traffic management scheme may come into force unless the Director has approved the content of the bylaw. 35
- “(4) Except as otherwise expressly provided in this Part, navigation bylaws may not be inconsistent with the Lakes District Waterways Authority (Shotover River) Empowering Act 1985, the Resource Management Act 1991, the Northland

New (Unanimous)

Regional Council and Far North District Council Vesting and Empowering Act 1992, or the Maritime Transport Act 1994.

5 “684F. **Council must consult Director**—Before making a navigation bylaw concerning a matter for which a maritime rule may be made, a regional council must consult the Director of Maritime Safety about the proposed bylaw.”

10 **8. New sections inserted**—The principal Act is amended by inserting, after section 699 (as enacted by section 2 of the Local Government Amendment Act 1979), the following sections:

“699A. **Infringement offences relating to navigation bylaws**—(1) In sections 699B to 699D,—

15 “‘Infringement fee’, in relation to an infringement offence, means the infringement fee prescribed for that offence by regulations made under **subsection (2)**:

20 “‘Infringement offence’ means a breach of a navigation bylaw that is specified in regulations made under **subsection (2)** as an infringement offence for the purposes of this section.

“(2) The Governor-General may from time to time, by Order in Council, make regulations—

25 “(a) Prescribing the infringement fee payable in respect of each infringement offence, which fee may not exceed ~~(\$500)~~ \$1,000;

“(b) Specifying which breaches of navigation bylaws are infringement offences for the purposes of this section:

30 “(c) Prescribing the form of infringement notices for infringement offences.

“699B. **Commission of infringement offence**—If any person is alleged to have committed an infringement offence, that person may either—

35 “(a) Be proceeded against for the alleged offence under the Summary Proceedings Act 1957; or

“(b) Be served with an infringement notice as provided for in **section 699C**.

“699C. **Infringement notices**—(1) If a harbourmaster or an enforcement officer observes a person committing an

infringement offence, or has reasonable cause to believe such an offence is being or has been committed by that person, an infringement notice in respect of that offence may be served on that person.

“(2) Any harbourmaster or enforcement officer (not necessarily the ~~(officer)~~ person who issued the notice) may deliver the infringement notice (or a copy of it) to the person alleged to have committed an infringement offence personally or by post addressed to that person’s last known place of residence or business; and, in that case, for the purposes of the Summary Proceedings Act 1957, it (or the copy) is to be treated as having been served on that person when it was posted. 5 10

“(3) Every infringement notice must be in the prescribed form and must contain the following particulars:

“(a) Such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence; and 15

“(b) The amount of the infringement fee specified for that offence; and

“(c) The address of the place at which the infringement fee may be paid; and 20

“(d) The time within which the infringement fee must be paid; and

“(e) A summary of the provisions of section 21 (10) of the Summary Proceedings Act 1957; and 25

“(f) A statement that the person served with the notice has a right to request a hearing; and

“(g) A statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing; and 30

“(h) Such other particulars as are prescribed.

“(4) If an infringement notice has been issued under this section, proceedings in respect of the offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957; and, in that case, the provisions of that section apply with the necessary modifications. 35

“699D. **Entitlement to infringement fees**—A regional council is entitled to retain all infringement fees received by it in respect of infringement offences where the infringement notice was issued by an enforcement officer of that council.” 40

Westport Harbour

Struck Out

5 **9. New Part XLIVC inserted**—The principal Act is amended by inserting, after Part XLIVB (as inserted by section 68 of the Local Government Amendment Act 1992), the following Part:

“PART XLIVC

“WESTPORT HARBOUR

10 **“707ZZH. Harbour assets vested in Buller District Council**—Any land vested in the Buller District Council by section 240A (1) of the Harbours Act 1950 may be sold, exchanged, subdivided, leased, or otherwise disposed of in accordance with this Act.

15 **“707ZZI. Application of income**—The income derived from the use or disposal of any asset referred to in **section 707ZZH** may be applied only towards the operation or development of the port at Westport, and for no other purposes unless the Minister in any specific case otherwise permits.”

New

20 **9. New Part 44D inserted**—The principal Act is amended by inserting, after Part 44C, the following Part:

“PART 44D

WESTPORT HARBOUR

25 **“707ZZZH. Harbour assets vested in Buller District Council**—Any land vested in the Buller District Council by section 240A (1) of the Harbours Act 1950 may be sold, exchanged, subdivided, leased, or otherwise disposed of in accordance with this Act.”

Repeals, Amendments, and Transitional and Savings Provisions

30 **10. Repeals**—The enactments specified in **(Schedule 1)** the Schedule are repealed.

11. Amendment to Reserves and Other Lands Disposal

Act 1982—Section 13 of the Reserves and Other Lands Disposal Act 1982 is amended by repealing subsections (1A) to (1c) (as inserted by section 50 (1) of the Harbours Amendment Act (No. 2) 1988), and substituting the following subsection: 5

“(1A) Land referred to in subsection (16) may not be sold without the prior written consent of the Minister of Local Government, and the Minister may give that consent unconditionally or subject to such conditions as the Minister thinks fit.” 10

12. Regulations continued in force—(1) Unless sooner revoked, the following regulations continue in force until the close of **31 March 2003** as if the Harbours Act 1950 had not been repealed by (**section 56**) **section 10**:

- (a) The General Harbour (Nautical and Miscellaneous) Regulations 1968 (S.R. 1968/239): 15
 - (b) The General Harbour (Ship, Cargo, and Dock Safety) Regulations 1968 (S.R. 1968/240):
 - (c) The Otago Inland Harbours Regulations 1969 (S.R. 1969/268): 20
 - (d) The Southland Inland Harbours Regulations 1970 (S.R. 1970/97):
 - (e) The Lake Taupo Regulations 1976 (Reprinted S.R. 1993/240):
 - (f) The Water Recreation Regulations 1979 (S.R. 1979/30): 25
 - (g) The Bon Accord Harbour Regulations 1979 (S.R. 1979/78):
 - (h) The General Harbour (Safe Working Load) Regulations 1982 (S.R. 1982/30):
 - (i) The Milford Sound Harbour Regulations 1983 (S.R. 1983/103). 30
- (2) The Governor-General may from time to time, by Order in Council, make regulations—
- (a) Amending any regulations specified in **subsection (1)** by providing for any purpose for which navigation bylaws may be made or for which maritime rules may be made: 35
 - (b) Revoking any regulations specified in **subsection (1)**, in whole or in part.
- (3) On the close of **31 March 2003**, all regulations in force under this section immediately before that closure expire and are deemed to have been revoked. 40
- (4) The following orders are revoked:

New (Unanimous)

- 5 (aa) The Waitomo County Council Harbour Board (Mokau Harbour Board) Order 1972 (S.R. 1972/55):
- (ab) The Harbour Boards Representation Order 1974 (S.R. 1974/217):
- (a) The Harbour Boards Representation Order 1977 (S.R. 1977/207):
- (b) The Harbour Boards Representation Order 1980 (S.R. 1980/168):
- 10 (c) The Harbour Boards Representation Order 1983 (S.R. 1983/141):
- (d) The Harbour Boards Representation Order 1986 (S.R. 1986/180):
- 15 (e) The Harbour Boards Representation Order (No. 2) 1986 (S.R. 1986/194).

New (Unanimous)

- (5) Until the close of **31 March 2003**,—
- 20 (a) Bylaws made under the principal Act may refer to or incorporate for the purposes of the bylaws any harbour limits defined by any Order in Council made under section 3 of the Harbours Act 1950 that was in force immediately before the repeal of that section by **section 10**; and
- (b) Those orders continue in force for such purposes.

25 **13. Expiry of section 12**—Section 12 expires with the close of 31 March 2003 and is deemed to be repealed on the close of that date.

14. Transitional provision relating to Lake Taupo—

30 (1) The Minister of Local Government is the responsible Minister under **section 650** of the principal Act for Lake Taupo and remains the responsible Minister until the close of a date specified by an order made under **subsection (2)**.

(2) The Governor-General may, by Order in Council made on the recommendation of the Minister of Local Government,

35 specify the date on which the Minister ceases to be the responsible Minister for Lake Taupo.

(3) In this section, “Lake Taupo” means all the waters of Lake Taupo, the navigable rivers and streams flowing into that lake, the tailrace from the Tokaanu power station, and the waters of the Waikato River between Lake Taupo and the Huka Falls.

5

15. Savings provisions relating to bylaws, leases, and other documents issued under Harbours Act 1950—

(1) Despite the repeal of the Harbours Act 1950 by **section 10**,—

(a) Section 424 of the Resource Management Act 1991 (which relates to bylaws of former Harbour Boards) continues to have effect as if the Harbours Act 1950 had not been repealed:

10

(b) Bylaws made under the Harbours Act 1950 (other than bylaws referred to in **paragraph (a)**) and in force immediately before the commencement of this section continue in force until *(revoked)* the close of 31 March 2003, unless they are inconsistent with anything in **section 684C to 684E** of the principal Act, as if the Harbours Act 1950 had not been repealed; and, until the close of that 31 March, bylaws continued in force under this paragraph may from time to time be amended as if that Act had not been repealed:

15

20

(c) Section 425 of the Resource Management Act 1991 (which relates to leases and other authorities issued by former Harbour Boards) continues to have effect as if the Harbours Act 1950 had not been repealed.

25

(2) Every licence, permit, approval, pilotage exemption, or other written authorisation granted, given, or issued under the Harbours Act 1950, and every appointment made under that Act, that was in force immediately before the repeal of that Act by **section 10** continues in force until it expires or is revoked or cancelled or replaced by a document issued or act done under the principal Act or the Maritime Transport Act 1994.

30

Struck Out

(3) Pilotage district limits defined under section 211 of the Harbours Act 1950 and in force immediately before the commencement of this section continue in force until the close of 31 March 2003 unless sooner revoked.

35

New

5 (3) Despite the repeal of section 211 of the Harbours Act 1950 by **section 10**, pilotage district limits having effect under that section 211 immediately before its repeal continue in force until the close of 31 March 2003 unless sooner revoked.

(3A) For the purposes of this section, the Governor-General may from time to time, by Order in Council, do all or any of the following things:

10 (a) Amend or revoke any pilotage district limits referred to in **subsection (3)**:

(b) Define new pilotage district limits, and amend or revoke such limits, for any period ending no later than the close of 31 March 2003.

Struck Out (Unanimous)

15 (4) Ships that were, immediately before the commencement of this section, exempt by or under section 225 of the Harbours Act 1950 from compulsory pilotage do not need to be under the conduct of a pilot until maritime rules made under the Maritime Transport Act 1994 otherwise provide or the
20 exemption expires or otherwise ceases to have effect, whichever happens first.

New (Unanimous)

25 (4) Exemptions from compulsory pilotage that were granted by or under section 225 of the Harbours Act 1950 and in force immediately before the repeal of that section by **section 10** continue in force until maritime rules made under the Maritime Transport Act 1994 otherwise provide.

30 **16. Savings provisions relating to harbour-related functions, duties, and powers**—(1) A territorial (*local*) authority responsible under any Act, Order in Council, or other enactment for operating a port or harbour may continue from time to time to appoint a harbourmaster and exercise functions, duties, and powers in respect of navigation safety.

New (Unanimous)

(2) Every instrument under the principal Act transferring to a territorial **((local))** authority any functions, duties, or powers under the Harbours Act 1950, that was in force immediately before the commencement of **section 10**, continues in force until the expiration of 2 years after that commencement and then expires. 5

(3) Nothing effected by or under this Act affects or limits the Waimakiriri Harbour District and Empowering Act 1916, the Lakes District Waterways Authority (Shotover River) Empowering Act 1985, the Northland Regional Council and Far North District Council Vesting and Empowering Act 1992, or any other Act applying to any harbour. 10

SCHEDULE

Section 10

ENACTMENTS REPEALED

New (Unanimous)

-
- 1886, No. 45—The Harbours Act 1878 Amendment Act 1886. (R.S. Vol. 36, p. 380.)
- 1908, No. 75—The Harbours Act 1908. (R.S. Vol. 36, p. 381.)
- 1914, No. 11—The Harbours Amendment Act 1914. (R.S. Vol. 36, p. 382.)
- 1923, No. 40—The Harbours Act 1923. (R.S. Vol. 36, p. 384.)
- 1941, No. 4—The Finance Act 1941: Section 9. (R.S. Vol. 36, p. 385.)
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- 1950, No. 49—The Harbours Act 1950. (R.S. Vol. 36, p. 247.)
- 1952, No. 78—The Harbours Amendment Act 1952. (R.S. Vol. 36, p. 386.)
- 1956, No. 59—The Harbours Amendment Act 1956. (R.S. Vol. 36, p. 387.)
- 1959, No. 6—The Harbours Amendment Act 1959. (R.S. Vol. 36, p. 388.)
- 1961, No. 114—The Harbours Amendment Act 1961. (R.S. Vol. 36, p. 391.)
- 1962, No. 74—The Harbours Amendment Act 1962. (R.S. Vol. 36, p. 392.)
- 1963, No. 90—The Harbours Amendment Act 1963. (R.S. Vol. 36, p. 392.)
- 1964, No. 56—The Harbours Amendment Act 1964. (R.S. Vol. 36, p. 393.)
- 1965, No. 6—The Harbours Amendment Act 1965. (R.S. Vol. 36, p. 394.)
- 1966, No. 64—The Harbours Amendment Act 1966. (R.S. Vol. 36, p. 396.)
- 1968, No. 139—The Harbours Amendment Act 1968. (R.S. Vol. 36, p. 396.)
- 1969, No. 81—The Harbours Amendment Act 1969. (R.S. Vol. 36, p. 398.)
- 1970, No. 68—The Harbours Amendment Act 1970. (R.S. Vol. 36, p. 398.)
- 1971, No. 58—The Harbours Amendment Act (No. 2) 1971. (R.S. Vol. 36, p. 399.)
- 1974, No. 31—The Harbours Amendment Act 1974. (R.S. Vol. 36, p. 403.)
- 1974, No. 87—The Harbours Amendment Act (No. 2) 1974. (R.S. Vol. 36, p. 403.)
- 1975, No. 77—The Harbours Amendment Act 1975. (R.S. Vol. 36, p. 405.)
- 1977, No. 80—The Harbours Amendment Act 1977. (R.S. Vol. 36, p. 405.)
- 1980, No. 54—The Harbours Amendment Act 1980. (R.S. Vol. 36, p. 414.)
- 1983, No. 6—The Harbours Amendment Act 1983. (R.S. Vol. 36, p. 419.)
- 1988, No. 63—The Harbours Amendment Act 1988. (R.S. Vol. 36, p. 430.)
- 1988, No. 92—The Harbours Amendment Act (No. 2) 1988. (R.S. Vol. 36, p. 430.)
- 1988, No. 102—The Harbours Amendment Act (No. 3) 1988. (R.S. Vol. 36, p. 434.)
- 1988, No. 132—The Harbours Amendment Act (No. 4) 1988. (R.S. Vol. 36, p. 435.)
- 1988, No. 188—The Harbours Amendment Act (No. 5) 1988. (R.S. Vol. 36, p. 436.)
- 1989, No. 71—The Harbours Amendment Act 1989. (R.S. Vol. 36, p. 436.)
- 1990, No. 119—The Harbours Amendment Act 1990. (R.S. Vol. 36, p. 438.)
- 1993, No. 68—The Harbours Amendment Act 1993. (R.S. Vol. 36, p. 438.)
- 1994, No. 36—The Harbours Amendment Act 1994. (R.S. Vol. 36, p. 439.)