

# WHO GOVERNS THE GOVERNORS OF THE SEA?

BY KARYN VAN WIJNGAARDEN, LLB, BSC, SOLICITOR WITH OCEANLAW NEW ZEALAND

**R**egional Council patrol craft, and in some areas, police vessels, are a regular sight on the water these days. Where does the authority of the Council officers come from?

Most users of our waterways, particularly commercial users, are aware that Regional Councils hold the statutory responsibility for navigation safety in ports and harbours, a statutory function carried out by the appointed Harbourmaster and his or her staff.

Navigation safety in ports and harbours has, up until now, been under the jurisdiction of the Local Government Act 1974 and more recently, supported by the Port and Harbour Marine Safety Code. Interestingly, the Code is voluntary, meaning that Regional Councils are not required by law to implement its provisions. However, the Code has been widely adopted throughout the country since it was finalised in 2004.

The Marine Legislation Bill has recently been introduced to Parliament and is now undergoing a consultative process. The Bill supplements the Code with a legislative framework that enables the relevant Regional Councils and organisations to manage maritime safety risks within ports and harbours.

There are three parts to the Bill. The first part deals with port and harbour safety. Practically speaking, there will be few changes to the systems of administration that commercial vessel owners see in their interactions with Regional Councils' representatives.

As it stands at present, the changes this Bill will usher in are largely administrative in nature, although there are a few interesting points that may develop further in the future. For example, under the Local Government Act 1974, when Regional Councils wished to implement navigation safety controls, the process was to do so by way of local bylaw. That process is lengthy, and relatively administratively time consuming. The Bill provides for Regional Councils to be able to enforce national navigation safety rules without having to first incorporate those rules into bylaws.

The Bill also clearly sets out the powers and duties of harbourmasters and associated enforcement officers. Those powers have previously been governed by the Local Government Act. The powers that a harbourmaster has under the Bill are not necessarily wider, but the terms of the Bill establish that the harbourmaster is empowered to exercise those powers in the course of carrying out safety related measures and duties.

It is interesting to note the way the Bill modifies the responsibilities of Regional Councils. One such example is the wording of the Local Government Act, which provides that Regional Councils may appoint harbourmasters and enforcement

officers such as it thinks necessary. Whereas the Bill states that a Regional Council must appoint a harbourmaster for every port that the Regional Council considers requires a harbourmaster for the purposes of ensuring maritime safety. The Bill also prescribes the powers of a harbourmaster in a more detailed manner, in relation to ensuring navigation safety.

These subtle changes in the language of the law signal that a greater onus is being placed on Councils to ensure that navigation safety is adequately managed, by suitably qualified people. The Bill clearly reinforces that the responsibility for navigation safety lies squarely with Regional Councils.


Part two of the Bill addresses an issue that became topical at the time of the grounding of the *Rena* a year ago: the ratification of international conventions. In particular, in the context of the *Rena* oil spill recovery effort and the costs associated with the cleanup are the *Bunker Convention* and the amendment to the *Convention on the Limitation of Liability for Maritime Claims (1976)*.

The overarching scheme of the Bill is to promote safety in the industry and to empower regulatory authorities to achieve and maintain national standards of navigation safety.

As most of the New Zealand public are now well aware, countries that have not acceded to the Convention have a significantly reduced limit of costs that can be recovered from the owner/operator of a vessel that causes environmental damage.

Whilst we all hope that there is no need in the future for New Zealand to have to clean up after another oil spill such as the *Rena*, it is reassuring to know that this international instrument will be acceded to by New Zealand, allowing greater costs of the clean up of a spill to be recovered, should the need arise.

The overarching scheme of the Bill is to promote safety in the industry and to empower regulatory authorities to achieve and maintain national standards of navigation safety.

While the reality is, that most users of our marine environment will not be impacted by the changes in this Bill, clarifying the administration of our waterways is a welcome step and will clear up issues that have remained unattended for too long. 

OCEANLAW NEW ZEALAND  
The only law firm in the South Pacific dedicated to the sea

