



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



New Zealand Branch Report

Kia ora, from a wet New Zealand. In the past month, we have been hit by weather often experienced in Australia.

Some of our communities in the North Island are devastated and the New Zealand economy is going to be under greater pressure (despite large insurance payment from outside of New Zealand coming in), with early indications the costs of repair will be between the Kaikōura and Christchurch earthquakes with estimates of NZ\$20 billion being quoted. The cyclone just highlights that much of New Zealand is heavily exposed to climate change.

The impact of our climate shows how important it was that last year's Federal Conference had a focus on the environment and our interaction with it, and how it affects maritime communities and operations. So a tip of the hat to the Queensland Branch and Federal Board for their foresight.

With roading now a major issue in New Zealand, as many communities are cut off from major highways, it will be interesting to see the greater role coastal shipping will provide to moving not only cargo/goods but also people in the coming years.

It was interesting to observe in times such as this that shipping is often the only way to bring in large quantities of goods and supplies to an area – Navy vessels were used once a national emergency was declared.

Our New Zealand Branch Conference is expected to be held in Auckland in early June (to be confirmed) and I'm excited for our Federal Conference in Perth later in the year as we continue to grow as an organisation.

Legal Update in New Zealand

Maritime Rules to Implement Cape Town Agreement Gazetted

New Maritime Rules implementing the Cape Town Agreement (CTA) have been gazetted, but the new rules will not come in force until the CTA comes into force internationally.

The CTA is an International Maritime Organization (IMO) convention dealing with design, construction, equipment and training standards for large commercial fishing vessels that operate on the high seas. It includes requirements for stability and associated seaworthiness, machinery and electrical installations, life-saving appliances, communication equipment and fire safety, as well as fishing vessel construction.

The new Maritime Rules Part 404 Design, Construction, and Equipment – New Zealand Cape Town Vessels and Foreign Cape Town Vessels implements the CTA requirements into New Zealand domestic law.

Maritime New Zealand (MNZ) says that the country's commercial fishing fleet is already largely aligned with the CTA's requirement, but "acceding to the CTA will contribute to maritime safety in our region through the exercise of port state control".

New Maritime Rules on Pilot Transfers and Lifeboat Drills

Amendments to Parts 23 and 53 of the Maritime Rules have come into force.

The amendments to Part 23 clarify that crew aren't required on lifeboats when they are lowered during drills, as that is a health and safety risk.

The amendments also revoke Rule 53.4(2)(a), which required pilots boarding or leaving a ship to not use a pilot-ladder if they consider it to be non-compliant with Part 53. This followed concerns about the rule's practicality and the director of maritime issuing a general exemption to the rule.

Other amendments to Part 23 relate to the approval of equivalent pilot transfer arrangements, accommodation ladder requirements, and the thickness of side ropes on pilot ladders.

IMO Adopts MARPOL Amendments

The Marine Environment Protection Committee (MEPC) of the IMO has adopted several amendments to the International Convention for the Prevention of Pollution from Ships (MARPOL) as its session in London in December.

The Mediterranean Sea has been designated as an Emission Control Area for Sulphur Oxides and Particulate Matter (ECA), meaning that the limit for sulphur in fuel oil on ships will 0.10% mass by mass (m/m) instead of 0.50% m/m. The new limit will take effect on 1 May 2025.

There are currently four ECAs – the Baltic Sea area, the North Sea area, the North American area (covering designated coastal areas off the United States and Canada) and the United States Caribbean Sea area (around Puerto Rico and the United States Virgin Islands).

The requirement to have a Garbage Record Book (containing records of garbage handling operations) has been extended to ships between 100-400 gross tonnage.

Flashpoint of fuel oil or a statement that the flashpoint has been measured at or above 70°C has been added as mandatory information in the bunker delivery note under appendix V of MARPOL Annex VI.

The MEPC also adopted amendments to the reporting requirements regarding the implementation of the IMO's short-term greenhouse gas (GHG) reduction measures, as well as making progress on revising the Initial IMO GHG Strategy to strengthen it and adopting resolutions on voluntary co-operation with ports and national actions plans to reduce GHG emissions from shipping.

Recent Prosecutions

FV Janas and Failure to Notify

This comes after it took nearly a year for MNZ to be notified about an incident involving welding onboard a vessel. When it occurred, the worker involved received minor burns to their neck.

Two parties were recently sentenced in the Nelson District Court for failing to notify an incident on board the Janas in November 2018.

Sturrock and Greenwood Ltd were hired to remove ammonia gas from the refrigerator of a Talley's vessel. While Anchor Engineering Ltd was contracted to undertake the welding repairs.

On the day of the incident, a worker was welding in a confined area. Shortly after the welding work started, a noise was heard coming down a pipe that was being worked on. The worker was blown backwards, they suffered minor burns to their neck.

The worker notified their employer and told them what occurred.

MNZ south regulatory operations general manager John Drury stated: “While it appears that there was confusion between the relevant organisations about reporting the incident, both Sturrock and Greenwood Ltd and Anchor Engineering Ltd had the duty to report.

“The policy should be, when in doubt, report. Or contact the regulator for clarification.”

MNZ was not notified of the incident at all. Instead, it was eventually notified to WorkSafe New Zealand 11 months after it took place. The notification was then transferred to MNZ.

“Like this case here, failing to notify can be very expensive for organisations – the two parties involved were fined a combined \$28,000, which could have been avoided by reporting the incident. Failing to notify is an offence under the Health and Safety at Work Act.

“Notifying an incident whether it be to MNZ (maritimenz.govt.nz) or WorkSafe (worksafe.govt.nz) is an easy process. Both organisations have a link to notify on the homepages of their websites.

“From a regulator’s perspective, notification is a hugely important tool. It allows incidents to be investigated quickly, evidence to remain in place, and potentially the prevention of serious injuries or death in the future.”

The two parties were sentenced under Section 56 of the Health and Safety at Work Act which states: “A PCBU [Person Conducting a Business or Undertaking] must, as soon as possible after becoming aware that a notifiable event arising out of the conduct of the business or undertaking has occurred, ensure that the regulator is notified of the event.”

The two parties were fined the amounts below

- Anchor Engineering Ltd – NZ\$9600 fine and regulator costs of NZ\$13,000
- Sturrock and Greenwood Ltd – NZ\$8400 fine and regulator costs of NZ\$9560

Collision Between Two Vessels 50 Nautical Miles off West Coast of North Island Put Down to a Failure to Keep Watch

The sole director of Wild Fish Ltd, Cory Stone, was recently week sentenced in the Porirua District Court for his part in the incident as the skipper of the Norman McLeod. Earlier in the year, Christopher Richards, skipper of the Lady Jane, was sentenced for his role in the incident.

Watchkeeping requires every vessel at all times to keep a lookout in order to make a full appraisal of the risk of collision as required by the collision prevention regulations. This is to ensure the vessel is clear of risks when on the water. Risks can include other vessels or natural hazards.

The incident occurred at around 6.30am, 21 January 2021. off the Taranaki Coast.

At the time, visibility was limited to about one and a half miles due to fog in the area.

As well as the skipper, the Norman McLeod had two crew onboard. While the Lady Jane only had skipper Christopher Richards onboard, he pleaded guilty to a separate breach of the Maritime Transport Act in August this year.

Neither vessel had anyone in the wheelhouse when the collision occurred and both were travelling at about six knots.

There were approximately 20 to 30 vessels within three nautical miles of the two vessels at the time.

MNZ central regulatory general manager Scott Bernie stated: “Leaving the wheelhouse with that many vessels around without assessing the risk of collision, was a high-risk decision.

“With the number of vessels in the area, maintaining a proper lookout should have been the top priority of both skippers to avoid potential collisions.

“MNZ has prosecuted several skippers this year for watchkeeping failings and is focusing on the need for watchkeeping to be a priority.”

The Lady Jane sustained damage to the bow which required emergency repairs, while the Norman McLeod suffered cosmetic damage. Fortunately, no-one was injured.

Nga mihi

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