

INFRINGEMENT FEES FOR OFFENCES REGULATIONS – HAWKE’S BAY REGIONAL COUNCIL AND QUEENSTOWN LAKES DISTRICT COUNCIL NAVIGATION SAFETY BYLAWS

Proposal

1. This paper proposes that the Cabinet Legislation Committee (the Committee) authorise the submission to the Executive Council of the:
 - 1.1. Maritime Transport (Infringement Fees for Offences – Hawke’s Bay Regional Council Navigation and Safety Bylaw 2018) Regulations 2019
 - 1.2. Maritime Transport (Infringement Fees for Offences – Queenstown Lakes District Council Navigation Safety Bylaw 2018) Regulations 2019.
2. These regulations specify fees for infringement offences for the corresponding local navigation safety bylaws.

Background

3. Section 330 of the Maritime Transport Act 1994 empowers the Governor-General, by Order in Council, to make regulations:
 - a) specifying which breaches of navigation bylaws are infringement offences
 - b) prescribing an infringement fee (not exceeding \$1000) for these infringement offences
 - c) prescribing the form of the infringement notice.
4. Navigation safety bylaws allow councils to manage and regulate maritime safety within their waterways. Infringement offence regulations support effective enforcement of these bylaws. Without such regulations, the only way a council can enforce a bylaw is by prosecuting the alleged offender in the District Court. Prosecutions are a disproportionate response to the level of offending envisaged by these bylaws.
5. Section 158(1) of the Local Government Act 2002 requires councils to review their navigation safety bylaws no later than five years after the date on which the bylaw was made. The Hawke’s Bay Regional Council and Queenstown Lakes District Council (the Councils) have accordingly updated their respective 2012 and 2009 navigation safety bylaws. The updated bylaws came into force on 3 September 2018 (Hawke’s Bay) and 6 April 2018 (Queenstown). Because infringement regulations are specific to a particular bylaw, the regulations supporting the Councils’ 2012 and 2009

bylaws have lapsed, and infringement offence regulations corresponding to their 2018 bylaws are now required.

Comment

6. The proposed regulations retain infringement fees in the same range as the previous regulations (between \$100-500 for Hawke's Bay and \$300-500 for Queenstown).
7. Schedule 1 to the proposed regulations includes minor changes from the previous regulations to reflect changes contained in the councils' respective updated navigation safety bylaws, as well as a number of new infringement offences. The attached appendix provides more detail. Where new infringement offences are created, they are consistent with those for conduct of a similar nature in other councils' bylaws and related infringement offence regulations.

Level of infringement fees

8. The Ministry of Justice did not raise any concerns over the proposed infringement fees and noted that the fees largely sit at a level that reflects the lower relative gravity of the offending.

Consultation

9. The following departments and agencies were consulted: Ministry of Justice, New Zealand Police, Maritime New Zealand, and the Department of Internal Affairs.
10. The Department of the Prime Minister and Cabinet was informed.
11. No issues were raised during consultation.
12. The matters covered in this paper fall within my delegated portfolio responsibilities. The Minister of Transport has been consulted on the proposals and agrees with the submission of this paper.

Timing and the 28-day rule

13. Subject to Cabinet's approval, the regulations will be notified in the *New Zealand Gazette* (the *Gazette*) on 21 February 2019 to come into force on 21 March 2019. This will be 28 days after notification in the *Gazette*.

Compliance

14. The regulations comply with the:
 - 14.1. LAC Guidelines on *Process and Content of Legislation (2018 edition)*, a publication maintained by the Legislation Design and Advisory Committee
 - 14.2. New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - 14.3. principles and guidelines set out in the Privacy Act 1993

14.4. relevant international standards and obligations

14.5. principles of the Treaty of Waitangi.

Regulatory Impact Analysis

15. A Regulatory Impact Statement is not required for this paper as the proposal is of a minor and mechanical nature.

Certification by Parliamentary Counsel

16. Parliamentary Counsel has certified the regulations as being in order for submission to the Executive Council.

Publicity

17. The regulations will be notified in the *Gazette*.

Released by the Associate Minister of Transport

Recommendations

18. I recommend that the Committee:

1. **note** that the Maritime Transport (Infringement Fees for Offences – Hawke’s Bay Regional Council Navigation and Safety Bylaw 2018) Regulations 2019 will allow the Hawke’s Bay Regional Council to enforce its updated navigation safety bylaw, which came into force on 3 September 2018
2. **note** that the Maritime Transport (Infringement Fees for Offences – Queenstown Lakes District Council Navigation Safety Bylaw 2018) Regulations 2019 will allow the Queenstown Lakes District Council to enforce its updated navigation safety bylaw, which came into force on 6 April 2018
3. **authorise** the submission to the Executive Council of the:
 - Maritime Transport (Infringement Fees for Offences – Hawke’s Bay Regional Council Navigation and Safety Bylaw 2018) Regulations 2019
 - Maritime Transport (Infringement Fees for Offences – Queenstown Lakes District Council Navigation Safety Bylaw 2018) Regulations 2019
4. **note** that the Maritime Transport (Infringement Fees for Offences – Hawke’s Bay Regional Council Navigation and Safety Bylaw 2018) Regulations 2019 will come into force on 21 March 2019
5. **note** that the Maritime Transport (Infringement Fees for Offences – Queenstown Lakes District Council Navigation Safety Bylaw 2018) Regulations 2019 will come into force on 21 March 2019.

Authorised for lodgement

Hon Julie Anne Genter
Associate Minister of Transport

Appendix 1

New infringement offences and fees:

Hawke's Bay

Clause	Offence	Fee
2.17.1	Failing to register personal watercraft	200
3.10.2	Entering reserved area in use for purpose other than reserved purpose	200
5.3.3	Operating vessel granted Navigation Safety Licence while licence suspended	200

Queenstown Lakes

Clause	Offence	Fee
8.2	Allowing an unsupervised underage person to operate powered vessel capable of exceeding 10 knots	500
11.1	Failing to ensure wake does not prevent people from safely using waterway, or does not cause danger or risk of danger, or does not cause risk of harm	300
13.2	Failing to moor vessel in secure manner or without adequate or safe means of accessing vessel	300
13.3	Placing obstruction in waters likely to restrict navigation, or cause injury, death or damage	500
15.1	Tying vessel to navigation aid without permission	300
29.1	Failing to conduct hot work operations in accordance with Code of Safe Working Practices for Merchant Seafarers	500
29.2	Failing to take fire precautions before or during hot work operations	500
30.1	Failing to maintain or make available written record of dangerous goods loaded or unloaded onto vessel	500
34.1	Queenstown Bay: exceeding 5-knot speed limit within 50 meters of access lane boundary	300
35.1	Clutha River: exceeding 5-knot speed limit specified in area	300
39.3	Moving vessel damaged by incident	500
40.1	Failing to report details of near miss accident or collision	500
43.6	Obstructing person using reserved area for reserved purpose	500
44.2	Failing to comply with conditions of commercial vessel licence	500

46.1	Loading or unloading commercial vessel using Council structure without permission	500
48.2	Failing to remove mooring following cancellation of mooring permit	300
57.1(b)	Preventing harbourmaster or enforcement office from carrying out statutory functions or duties	500

Removed infringement offences and fees:

Hawke's Bay

Offence	Fee
Discharging, dropping, or causing or allowing to be discharged or dropped cargo or anything into navigable waters that would or may constitute a danger to navigation safety	300
Seaplane or other aircraft landing or taking off in an area not reserved for that purpose without Harbourmaster's prior permission	200

Queenstown Lakes

Offence	Fee
Navigating or attempting to navigate a craft while unfit by reason of alcohol, drugs, or sickness	500
Creating excessive noise or public nuisance	300
Exceeding 5 knots within a reserved area unless specifically permitted	300
Failing to comply with Harbour Master's instructions as to speed	300
Failing to ensure that a vessel, trailer, or vehicle is entirely free of water weed, plant growth, debris, or unwanted organisms	300
Using prohibited area of the Kawarau River as a commercial operator	500
Failing to comply with resource consent conditions	500
Operating a craft in a manner that is or might be dangerous to the public or other persons	500
Depositing prohibited materials	500
Undertaking a water-based activity during prohibition	500
Failing to carry appropriate means of communication	300

Leaving a licensed mooring vacant or unattended	300
Failing to submit operational safety plan to Council	500
Failing to ensure that a passenger on a commercial vessel is not impaired in any way that presents a risk to the passenger or others	300
Failing to complete registration requirements as required by Harbour Master	500
Failing to prepare, adopt, and submit operational safety plan to Harbourmaster	300
Failing to undertake and provide evidence of annual audit of operational safety plan, safety operation, and safety equipment	300
Failing to provide full name and address to the Harbour Master on request, or obstructing the Harbour Master in the exercise of his or her duties under the bylaw or any other relevant legislation	500