



28 February 2023

OC221103

Hon Kiritapu Allan

Associate Minister of Transport

cc Hon Michael Wood

Minister of Transport

PROPOSED MARITIME TRANSPORT (INFRINGEMENT FEES FOR OFFENCES – MANAWATŪ RIVER AND TRIBUTARIES NAVIGATION SAFETY BYLAW 2022) REGULATIONS 2023

Purpose

Seek your authority to:

1. issue drafting instructions to the Parliamentary Counsel Office (PCO) for infringement regulations relating to the Manawatū River and Tributaries Navigation and Safety Bylaw 2022.
2. share PCO's drafts of the infringement regulations with Horizons Regional Council, to ensure the regulations are fit for purpose.

Your authority is needed as soon as reasonably possible because no infringement regulations are currently in place for Horizons Regional Council, which limits the enforcement options of the Council.

Key points

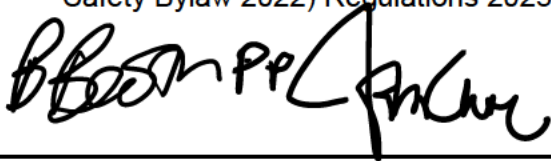
- Navigation safety bylaws allow councils to manage and regulate maritime safety within their waterways. Corresponding infringement regulations support the effective enforcement of these bylaws.
- Without infringement regulations, the only way councils can enforce a bylaw is by prosecuting alleged offenders through the District Court. Prosecution is generally a disproportionate response to the level of offending envisaged by these bylaws. However, since Horizons Regional Council currently have no infringement regulations in place, prosecution is the only enforcement option available to them at the moment.
- Horizons Regional Council have requested infringement regulations be made to correspond to their updated navigation safety bylaw, which came into force in July 2022.

- Your authority is needed for the Ministry to issue drafting instructions to PCO. It is also needed to allow the Ministry to share PCO's drafts of the regulations, which are legally privileged, with Horizons Regional Council since they are outside of the Crown, to ensure that the regulations are fit for purpose.

Recommendations

We recommend you:

- authorise** the Ministry of Transport (the Ministry) to issue drafting instructions to the Parliamentary Counsel Office (PCO) for the Maritime Transport (Infringement Fees for Offences – Manawatū River and Tributaries Navigation Safety Bylaw 2022) Regulations 2023 Yes / No
- authorise** the Ministry to share PCO's drafts of the Maritime Transport (Infringement Fees for Offences – Manawatū River and Tributaries Navigation Safety Bylaw 2022) Regulations 2023 with Horizons Regional Council. Yes / No



Brendan Booth
 Chief Legal Adviser
 17 / 1 / 23



Hon Kiritapu Allan
 Associate Minister of Transport for the
 Minister of Transport
 / /

- Minister's office to complete:
- Approved Declined
 - Seen by Minister Not seen by Minister
 - Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Phoebe Moir, Legal Adviser	s 9(2)(a)	✓
Annelies McClure, Principal Solicitor		
Brendan Booth, Chief Legal Adviser		

PROPOSED MARITIME TRANSPORT (INFRINGEMENT FEES FOR OFFENCES – MANAWATŪ RIVER AND TRIBUTARIES NAVIGATION SAFETY BYLAW 2022) REGULATIONS 2023

Horizons Regional Council have requested new infringement regulations

- 1 We have recently received a request from Horizons Regional Council to progress infringement regulations relating to their new navigation safety bylaw. Horizons Regional Council have already passed their new bylaw, which came into force in July 2022.

What are navigation safety bylaws and their corresponding infringement regulations?

- 2 Navigation safety bylaws allow councils to manage and regulate maritime safety within their waterways. Corresponding infringement regulations support the effective enforcement of these bylaws by dissuading breaches and funding the council enforcement of them.
- 3 Without infringement regulations, the only way councils can enforce a bylaw is by prosecuting alleged offenders through the District Court. Prosecution is generally a disproportionate response to the level of offending envisaged by these bylaws.

Horizons Regional Council have updated their navigation safety bylaw

- 4 Navigation safety bylaws are required to be reviewed every five years.¹ Horizons Regional Council did not meet this deadline, and their 2010 bylaw expired as a result. The infringement regulations which relate to this old bylaw were also made under the Local Government Act 1974 section 699A, which was repealed in 2013. The new empowering provision is found in the Maritime Transport Act 1994, section 330.
- 5 This means that the previous infringement regulations are no longer able to be used by Horizons Regional Council.
- 6 Because of this, the Council passed a new bylaw in July 2022: The Manawatū River and Tributaries Navigation Safety Bylaw 2022. This bylaw does not currently have any corresponding infringement regulations, which limits the enforcement options of the Council. Now that a new bylaw is in force, the infringement regulations corresponding to the old bylaw have lapsed, in addition to the expiry and repeal outlined above.
- 7 Horizons Regional Council have therefore requested that new infringement regulations be made to go with their new navigation safety bylaw, and their previous infringement regulations be repealed.

Your authority is required to issue drafting instructions to the Parliamentary Counsel Office

- 8 Cabinet approval is not required to issue drafting instructions to the Parliamentary Counsel Office (PCO) because the infringement regulations are entirely routine and do

¹ [Local Government Act 2002, section 158.](#)

not require new policy decisions since they are giving effect to a bylaw already created by the Council. You can therefore authorise the Ministry to issue drafting instructions to PCO.

Your authority is required to share PCO drafts with organisations outside of the Crown

- 9 Your authority is needed to share PCO's drafts of the regulations with Horizons Regional Council, because draft regulations are legally privileged, and Horizons Regional Council are an organisation outside of the Crown.² Sharing these drafts is necessary to make sure the regulations are fit-for-purpose.
- 10 Sharing PCO drafts is done on the basis that the drafts are:
 - 10.1 subject to legal professional privilege;
 - 10.2 released on an in-confidence basis;
 - 10.3 a work in progress; and
 - 10.4 subject to PCO's quality assurance methods.

Horizons Regional Council has produced, in conjunction with the Ministry, proposed infringement offences and fees

- 11 Horizons Regional Council has produced, in conjunction with the Ministry, proposed infringement offences and associated penalty levels. These have been attached at Annex 1 for reference.
- 12 These proposed infringement regulations and fees have been approved by the Council, but they are a first draft and are subject to change as the Council works with the Ministry and PCO.

Consultation

- 13 We have already consulted with the Ministry of Justice under 7.34 of the Cabinet Manual, and they have confirmed that they are comfortable with the proposed infringement penalty amounts and wording.³ We will continue to consult with them on further drafts produced by PCO.

Impact analysis

- 14 The Treasury's Regulatory Impact Analysis team has determined that the repeal and replacement of the infringement offences and fees under Manawatū River and Tributaries Navigation and Safety Bylaw 2010 is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

² [CO \(19\) 2: Attorney-General's Protocol for Release of Draft Government Legislation outside the Crown | Department of the Prime Minister and Cabinet \(DPMC\).](#)

³ [Cabinet Manual 2017 *The Executive, Legislation, and the House* 7.34 at 105 \(DPMC\).](#)

- 15 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Risk and impacts

- 16 We do not consider there are any risks for you authorising the Ministry to issue drafting instructions to PCO.

Next steps

- 17 Once drafts of the infringement regulations have been prepared, we will provide you with the necessary papers for the Cabinet Legislation Committee, and Executive Council, to enable the infringement regulations to be made.

PROACTIVELY RELEASED BY
TE MANATU WAKA MINISTRY OF TRANSPORT

ANNEX 1

Horizons Regional Council's proposed infringement fees for offences of its new Navigation Safety Bylaw 2022

Clause	Draft Description	Fee \$
cl 3.1.2	Failing to notify Harbourmaster of an accident or incident	200
cl 4.1.1	Failing to have sufficient personal flotation devices for each person on board a recreational craft that are readily accessible and of appropriate size for each person on board	200
cl 4.1.5	Failing to ensure persons on board recreational craft wear flotation devices	200
cl 4.1.6	Failing to ensure that any person being towed is wearing a properly secured personal flotation device of an appropriate size for that person	200
cl 4.2.1	Operating a vessel's propulsion system at wharf, jetty, pier, or ramp in way that may cause damage or injury	200
cl 4.3.1	Diving, swimming, or other related activities in certain areas in breach of requirements	200
cl 4.4.1	Anchoring vessel so as to cause obstruction to the passage of other vessels or approaches to any wharf, jetty, pier, or ramp	200
cl 4.4.2	Cutting, breaking, destroying, or unlawfully detaching moorings or fastenings of vessel in breach of requirements	200
cl 4.4.3	When vessel is moored to wharf or other landing place, failing to ensure adequate and safe means of access to vessel	200
cl 4.5.1	Obstructing access by water to wharf, landing place, boat ramp, or mooring	200
cl 4.5.2	Placing obstruction in waters if liable to restrict navigation, injure person, or damage property	200
cl 5.1.1	Failing to register personal water craft	200
cl 5.1.2	Failing to display, or adequately display, personal water craft registration number	200
cl 5.1.3	Failing to complete change of ownership or deregistration within specified timeframe	200
cl 5.2.2	Allowing a person less than 15 years of age to operate a power-driven vessel capable of exceeding a speed of 10 knots	200
cl 5.3.1	Operating a vessel at a speed exceeding 5 knots within specified areas	200
cl 5.3.2	Operating a vessel at a speed exceeding 5 knots when any part of person is extended over fore part, bow, or side of vessel	200
cl 5.3.3	Operating a vessel at a speed exceeding 5 knots while being towed in specified areas	200
cl 5.3.4	Operating a vessel at a speed exceeding 5 knots in contravention of Harbourmaster's or Enforcement Officer's direction	300

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cl 5.3.5	Operating a vessel at a speed exceeding 5 knots in specified areas at certain times of year	200
cl 5.3.6	Failing to recover dropped water ski or similar object unless adequate measures taken	200
cl 5.4.1	Failing to ensure wake of recreational vessel does not cause danger or risk of damage to other vessel or structure, or harm to person	200
cl 5.6.1	Failing to use a lookout 10 years or over on a vessel which is towing a person at a speed exceeding 5 knots who is responsible for notifying the person in charge of any mishap to the person being towed	200
cl 5.6.2	Being towed by a vessel at a speed exceeding 5 knots without a lookout 10 years or over who is responsible for notifying the person in charge of any mishap	200
cl 5.7.1	Towing person between sunset and sunrise	200
cl 5.7.2	Being towed between sunset and sunrise	200
cl 5.8.2	Obstructing person using reserved area for the purpose for which it has been reserved	200
cl 5.8.2	Entering into, remaining in or using a reserved area when a person is using a reserved area for the purpose for which it is reserved	200
cl 5.9.1	Damaging, removing, defacing, or interfering with aid to navigation	300
cl 6.2.5	Failing to give a public notice specifying the period of activity and details of suspension or reserved area	200
cl 6.4	Failing to comply with a direction given by the Harbourmaster, an enforcement officer or an honorary enforcement officer	200

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