Complaint regarding Shipping (Charges) Amendment Regulations 2013 and Marine Safety Charges Amendment Regulations 2013

Report of the Regulations Review Committee

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Recommendation

The Regulations Review Committee has considered a complaint about the Shipping (Charges) Amendment Regulations 2013 and the Marine Safety Charges Amendment Regulations 2013. Although we have found that the complaint is not made out, our consideration of this complaint has raised substantive concerns. We recommend that the House take note of this report.

Summary of our report

Although we are not recommending that the regulations be disallowed, there are four areas where we have substantive concerns. These are discussed in the report below. We expect Maritime New Zealand (MNZ) to address these concerns and the recommendations that flow from them. Our concerns and recommendations are as follows:

- MNZ should ensure that at the time of making decisions relating to fees and levies it fully documents decision-making so it is transparent, including to the industry.
- MNZ failed to take the opportunity offered by the mid-point review to address industry concerns about cross-subsidisation and the base hourly rate. We expect MNZ to address this issue promptly.
- This committee's prior recommendations in 2009, updated in 2011, have not been fully implemented, and we understand they will not be until the full 2018/19 funding review. We would expect MNZ to deal with this issue promptly.
- MNZ failed, when substantially increasing its fees, to take into account the reduction in demand for registrations. We expect MNZ to address its forecasting capability.

Introduction

On 7 February 2014, we received a complaint from Mr Paul Wilson about the Shipping (Charges) Amendment Regulations 2013 and the Marine Safety Charges Amendment Regulations 2013. The regulations are used to set fees and levies for commercial ships and raft operators in New Zealand waters.

The following matters were raised by the complainant:

- the fees and levies set by the regulations exceed the actual cost to MNZ of providing services; for this reason, MNZ continues to increase its costs, in order to justify the level at which fees and levies are set
- in particular, MNZ's personnel, management, and administration costs continue to increase—this is a long-term trend

- international shipping operators benefit from the system, because they are being subsidised by domestic operators
- the level at which the fees are set is driving some boat owners and operators to take their boats out of the shipping industry.

The complainant asked for the fees set by these regulations to be reviewed. He recommended a return to the fees set under the former Shipping (Charges) Regulations 2000 and Marine Safety Charges Regulations 2000. He also requested that the committee consider preventing further fee changes proposed for the Maritime Operator Safety System (MOSS). He asked the committee to consider revoking both of these regulations.

Standing Orders grounds

Under Standing Order 320, where a complaint is made to us, we have to consider whether it relates to one of the grounds on which we may draw a regulation to the special attention of the House. Those grounds are set out in Standing Order 319(2).

The complainant based this complaint on six of the grounds set out in Standing Order 315(2) of the Standing Orders of the 50th Parliament. Standing Order 315 has become Standing Order 319 in the present Parliament.[1]

Background to this inquiry

This is not the first time that the Regulations Review Committee has considered a complaint about regulations relating to marine safety charges and the actions of MNZ. The Regulations Review Committee of the 49th Parliament made two reports relating to a complaint about the Marine Safety Charges Amendment Regulations 2008.[2] The committee's interim report in 2009 was critical of MNZ, concluding that the regulations made an unusual or unexpected use of the powers conferred under the Maritime Transport Act 1994. It found that the process MNZ followed in setting the levy charged across different shipping categories was not fair, reasonable, robust, or coherent. The committee recommended that MNZ reassess its fee-setting methodology; and that the Ministry of Transport (MOT) and MNZ follow a consistent, analytical, robust process. It also recommended MNZ maintain good records of its application of the process when exercising the power to impose a levy.[3] In its response the Government endorsed this recommendation and agreed to ensure that it would be given effect.

As a consequence, in 2011/12 MNZ initiated a review of this methodology (the funding review). The subject matter of this current complaint relates to the arrangements set in place following that funding review.

Relevant legislation and legislative history

The current complaint was made about the Shipping (Charges) Amendment Regulations 2013. Those regulations were subsequently revoked and replaced by the Shipping (Charges) Regulations

1 See Appendix B for Standing Order 319.

2 Complaint regarding SR 2008/319 Marine Safety Charges Amendment Regulations 2008, Interim Report of the Regulations Review Committee, August 2009, and Complaint regarding SR 2008/319 Marine Safety Charges Amendment Regulations 2008, Report of the Regulations Review Committee, June 2011.

3 Letter from MOT to the Regulations Review Committee, 23 July 2014, page 10, paragraph 38. The two other recommendations were: "Redraft section 191 of the Maritime Transport Act 1994 to clarify that the marine safety charge being referred to is a levy" and "Amend the Maritime Transport Act 1994 to provide for a statutory consultation process to be followed whenever making regulations to set or amend the levy".

2014. Much of our consideration of this complaint focused on the 2014 regulations. The 2014 regulations have been further amended by the Shipping (Charges) Amendment Regulations 2016.

The Marine Safety Charges Amendment Regulations 2013 amended the Marine Safety Charges Regulations 2000. The Maritime Levies Regulations 2016 have now repealed and replaced the 2000 regulations.

Our consideration has taken into account the changes made to the regulations that are the subject of this complaint.

Shipping (Charges) Regulations 2014

These regulations prescribe fees to be paid for work done or services provided by MNZ. The work or services include the establishment, maintenance, and operation of facilities, and the costs and expenses incurred by the Crown in exercising its functions. Some of these fees are charged at an hourly rate, and some are fixed charges.

Fees and charges set by the regulations can be no more than necessary to recover the costs of the activities to which the fees and charges relate. These regulations allow for a fee to be set at no more than the amount necessary to cover costs. If the fee recovers more than it ought to, it could be viewed as a tax. Explicit authority from Parliament is required to charge taxes. Fees are expected to be set in accordance with guidance from both the Treasury[4] and the Office of the Auditor-General.[5] These guides are intended for all public entities that have statutory authority to charge a fee for the goods or services that they are obliged to provide.

Marine Safety Charges Amendment Regulations 2013

These regulations impose a levy on both foreign and domestic ships, called the marine safety charge, and known as the levy. The levy can be charged to support the safety of shipping, covering such aspects as navigational aids, distress and safety radio services, and marine safety information.

A levy differs from a fee for a specific good or service. Levies charged to a certain group or industry are usually used for a particular purpose. In this case, levies are used for things that make shipping safer in our waters. It is in the nature of a tax that is charged to a specific group. The Auditor-General's good-practice guide does not apply to levies.

The committee's approach to the inquiry

The Regulations Review Committee of the 50th Parliament received the current complaint. It concluded that the complaint met the first hurdle of validity. It did that by specifying which regulations were being complained about and identifying the Standing Order grounds that formed the basis of the complaint. The complaint also met the second hurdle of validity in that it raised a prima facie case in relation to at least one of the grounds specified in Standing Order 319(2).

However, there was not enough time remaining in the parliamentary term for evidence to be heard and, if appropriate, a report to be made to the House. When the 51st Parliament convened in October 2014, the complaint was reinstated.

In the two years that this complaint has been before us, we sought and obtained information from several sources. The complainant, MNZ, and the MOT appeared before us and we questioned

4 at http://www.treasury.govt.nz/publications/guidance/planning/charges

5 at http://www.oag.govt.nz/2008/charging-fees/docs/charging-fees.pdf

them in detail. We also received additional material from the complainant, and a large amount of detailed technical information from MNZ and the MOT. Although we did not call for public submissions, we received several in support of the complaint. The submitters ranged from private boat owners to a national body representing the interests of owner-operator commercial fishermen in New Zealand.

We considered whether these regulations should be drawn to the attention of the House on the grounds set out in the Standing Orders. We concluded that not all of the grounds specified in the complaint had been made out. We also determined that some of the issues raised related to policy grounds that we have no jurisdiction to consider. We concluded, however, that the regulations warranted further investigation on three grounds: Standing Orders 319(2)(a), (c), and (f).

These grounds relate to whether the regulations:

- (a) are not in accordance with the general objects and intentions of the enactment under which they are made. In particular, whether the fees and charges contained in the regulations are set so high that they defeat the objects of the Maritime Transport Act.
- (c) appear to make some unusual or unexpected use of the powers conferred by the enactment under which they are made. In particular, whether the fees and charges contained in the regulations are no higher than necessary to recover MNZ's costs.
- (f) contain matter more appropriate for parliamentary enactment. If the fees and charges contained in the regulations have been set at a level higher than the amount necessary to recover costs, that may constitute a tax which should be authorised by primary legislation.

Many of the matters canvassed in the complaint were technically complex: for example, the method used to calculate the hourly rate that underpins many of the fees. We asked MNZ and the MOT to give us full details of the models used in their calculations. In assessing these, we sought advice from the Office of the Auditor-General (OAG). In particular we asked the OAG to comment on whether the method of fee-setting, and the components of the fees, were in accordance with the Auditor-General's good practice guide, "Charging fees for public sector goods and services".

We identified issues that we considered to be at the heart of the matter. We needed to examine them in detail before we could determine whether any of the grounds set out in Standing Order 319(2) were made out.

The critical issues

We needed to know some basic facts to judge whether the disputed fees and charges are reasonable or excessive, and whether they are used in a way that discriminates against the domestic seafaring community:

- what they are based on, and how the rate was determined
- whether the base hourly rate meets any of the grounds on which the committee should take action under Standing Order 319(2)
- whether the method used to set the base hourly rate was consistent with the Auditor-General's good practice guide.

The hourly rate

The OAG advised us that MNZ charges fees for various services, sometimes referred to as its "feeable functions". The most common functions relate to the Maritime Operator Safety System (MOSS), Sea Certification (SeaCert) licensing,[6] and marine protection documents.

MNZ charges may be fixed (such as for SeaCert applications) or variable (such as for audits of maritime activities), but most charges are underpinned by the hourly rate that MNZ has determined it will charge for these services.

The MOT advised us that, prior to the funding review in 2011/12, the hourly charge-out rate on which fees were previously based had not been updated materially since MNZ was established in 1993. Following recommendations in the interim report of the Regulations Review Committee in 2009, MNZ initiated a full funding review in 2011/12 to consider its overall cost structure and the underlying costs of specific services and activities.

MNZ followed a two-step process. In the first step MNZ contracted a professional services firm, Ernst and Young, to develop models, including a model to provide information on MNZ's cost of effort across various activities, outputs, and sub-outputs. The global effect of the model was not to increase MNZ funding but to align more accurately the different revenue streams with the services and activities they were intended to pay for. The final financial models produced from this funding review allowed MNZ to understand its current costs, likely future costs, the funding sources for these costs, and the spread of these costs across the maritime sector. This was intended to provide a sound basis for funding decisions. It was initially expected to take six years to implement fully, but in the event, after three years, MNZ made a decision to carry out an interim funding review. This took place in 2015/16, and was a targeted rather than a complete review. As a consequence MNZ changed some parts of its fee structure.

In the second step of the process, MNZ used the information derived from the funding review to identify a range of possible hourly rates. The OAG advised us that it considered there had been a complex analysis of competing considerations that included the need to fully recover costs, transitioning those costs, and policy considerations. MNZ settled on a rate of $205 per hour (GST exclusive).[7]

We were told by the OAG that the approach adopted by MNZ to determine the base hourly rate was reasonable. Based on this advice, we consider that it is likely that MNZ set the base hourly rate at a level that did not exceed that necessary for cost recovery.

The OAG work also indicated that MNZ had applied the recommended principles of authority, efficiency, and accountability when setting the base hourly rate. We note, however, the view of the OAG that MNZ's documentation, recording how it finally derived the base hourly rate, is poor. This is a matter we will return to later in this report.

The extent to which fee and levy payers are accessing public, private, or club goods

This matter was considered by MNZ as part of the 2011/12 funding review and was looked at again as part of its mid-point funding review. In particular, the mid-point funding review considered whether the costs for MNZ's regulatory and compliance work were being recovered

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6 SeaCert is the seafarer licensing framework for national and international certificates of competency and proficiency. It also sets out where seafarers can operate in local and international waters.

7 In view of the impact on fee payers, the resulting fee increases were to be phased in over six years, but the size of this cost recovery gap involved significant initial fee increases just to partly rectify the problem. OAG, letter to committee dated 9 September 2015, pages 3 and 4.

from the appropriate sources, so that those who benefitted from the regulatory and compliance work were paying for the services. We were told that MNZ obtained detailed external advice during this review and that, as a result, it made changes to the way it intends to fund some of its activities so that they better reflect the public/private benefits associated with those activities.

We were reassured by the view of the OAG that:

> MNZ has been very deliberate and considered when determining the nature of the services it provides…and…who should pay for those services. This has included obtaining appropriate external advice and relying on that advice where appropriate. Also, MNZ has been transparent in its determinations.[8]

Cross-subsidisation

The complainant specifically raised the issue of the possible subsidy of international operators in the industry by domestic operators. We asked the OAG to review how MNZ manages its various revenue streams with a view to assessing whether this is indeed so.

We were told that MNZ seeks to align its revenue collection to the various services it provides on the following basis:

- Crown funding – for public good activities, such as policy advice.
- Levy – for common good activities supporting the maritime system, such as navigational aids and regulatory functions.
- Fees or user charges – for private benefit MNZ activities such as licensing, certification, audits, and approvals.

Both the funding review and the mid-point funding review identified some areas where there was potential cross-subsidisation across MNZ's funding streams.

The funding review showed that the cost of providing MNZ's services funded by user charges (for example, services for which fees are charged) was about $5.5 million per year, in comparison with the then-estimated fee revenue of $1.8 million. This shortfall in fee revenue of $3.7 million was funded from an over-recovery of levy income.

Accordingly, a key recommendation of the 2011/12 funding review, which was accepted, was to progressively move user charges on to a full cost-recovery basis (for example, by increasing the hourly charge-out rate) and to phase out use of the levy to meet the funding shortfall.

The funding review showed that the levy was being used to meet shortfalls in Crown funding for recreational boating costs, and shortfalls in Health and Safety in Employment funding. It also showed that the fixed fee charged for SeaCert services was under-recovering the costs of considering complex seafarer licensing applications.

We note that the actual levy revenue for the period 2013/14 through to 2015/16 was on average 20 to 25 percent higher than the funding review forecast figure. In the forecast period 2016 to 2018, revenue is expected to be more than 50 percent above forecast levels. The OAG understands that actual levy revenue was greater than forecast because the funding review did not build in any potential growth in shipping volumes, while in actual terms non-passenger volumes increased by 5 percent a year and passenger volumes increased by 7 percent a year.

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[8] OAG, letter to committee, dated 4 April 2016, paragraphs 14 and 15.

The OAG summarised for us in June 2016 its findings on cross subsidisation:

> Cross-subsidisation was identified during both the review and mid-point funding review with the predominant form of the subsidy being use of the levy to meet funding shortfalls in the areas of fees and Crown funding. We note that levy payers are, in dollar terms, largely international vessel operators, while most direct fee payers are domestic seafarers and vessel operators. Accordingly the impact of the subsidy between maritime levy and direct fees may imply that international operators have at various times subsidised activity relating to the domestic industry in circumstances where the domestic (that is fee) income streams proved inadequate to maintain service levels.[9]

We also note that MNZ has done considerable work on how much it should recover from the levy. Nonetheless, MNZ acknowledges that it lacks reliable data on such things as relative risk between different ship categories. We are concerned that the methodology that MNZ uses to allocate the maritime levy across different classes of levy payers has not changed substantially since 2008. The OAG considers that this needs to be reviewed. We agree with that view. This matter requires attention as soon as practicable as it clearly contributes to a level of distrust and bad feeling within the industry.

We understand that there are plans to do so. As a result of Cabinet decisions made in the mid-point funding review, MNZ will undertake a full review of the maritime levy allocation methodology to determine the appropriate data required, and the model to apply to maritime levy papers. It is to report back on the results of this work as part of the full 2018/19 funding review.

On a related matter, we note that there was lack of clarity as to the methodology rationale for the different approaches to fee increases in relation to MOSS and SeaCert. It was not clear to us, nor to the industry, why a different approach was applied to these fee types.

Possible "driving out" of operators

The complainant submitted that the level at which fees and charges are set is driving some boat owners and operators to take their boats out of the shipping industry. This would be a matter of significant concern. We asked the OAG to provide us with advice to help us determine whether this was likely to be the case.

The OAG concluded that both the number of commercial operators and the number of vessels entering the MOSS regime has been fewer than originally forecast. MNZ therefore received less than the forecast revenue from its MOSS activities and had to reduce its operating expenses. We would have expected MNZ to have carried out an elasticity-of-demand forecast before introducing these services. We understand, however, that this was not done.

A post-facto analysis suggests that there have been various reasons for fewer operators and vessels entering MOSS than forecast. Some operators delayed their entry into the MOSS regime, MNZ's database may have included operators who were no longer operating, and some operators chose to merge operations or group vessels under a single operation, as opposed to individual operations.

We are concerned that MNZ's forecasts were inaccurate and failed to take some important factors into account. We cannot, however, conclude from this information that high fees are driving owners and operators out of the shipping industry.

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[9] OAG, letter to committee, dated 27 June 2016, page 4.

Our conclusion on the complaint

After considering the issues raised by the complainant, and the evidence presented to our committee, we have reached the following conclusion.

In our view, the complaint is not made out, and does not justify the committee drawing the special attention of the House to the regulations on any one or more of the grounds set out in Standing Order 319(2).

The OAG considers that the process by which the fees were set was reasonable, and we have no reason to reach a different view. However, the OAG found that there was a lack of documentation held by MNZ on how it finally derived the base hourly rate that was used as the basis for its fixed fees and for charging out a range of other activities. Further, MNZ's failure to respond to similar concerns previously expressed by this committee warrants our drawing this matter to the attention of the House.

Our comment and recommendations

It has taken several years and considerable resources to carry out the analysis necessary for us to consider this complaint. While we do not consider that the grounds in Standing Order 319(2) have been made out, we have three relatively significant concerns which we discuss in more detail below. We are concerned about:

- a failure in documentation about how the base hourly rate was set and the justification for setting it at that particular level
- a missed opportunity in the mid-point review of 2015/16 to address industry concerns on this matter
- a seven-year delay in addressing the issue raised by this committee in its report of 2009 regarding how the levy is split between operators.

A failure in documentation

The OAG has assured us that its examination of the process used by MNZ in the 2011/12 funding review indicates that this was robust. External expertise was used, with Ernst and Young being contracted to develop funding models. Our committee was provided by the MOT and MNZ with extensive information about the process.[10] The OAG concluded that the models produced allowed MNZ to understand the current cost of effort, likely future costs, funding sources for these, and the spread of these costs across the maritime sector. The OAG advised us that it considered this approach reasonable. Its audit work determined that MNZ had allocated its overhead costs on a reasonable basis and the OAG saw no evidence of these costs being "gold plated".[11]

However, it became abundantly clear during our consideration of this complaint that the required final step was missing: the documentation of the basis on which decisions were made as to the level of fees that would be charged. MNZ was not subsequently able to provide this, either to our committee or to the OAG.

Fee and levy setting is an issue that all industry participants are vitally interested in, that impacts on their livelihoods, and that has the potential to lead to dissatisfaction, distrust, and general bad feeling within the industry. We therefore find it unacceptable that the important work of

10 MOT, 22 August 2013; 11 April 2014; 23 July 2014; 25 August 2014; MNZ's Maritime New Zealand Funding Review Consultation—Background Document.

11 OAG, letter to committee, dated 4 April 2016, page 7.

documentation was not completed; and that it was not possible to provide those who were subject to the fees and levies with a clearly laid-out rationale for the decisions taken.

In our 2009 report we made a similar comment about the importance of documentation. One of our recommendations called for the MOT and MNZ, when exercising delegated power, to impose a levy, "to follow a consistent, analytical, robust process, and **maintain good records** [our emphasis]…so as to bring the exercise of that power within the contemplation of Parliament's original delegation".[12]

We are disappointed that it is necessary to make a similar recommendation once more. We strongly recommend that MNZ ensure that, at the time of making decisions relating to fees and levies, it fully documents decision-making so it is transparent, including to the industry.

A failure to address previous concerns

MNZ carried out a mid-point funding review at the end of last year, three years after it had instituted a changed fee structure. This was a targeted review and not every issue was considered. The OAG noted, while this review was underway, that it would be helpful if MNZ were to incorporate a review of the base hourly rate as part of its work,[13] given that there was industry disquiet about the matter. We understand that MNZ felt that this would be very challenging and costly to do, and that it intended to carry out this work instead in 2018, at the end of the full six-year implementation period following the fee change.

In our view it would have been appropriate to widen the scope of the mid-point review to include this work. The situation since the base hourly rate was set has been complicated by the introduction from 1 July 2014 of MOSS, as the calculations contained in the funding review did not include the cost of MNZ delivering "feeable" functions relating to MOSS. We understand that the amounts concerned could, potentially, have a significant effect on MNZ's cost structure.

We also note that the good practice guide of the OAG, "Charging fees for public sector goods and services", recommends that, because costs are not static, they should be reviewed regularly to ensure that they remain appropriate, and the assumptions on which they are based remain valid and relevant. The guide suggests that such reviews be carried out at least every three years.

We are disappointed that MNZ failed to take advantage of the opportunity offered by the mid-point review to address the concerns of the industry about cross-subsidisation and the base hourly rate. We expect MNZ to address this issue promptly.

Undue delay in resolving levy matters

We are concerned that the methodology that MNZ uses to allocate the maritime levy across different classes of levy payers has not changed substantially since 2008; and we note the view of the OAG that it needs to be reviewed.[14]

Our previous reports on the complaint about the Marine Safety Charges Amendment Regulations 2008 raised exactly this issue. In our follow-up report of June 2011 we commented on an update we had received from the Minister of Transport on progress relating to this issue:

> The Minister…told us that the review of [MNZ] includes [MNZ's] cost allocation and cost recovery framework which were identified as necessary to clarify the allocation of effort and

12 Interim report of the Regulations Review Committee, August 2009, Complaint regarding SR 2008/319 Marine Safety Charges Amendment Regulations 2008.

13 OAG, letter to committee, dated 9 September 2015.

14 OAG, letter to committee, dated 4 April 2016.

> cost for levy and fee calculation purposes. The Minister believes that **improved data** [our emphasis] will provide more complete and verifiable information and support better analysis, and that this capability will allow the monitoring of projected results against actual results, uncover opportunities for 'further refinement', and identify any issues for consideration when the levy is next reviewed.
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> … [MNZ] already reports on levy revenue, but will be able to do so better once information systems being reviewed in conjunction with the funding review have been improved. [15]

The levy allocation and charging basis was not changed in the funding review. It was discussed again in the mid-point funding review and MNZ accepted that some members of the maritime industry believed they were paying too great a share of the levy, based on the benefits, risk, and cost to them. We are concerned to see that MNZ still considers that it does not have sufficient data to revisit the levy allocation method; and that, while work to reassess the levy allocation will start in 2016/17, it will not be dealt with until the full funding review due in 2018/19.[16]

This is another issue which gives rise to dissatisfaction within the industry; and we note with great concern that, in the seven years since we raised this issue in our interim report of 2009, MNZ has still not obtained sufficient information about relative risk between ship categories to allow it to review the matter and provide interested parties with a clear rationale for the basis of the allocation. As this complaint has demonstrated, in the absence of such a rationale, industry participants feel they have grounds to question the fairness and validity of the allocation.

The committee is concerned that its prior recommendations in 2009, updated in 2011, have not been fully implemented, and we understand they will not be until the full 2018/19 funding review. We would expect MNZ to deal with this issue promptly. In doing so, MNZ should undertake this review in accordance with the principles set out in the OAG's guidance on charging fees for public sector goods and services. It should seek input from the MOT and industry participants.

Forecasting capability

Our review of this complaint has taken too long because we have had to deal with complex issues and seek advice from the OAG. Some of MNZ's forecasts were inaccurate or unreliable and failed to take important factors into account (for example, as we commented above, there was no elasticity-of-demand analysis carried out when the original MOSS and SeaCert forecasts were prepared).

The material we needed to consider on the matter before us was complex and we felt that MNZ could, at times, have been more proactive in providing us, not simply with the material we needed, but with more guidance in understanding some very difficult issues and documents. That said, however, we note that the view of our advisers, the OAG, was that MNZ gave OAG auditors full access to all the material they required;[17] and that, based on this material, the OAG was able to give us an assurance on the matter that was fundamental to our inquiry, namely that there was no indication that the base hourly rate had been set at an inappropriate level.

We are concerned that MNZ failed, when substantially increasing its fees, to take into account the reduction in demand for registrations. We expect MNZ to address its forecasting capability.

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15 Report of the Regulations Review Committee, June 2011, Complaint regarding SR 2008/319 Marine Safety Charges Amendment Regulations 2008, page 6.

16 MNZ Proposals to Make Changes to Maritime New Zealand Fees and the Maritime Levy for 2016–19, page 49.

17 OAG, letter to committee, dated 4 April 2016, page 7.

Conclusion

We note that the shortcomings in how MNZ has discharged its role have contributed unnecessarily to a degree of distrust and dissatisfaction within the maritime industry. It is in the interests of MNZ and the industry for these matters to be addressed urgently.

We expect MNZ to treat this committee with respect in relation to the recommendations we have made.

Appendix A

Committee procedure

The committee met between 6 November 2014 and 3 November 2016 to consider the complaint. We considered evidence from the complainant, the Ministry of Transport, and Maritime New Zealand. Submissions were also received from seven other entities and individuals. We sought advice from the Office of the Auditor-General.

Committee members

Hon David Cunliffe (Chairperson)
Andrew Bayly
Hon Chester Borrows
Christopher Bishop
Hon David Parker

Appendix B

Standing Order 319

319 Drawing attention to regulation

(1) In examining a regulation, the committee considers whether it ought to be drawn to the special attention of the House on one or more of the grounds set out in paragraph (2).

(2) The grounds are, that the regulation—

(a) is not in accordance with the general objects and intentions of the enactment under which it is made:

(b) trespasses unduly on personal rights and liberties:

(c) appears to make some unusual or unexpected use of the powers conferred by the enactment under which it is made:

(d) unduly makes the rights and liberties of persons dependent upon administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal:

(e) excludes the jurisdiction of the courts without explicit authorisation in the enactment under which it is made:

(f) contains matter more appropriate for parliamentary enactment:

(g) is retrospective where this is not expressly authorised by the enactment under which it is made:

(h) was not made in compliance with particular notice and consultation procedures prescribed by applicable enactments:

(i) for any other reason concerning its form or purport, calls for elucidation.