

Report 02.159
15 March 2002
File: J/2/1/2
Docs:Rec.HEO

Report to Environment Committee
from Mike Pryce, Manager, Harbours

Maritime Rule Part 91 – Invitation to Comment

1. Purpose

For the Committee to recommend to Council approval of a submission to the Maritime Safety Authority (MSA) on Maritime Rule Part 91.

2. Background

The Wellington Regional Council has been invited to comment on the MSA's proposed regulations (Part 91) which are to replace the Water Recreation Regulations 1974. Part 91 updates the basic navigation safety rules contained in the 1974 regulations and introduces new requirements for the carriage of personal flotation devices on pleasure craft. In essence Part 91 replicates the *Wellington Regional Navigation and Safety Bylaws 2000* that were made pursuant to section 684B of the Local Government Act 1974. However, all regional council bylaws *cannot be inconsistent* with Part 91.

Submissions on Maritime Rule Part 91 were due on 18 March 2002 and the submission has already been sent to the MSA (**Attachment 1**). Officers were given a very short time scale in which to respond and this has made it difficult to produce a comprehensive submission. However, it is considered that the most important issues for this Council are traversed in the submission.

3. Comment

The proposal that navigation bylaws be subject to Part 91 is a significant departure from the navigation and safety arrangements of the past. Previously, the Water Recreational Regulations applied outside harbour limits and the Harbour Bylaws applied inside the Harbour limits. Officers consider that this sensible arrangement should be continued; Part 91 should not apply where regional council bylaws are in force. Central to this issue is the requirement that navigation and safety bylaws *not be inconsistent* with the regulations (Part 91).

Generally, modern primary legislation is broadly worded and empowering. Section 684B of the LGA, which empowers regional councils to make navigation and safety bylaws, allows “room” for regional councils to determine appropriate bylaws for their local communities. Therefore, it is possible for bylaws to vary between regions without any bylaw being inconsistent with the LGA.

In contrast, regulations such as Part 91 are highly prescriptive. Regional councils will be dramatically restricted in the extent to which they can accommodate local variations in their bylaws. We consider this to be contrary to the intention of section 684B of the LGA. Furthermore, the practical effect of this proposal is to make regional councils *de facto* enforcement agencies of the MSA by virtue of having no control over what is to be enforced.

A number of specific amendments to the provisions in Part 91 are also recommended in the submission.

4. Communication

No particular communication is required for this submission.

5. Recommendation

That the Committee recommends to Council that it approves the attached submission on Maritime Rule Part 91 that was submitted for consideration by the Maritime Safety Authority on 18 March 2002 and confirm the action taken.

Report prepared by:

Approved for submission by:

MIKE PRYCE
Manager Harbours

JANE BRADBURY
Divisional Manager, Environment

Attachment 1: Maritime Rule Part 91 - Submission from the Wellington Regional Council

Attachment 2: Maritime Rule Part 91