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MARPOL ANNEX VI CONSULTATION

This is a response to the Ministry's November 2018 consultation document.

I am a legal academic specialising in maritime law, as well as a partner at Wellington firm Izard Weston.

I have been interested in the MARPOL Annex VI issue for some time, having published "Shipping and Air Pollution: New Zealand's Failure to Ratify MARPOL Annex VI" in a 2016 issue of the *Australia and New Zealand Maritime Law Journal* (vol 30, pp 90-98).

In a letter dated 11 August 2016 I wrote to the former Minister of Transport, referring to this article, and urging him to ratify this instrument.

On 28 September 2017 I responded to the Ministry's invitation to participate in further consultation on the issue of shipping and greenhouse gas emissions.

On 20 December 2017 I wrote to the incoming Minister of Transport urging him to ratify this instrument.

I am pleased that the Ministry is finally being asked to conduct public consultation on this issue.

Question 1: New Zealand's stated ambition is to be a global leader on climate change and strengthen our credibility and influence in international climate negotiations. To enable New Zealand to influence climate change policy at the IMO we need to accede to Annex VI and be at the table to influence decisions. Do you agree?

Yes. This has been one of the factors I have stressed throughout my engagement on this issue. New Zealand's current position is an embarrassment. The country cannot credibly claim to be a "global leader" on climate change if it has not ratified a widely-adopted set of international minimum standards on air pollution from ships (or a more

stringent local equivalent). Annex VI has been open for signature for over two decades. It has been in force for over 13 years. We are the only OECD country apart from Israel and Mexico that has not ratified. We are the only SPC country apart from the Solomon Islands and Fiji. Any time New Zealand speaks about climate change on the world stage we could be rightly accused of hypocrisy if we continue to sit on the side-lines where shipping is concerned – the industry we rely on to keep this country running.

Having a credible voice on the international stage is also important for New Zealand from an economic perspective. There have been suggestions in the past at the IMO that financial measures to combat greenhouse gas emissions should take into account the distance a vessel is travelling. For a geographically remote country like New Zealand, with relatively low shipping volumes, this kind of mechanism could have a disproportionate effect on our shipping costs. New Zealand's participation in Annex VI will help lend authority to arguments the country may wish to raise to the contrary (for example, that shipping volume is more important than distance).

Certainly ratification of the agreement means some significant adjustments for the domestic industry, and big questions are raised around the supply of compliant fuel worldwide – but these are the adjustments and questions that we are confronted with in the 21st century. If New Zealand wants to be a leader in this field it has a lot of catching up to do.

Questions 5 to 8: Public Health

Researching my 2016 article, I was struck by the paucity of reliable monitoring undertaken around New Zealand on sulphur oxides in particular. We have long known the health impacts of these emissions, but have little way of knowing whether it is a practical issue around ports like Wellington, Tauranga, Lyttelton and Auckland.

However, from the information that was available, this appears to be an issue we should take more seriously. Unlike some countries, New Zealand's major ports are in close proximity to major residential centres, and people are encouraged to participate in recreational activities nearby. Can we confidently tell a mother pushing a stroller along Auckland waterfront that the ships belching black smoke from their funnels present no real risk to her infant?

The impact of Annex VI in improving the quality of fuel on board ships will reduce these pollutants, improving air quality. The precautionary principle would hold that a State in New Zealand's position should introduce restrictions to address these potential risks, notwithstanding the lack of comprehensive data, particularly given the known risks to public health.

Questions 9 to 12: New Zealand Ships Abroad

The problems that New Zealand ships travelling abroad for servicing will encounter after the 2020 fuel quality changes come into effect are a reminder of why the widely-accepted IMO regulatory standards are so central to the shipping industry. By agreeing to abide by international minimum standards New Zealand's ships will continue to be granted hassle-free passage to and from the world's ports. If we do not put them into force here, then New Zealand ships heading to Sydney or Singapore will not be granted any exemption from compliance merely on the basis that their flag state has declined to participate. They will be subject to detention by port state control agencies, potentially fined, and compelled to comply before departure.

The alternatives would be to have sufficient fuel supplies to at least have a New Zealand flagged vessel depart these waters in compliance with MARPOL Annex VI, or to seek a formal exemption for each ship on arrival in its first MARPOL Annex VI port until higher quality fuel can be taken on board. In the latter case, New Zealand companies will be facing a high regulatory burden, not to mention a period of uncertainty, for each offshore voyage.

Questions 34 to 35: The Domestic Sector

As the discussion paper suggests, at a principled level, New Zealand should address ratification of MARPOL Annex VI as if all large domestic vessels under the New Zealand flag will need to comply. First, the issues around international leadership in environmental matters and public health point towards imposing a single standard for all such vessels. Second, there would be a significant competitive disadvantage if some vessels could opt to burn cheaper, dirtier fuels while other companies were compelled to burn higher quality fuels in order to meet their international servicing requirements. Third, there will most likely be practical limitations to supplying large quantities of marine fuels of varying qualities around New Zealand. This reform project should be about raising the quality of fuels used across New Zealand's fleet as a whole.

Question 36: Other Considerations

There is also a benefit in New Zealand enforcing Annex VI in respect of visiting foreign vessels as a port state. We will be part of the global enforcement net ensuring that fuel and engine efficiency standards are being complied with by vessels of all flags. At one extreme, we would not want to become the state where the dwindling number of non-Annex VI compliant vessels could be sent on a long, profitable run burning low-cost fuel.

Questions 37 to 38: Overall Conclusion

I believe New Zealand is long overdue to ratify MARPOL Annex VI. The vast majority of the world has already begun addressing the issues that are raised in the consultation paper, and each of those states has had to confront similar concerns around costs, supply, and practicality. There are plenty of examples for New Zealand to draw on. The local shipping industry has put a lot of thought into this issue already, and is ready to assist the Ministry with its work. We just need to get a move on.

To this end, I think the proposed timetable is not ambitious enough. The regulatory amendments phase seems unnecessarily long. MARPOL Annex VI should be in force here in 2020 to provide certainty for the domestic industry, which needs certainty in order to undertake long-term planning.



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