

**Reprint
as at 1 February 1995**



Shipping Act 1987

Public Act 1987 No 183
Date of assent 20 July 1987
Commencement see section 1(2)

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This Act is administered by the Ministry of Transport.

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An Act to promote fair dealing and safeguard competition in New Zealand's outwards shipping services, and to discourage discrimination against New Zealand shipping and trading interests by foreign governments

1 Short Title and commencement

- (1) This Act may be cited as the Shipping Act 1987.
- (2) This Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.

2 Interpretation

In this Act, unless the context otherwise requires,—

agreement includes any contract, arrangement, or understanding, whether formal or informal and whether express or implied; and also includes—

- (a) an agreement made outside New Zealand; and
- (b) an agreement made before the commencement of this Act; and
- (c) an agreement that is not enforceable by legal proceedings, whether or not it was intended by any party to the agreement to be so enforceable

carrier means a person, whether an operator of vessels or not, who contracts with any shipper to carry or arrange for the carriage of goods wholly or partly by sea, whether or not as an incidence of the carriage of passengers

direction means a direction given by the Minister under section 7, and, where a direction has been amended, means the direction as so amended

foreign government means the government of a country other than New Zealand

Minister means the Minister of Transport

outwards shipping means the carriage of goods wholly or partly by sea from a place in New Zealand to a place outside New Zealand

registered New Zealand ship means a ship that is registered in New Zealand under the Ship Registration Act 1992

shipper means a person who is both the consignor and owner of goods by whom or in whose name goods are consigned or to be consigned wholly or partly by sea from a place in New Zealand to a place outside New Zealand; and includes any class, group, or association of shippers

unfair practice has the meaning assigned to it in section 4(1).

Section 2 **registered New Zealand ship**: amended, on 29 October 1992, by section 88(2) of the Ship Registration Act 1992 (1992 No 89).

Part 1

Shipping policy and practices

3 Shipping policy objectives

For the purposes of this Act, the objectives of New Zealand's shipping policy relating to outwards shipping are as follows:

- (a) to promote and safeguard fair competition in international shipping serving New Zealand's outwards shipping to the benefit of both shippers and carriers, having regard to—
 - (i) New Zealand's reliance on efficient, reliable, and competitive shipping services, whether provided by individual carriers or by members of a conference:
 - (ii) New Zealand's market and product diversification:
 - (iii) developments in international shipping, including shipping operated other than on a commercial basis or for other than a commercial purpose:

- (b) to safeguard against the abuse of a dominant position by any carrier or association of carriers, and to ensure that the entry of new carriers into New Zealand's outwards shipping is not unfairly or unreasonably prevented or prejudiced:
- (c) to discourage practices by carriers that have the effect of limiting, preventing, or reducing competition among carriers:
- (d) to encourage carriers to give reasonable notice to shippers who will be affected of impending changes to the terms and conditions upon which the carrier carries goods:
- (e) to encourage consultation and negotiation between shippers and carriers relating to the terms and conditions of the carriage of goods by carriers, particularly in relation to the following matters:
 - (i) changes in general tariff conditions and in the policies on which such conditions are based:
 - (ii) changes in the general level of tariff rates for major commodities:
 - (iii) promotional freight rates:
 - (iv) special freight rates:
 - (v) the imposition of and changes to surcharges:
 - (vi) procedures for the supply of information by shippers in respect of cargo availability and the nature and volume of cargo to be shipped:
 - (vii) the introduction of new technology:
 - (viii) changes in the pattern of services:
- (f) to recognise that commercial relations between shippers and carriers should be self-regulating while there is a satisfactory balance of advantage between the parties.

4 Unfair practices justifying use of Minister's powers to initiate investigations and issue directions

- (1) For the purposes of this Part, the term **unfair practice** means any practice or conduct engaged in, or any agreement entered into or arrived at, that has the purpose or has or is likely to have the effect of limiting, preventing, or reducing competi-

tion in outwards shipping services; and includes, in relation to outwards shipping services, the following:

- (a) the abuse of a dominant position by any carrier or association of carriers:
 - (b) any substantial failure on the part of a carrier to give reasonable notice (whether individually or to a representative body or by way of circular or notice appearing in any relevant trade journal or other appropriate publication) to any New Zealand shipper who will or is likely to be affected of impending changes to the terms and conditions upon which the carrier carries goods:
 - (c) any unreasonable refusal or failure on the part of a carrier to enter into negotiations or consultations requested by any New Zealand shipper relating to the terms and conditions upon which the carrier carries goods:
 - (d) the tendering by a carrier for the supply of outwards shipping services at prices, or on terms, agreed or arranged with any other carrier without the knowledge of the person inviting the tender, or the entering into or arriving at of any agreement with any other carrier or carriers that 1 or more of them will abstain from tendering for the supply of such services, where tenders for the supply of such services have been invited.
- (2) In exercising the discretion to initiate an investigation into an unfair practice under section 5(1), or to issue directions under section 7(1), the Minister shall have regard to the following matters:
- (a) the shipping policy objectives set out in section 3:
 - (b) the degree of any detriment or disadvantage caused or likely to be caused by the unfair practice:
 - (c) the possibility of stopping or preventing the carrier from engaging in the unfair practice, or of minimising any detriment or disadvantage caused or likely to be caused by the unfair practice, by means other than the powers conferred on the Minister by this Part.

5 Minister may investigate suspected unfair practices

- (1) Where the Minister believes on reasonable grounds that any unfair practice is being or has been engaged in by a carrier or

carriers that has or is likely to have a detrimental effect on the interests of any New Zealand shipper, the Minister, following consultation with that carrier or those carriers, may investigate the matter or arrange for it to be investigated by some other person whom the Minister considers to be qualified to conduct such an investigation by reason of that person's experience in or knowledge of the shipping industry.

- (2) Any person to whom any such matter is referred by the Minister under subsection (1) shall have the same powers as the Minister has under subsection (3).
- (3) The Minister shall, for the purposes of an investigation under this section, have the same powers as are conferred on Commissions of Inquiry by section 4 and sections 4B to 9 of the Commissions of Inquiry Act 1908.
- (4) Section 4 and sections 4B to 9 of the Commissions of Inquiry Act 1908 shall apply to all persons involved in any capacity in an investigation under this section as if it were an inquiry conducted by a Commission under that Act.
- (5) Any person who satisfies the Minister, or the person conducting the investigation where that person is not the Minister, that any evidence given in the investigation may adversely affect that person's interests, shall be given an opportunity during the investigation to be heard in respect of the matter to which the evidence relates.
- (6) Where in the course of an investigation under this section it appears to the Minister, or to the person conducting the investigation where that person is not the Minister, that any adverse finding or comment is likely to be made in the report on the investigation relating to the conduct of any person, that person shall be given an opportunity to be heard in respect of that conduct.
- (7) Every person entitled or given an opportunity to be heard in an investigation under this section may appear in person or be represented by counsel or an agent.

6 Report on investigation

- (1) The person conducting an investigation under section 5 shall prepare a written report on the results of the investigation, and,

where that person is not the Minister, shall submit the report to the Minister.

- (2) Not later than 30 days after the completion of the report on an investigation conducted under section 5 or, where the person conducting the investigation is not the Minister, not later than 30 days after the submission of the report to the Minister, the Minister shall,—
 - (a) subject to subsection (3), send a copy of the report to every person whose conduct has been the subject of investigation by the inquiry; and
 - (b) where the report reveals conduct on the part of any carrier that would reasonably justify the use of the Minister's power to issue directions to that carrier under section 7, notify that carrier accordingly and specify a date, being not earlier than 30 days after the date of the notification, before which the carrier may make representations to the Minister on the matter.
- (3) The Minister—
 - (a) may delete or omit from any copy of a report to be sent out under subsection (2)(a) any part of the report that does not bear directly on the conduct of the person to whom the report is to be sent:
 - (b) shall delete or omit from such a copy any part of the report that contains confidential or sensitive commercial information (being information that may be withheld under the Official Information Act 1982) supplied by any person other than the person to whom the report is to be sent.
- (4) Subject to subsection (5), the Minister may cause the whole or any part of a report on an investigation under section 5 to be published.
- (5) The Minister shall not publish any part of the report that contains confidential or sensitive commercial information (being information that may be withheld under the Official Information Act 1982) unless the Minister is satisfied that in all the circumstances it is in the public interest to do so.

7 Minister may issue directions to carriers engaging in unfair practices

- (1) Where, as a result of an investigation carried out under section 5, and following consideration by the Minister of any representations made by the carrier within the time allowed under section 6(2)(b), the Minister is satisfied that a carrier is engaging or has engaged in any unfair practice, and that the effect of the unfair practice has been or is likely to disadvantage in any substantial way the interests of any New Zealand shipper, the Minister may direct that carrier in writing to do all or any of the following:
- (a) furnish to the Secretary for Transport particulars of all the terms and conditions of, and the names of all other parties to, each agreement relating to outwards shipping to which that carrier is or has been a party and which includes or included provision for any or all of the following matters:
 - (i) the fixing or regulation of freight rates:
 - (ii) the giving to or withholding from any New Zealand shipper of special rates or other special privileges or advantages, or the imposition of any detriment or disadvantage on any such shipper:
 - (iii) the allocation of ports to any particular vessel or carrier, or the restriction or other regulation of the number or character of sailings between ports:
 - (iv) the restriction or other regulation of the volume or character of goods to be carried:
 - (b) give reasonable notice, in such manner as may be specified in the direction, to any New Zealand shipper who will or is likely to be affected of impending changes to the terms and conditions upon which that carrier supplies outwards shipping services:
 - (c) provide such evidence as the Minister may require that, following a written request from a New Zealand shipper, the carrier has entered into reasonable consultations or negotiations or both with that shipper on such matters as may have been specified by the shipper in the request, being matters relating to the terms and condi-

tions upon which the carrier supplies outwards shipping services, or to any proposed or possible changes to such terms and conditions.

- (2) Any direction issued under this section may—
- (a) require the furnishing of particulars of any agreement entered into by the carrier after the date on which the direction was given:
 - (b) exempt from the ambit of the direction, in whole or in part, any agreement or class of agreements of which particulars are required to be furnished, whether by reference to—
 - (i) the identity or class of identity of any other party to the agreement or agreements; or
 - (ii) the subject matter of the agreement or agreements; or
 - (iii) the nature of any of the terms or conditions of the agreement or agreements; or
 - (iv) the period within which any such agreement is or was entered into or in existence:
 - (c) specify the period within which particulars of any agreement to which the direction relates must be furnished to the Secretary for Transport, and different periods may be specified in respect of agreements entered into or subsisting at different times:
 - (d) specify any minimum period of notice that may be appropriate to a requirement imposed under subsection (1)(b).
- (3) Subject to section 8(2), a direction under this section may be issued at any time and may amend any prior direction issued to the same carrier.
- (4) The Minister may at any time, by notice in writing to the carrier concerned, cancel a direction issued under this section.

8 Restrictions on directions

- (1) No requirement shall be imposed under any direction that is not related to the nature of the conduct that justified the issue of the direction.

- (2) No direction shall be issued to a carrier later than 18 months after the date before which the carrier is entitled to make representations under section 6(2)(b).

9 Period for which direction in force

Every direction issued under section 7 shall remain in force until—

- (a) it is cancelled by the Minister; or
(b) the date 2 years after the date before which the carrier is entitled to make representations under section 6(2)(b),—

whichever is the sooner, and shall then lapse.

10 Minister's powers not to be delegated

Notwithstanding section 8 of the Ministry of Transport Act 1968, the Minister shall not delegate to any other person—

- (a) the power conferred on the Minister by section 5(1) to initiate an investigation;
(b) any of the powers conferred on the Minister by section 7.

11 Offences

- (1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$50,000 who—
- (a) refuses or fails without reasonable excuse to comply with any direction given under section 7; or
(b) furnishes any particulars of any agreement to which a direction made under section 7 applies, knowing that the particulars are false or misleading; or
(c) fails without reasonable excuse to supply information requested by a person carrying out an investigation under section 5 for the purposes of that investigation.
- (2) For the purposes of paragraphs (a) and (c) of subsection (1), it shall constitute a reasonable excuse if the person charged can show that compliance with the direction or the supply of the information, as the case may be, would render that person liable to prosecution under the law of another country.

Part 2

Inter-Governmental shipping relations

12 Regulations may be made for defence of New Zealand shipping or trading interests

- (1) The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
 - (a) regulating the carriage of goods in ships and the rates to be charged for such carriage:
 - (b) regulating the entry of ships into New Zealand and the departure of ships from New Zealand, and the cargo carried in such ships:
 - (c) regulating the terms and conditions of agreements relating to shipping services, including charter parties:
 - (d) fixing and levying charges on ships that enter New Zealand ports:
 - (e) prescribing penalties not exceeding \$10,000 for offences against regulations made under paragraphs (a) to (d):
 - (f) providing for such other matters as are contemplated by or necessary for giving effect to the provisions of this Act and for its due administration.
- (2) The Minister shall not recommend that regulations be made under any of paragraphs (a) to (e) of subsection (1) unless the Minister is satisfied that a foreign government or any agency of a foreign government has adopted or proposes to adopt any measure that damages or threatens to damage New Zealand shipping or trading interests by adversely affecting the access of New Zealand national flag carriers to seaborne cargo or of New Zealand shippers to the services of carriers of their choice.
- (3) Where the Minister recommends the making of regulations under this section in response to any measure adopted or proposed to be adopted by a foreign government or any agency of a foreign government, any regulations made on that recommendation shall relate only to outwards shipping by ships controlled by—
 - (a) that foreign government or agency; or
 - (b) a national of the country of that government; or

- (c) a body corporate having its principal place of business in that country.

13 Designation of national flag carriers

- (1) For the purposes of shipping agreements concluded or to be concluded between the Government of New Zealand and any foreign government, the national flag carriers shall be—
 - (a) all carriers who own a registered New Zealand ship; and
 - (b) all carriers who are entitled to own a registered New Zealand ship; and
 - (c) all carriers designated as national flag carriers pursuant to subsection (2).
- (2) The Minister may, following consultation with the principal New Zealand shippers likely to be affected by any such designation, by notice in the *Gazette* designate any carrier as a national flag carrier.

Part 3 Miscellaneous provisions

14 Application of other Acts

Nothing in Parts 2 and 4 of the Commerce Act 1986 shall apply to outwards shipping.

15 Repeal and consequential amendments

- (1) The Protection of British Shipping Act 1936 is hereby repealed.
- (2) *[Repealed]*
- (3) *[Repealed]*

Section 15(2): repealed, on 1 February 1995, by section 202(1) of the Maritime Transport Act 1994 (1994 No 104).

Section 15(3): repealed, on 1 September 1990, by section 5(2)(g) of the Ministry of Transport Act Repeal Act 1990 (1990 No 101).

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Notes

1 *General*

This is a reprint of the Shipping Act 1987. The reprint incorporates all the amendments to the Act as at 1 February 1995, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989*

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Maritime Transport Act 1994 (1994 No 104): section 202(1)

Ship Registration Act 1992 (1992 No 89): section 88(2)

Ministry of Transport Act Repeal Act 1990 (1990 No 101): section 5(2)(g)
