

22 April 2024

Marie  
[fyi-request-25856-79bf59f4@requests.fyi.org.nz](mailto:fyi-request-25856-79bf59f4@requests.fyi.org.nz)

By email  
Our ref: F34353

Dear Marie

### **Request for information regarding investigations**

I refer to your request of 27 February 2023 via the FYI site for the following information:

*Please provide the following:*

- 1. How many prosecutions in the recreational sector by MNZ in the last 10 years.*
- 2. Of those recreational prosecutions please outline the injuries and seriousness of those injuries sustained including if ambulances were at the scene.*
- 3. Maritime officers investigate and write a memorandum or other investigation document whereby they recommend to the CIP if a person should be prosecuted.*

*In the last 10 years:*

- 1. How many of those that Maritime Officer recommended be prosecuted, the CIP adopt the recommend to prosecute regardless of if the type of charges changes.*
- 2. How many of those recommended prosecutions that CIP recommend on basis of investigations report to the director are accepted and prosecution confirmed.*
- 3. How many recommendations from the maritime officer to CIP to not prosecute (regardless of other suggestions) are endorsed by CIP to not prosecute.*
- 4. How many recommendations by CIP to not prosecute does the director endorse instead therefore not prosecute.*
- 5. In last 10 years, How many recreational prosecutions undertaken MTA s65 (1) where the skipper was charged even though they were not driving the boat at the time.*
- 6. In last ten years How many recreational prosecutions under MTA s65(2) where by the skipper is charged not the person driving the boat.*
- 7. How many people charged in MTA s65(1) or (2) where they were not driving the boat when it had an incident/accident and the person who was driving the boat was not charged.*

*Please provide the following:*

- 1. Example template of an investigation memo used to provide info to the CIP*
- 2. Example template for all things relating to all things CIP ie the template for recording the CIP decisions.*
- 3. The process/policy document guide to review a prosecution and investigation.*

4. The prosecution manual/policy book on how to conduct the prosecution proceedings at each stage and conduct of those involved in the prosecution team.
5. How many complaints about MNZ have MNZ received in the last 5 years?
6. How many "independent inquiry's" have MNZ commissioned in the last 5 years, and why. What is the policies to determine which solicitor will conduct the enquiry.

**Response**

1. How many prosecutions in the recreational sector by MNZ in the last 10 years.

There have been 25 prosecutions in the recreational sector in the last 10 years.

2. Of those recreational prosecutions please outline the injuries and seriousness of those injuries sustained including if ambulances were at the scene.

Information regarding injuries is contained within the table below. We consider the description of the injuries answers your question as to the seriousness of those injuries. We note that there may be multiple prosecutions related to the same incident.

Fractured ribs, cracked vertebrae, a punctured and collapsed lung, and dissection of the internal aorta wall. Significant swelling and bruising to lower back.
Unknown. No physical injuries reported.
Burns, broken ribs and cracked tailbone, eye injury, possible concussion and bruising.
Same as above.
Scalp lacerations and a head injury with concussion.
Fatality.
Bruising and strained muscles.
Serious lacerations to legs near her ankles.
Multiple rib fractures and a collapsed lung.
No victim injuries.
Contusion, abrasion, laceration, and hematoma. Concussion. Unknown injuries to additional victim.
Same as above.
Rendered unconscious and laceration to head, and bruising.
Lacerations to head and broken arm.
No victims.
Described as minor injuries. Unable to find further detail.
Unspecified, but believed to include a dislocated hip, facial lacerations, and a broken arm.
No injuries.
Head injury, short-term memory loss, headaches and short attention span. Serious injuries to arm, including shattering several centimetres of bone. Minor injuries for other victims.
Same as above.
Unable to find detail of injuries to victims.
Fatality.
4 passengers taken to hospital by ambulance and 1 by Westpac Rescue Helicopter, unable to find any further detail on injuries.
Two victims admitted to hospital overnight for their injuries, unable to find further detail on their injuries. Abrasions and bruising, suffered from shock. Cuts, grazing to bruising neck chest and thigh pain.
Victim rescued; no detail of injuries found.

Information regarding ambulances is not recorded in such a way as to enable a reasonable search. It would mean reviewing every document within each file to find this information. This part of your request is refused under section 18(f) of the Act, as the information requested cannot be made without substantial collation or research.

3. *Maritime officers investigate and write a memorandum or other investigation document whereby they recommend to the CIP if a person should be prosecuted.*

*In the last 10 years:*

1. *How many of those that Maritime Officer recommended be prosecuted, the CIP adopt the recommend to prosecute regardless of if the type of charges changes.*

Maritime Officers or Investigators can make recommendations in the investigation memorandum, however this document predates the evidential sufficiency and therefore the memorandum may not reflect the actual charges or the parties that could be charged. The Maritime Officer or Investigators recommendations may change when attending CIP. In addition, a large number of investigations go before CIP each year. To collate the information requested would require Maritime NZ to locate and review the individual files which are stored across a number different and older systems, and even locating the correct files would take a significant amount of time. This information is therefore refused under section 18(f) of the Act, as the information requested cannot be made available without substantial collation or research.

2. *How many of those recommended prosecutions that CIP recommend on basis of investigations report to the director are accepted and prosecution confirmed.*
3. *How many recommendations from the maritime officer to CIP to not prosecute (regardless of other suggestions) are endorsed by CIP to not prosecute.*
4. *How many recommendations by CIP to not prosecute does the director endorse instead therefore not prosecute.*

Questions 2 to 4 of your request are refused under section 18(f) of the Act, as the information requested cannot be made without substantial collation or research. To collate the information requested would require Maritime NZ to check each and every file.

Please note that the CIP Tier 3 managers individually vote on their recommendation, so the CIP recommendation could be unanimous or split when considering each party and each offence that has met evidential sufficiency.

5. *In last 10 years, How many recreational prosecutions undertaken MTA s65 (1) where the skipper was charged even though they were not driving the boat at the time.*
6. *In last ten years How many recreational prosecutions under MTA s65(2) where by the skipper is charged not the person driving the boat.*
7. *How many people charged in MTA s65(1) or (2) where they were not driving the boat when it had an incident/accident and the person who was driving the boat was not charged.*

Maritime NZ does not record information such as whether the skipper was charged even though they were not driving the boat. This question is therefore refused under section 18(e) of the Act because the requested information does not exist.

Additionally, a s65 charge relates to dangerous activity involving ships or maritime products, not just related to the activity of driving the boat.

For clarity, a recreational vessel is defined as a "pleasure craft" under the [Maritime Transport Act](#).

*Please provide the following:*

1. *Example template of an investigation memo used to provide info to the CIP*

Please see attached the requested template.

2. *Example template for all things relating to all things CIP ie the template for recording the CIP decisions.*

Please see attached the requested template.

3. *The process/policy document guide to review a prosecution and investigation.*

4. *The prosecution manual/policy book on how to conduct the prosecution proceedings at each stage and conduct of those involved in the prosecution team.*

Questions 3 and 4 above are refused under section 18(e) of the Act because the requested information does not exist.

5. *How many complaints about MNZ have MNZ received in the last 5 years?*

This type of data is not captured centrally and cannot reasonably be searched for. This question is therefore refused under section 18(f) of the Act because the requested information cannot be extracted without substantial collation and research.

6. *How many "independent inquiry's" have MNZ commissioned in the last 5 years, and why. What is the policies to determine which solicitor will conduct the enquiry.*

No independent inquiries were commissioned by Maritime NZ in the last five years (Duncan Ferrier was engaged by Maritime NZ to conduct an independent review of Maritime NZ's investigation into the C-Works incident) and Maritime NZ does not have any policies in place to determine which solicitor will conduct an inquiry/review.

Where we have refused certain questions under section 18 of the Act, we have considered whether we would be able to respond to your request given extra time, or the ability to charge for the information requested. We have concluded that, in either case, Maritime NZ's ability to undertake its other operations would still be prejudiced.

I trust this fulfils your information request. Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz) or by calling 0800 802 602.

If you wish to discuss this request, please do not hesitate to contact [ministerial.services@maritimenz.govt.nz](mailto:ministerial.services@maritimenz.govt.nz)

Yours sincerely



**Christine Ross**

Manager, Communication and Ministerial Services

# Memorandum

LEGALLY PRIVILEGED

TO	(XXXX Insert name)Deputy Chief Executive, Regulatory Operations, Compliance Intervention Panel (CIP)	
FROM	[Name], [Job Title]	
MANAGER REVIEWED	[Name], [Job Title]	
COPIES	[Name], Senior Solicitor	
DATE	[dd Month yyyy]	TOTAL PAGES [XX]
	Date of Incident [dd month yyyy] (12 months statute of limitations)	
SUBJECT	<b>Investigation Memorandum - [Investigation Number: VESSEL NAME – Company, Master]</b>	

**WARNING: May contain Graphic Content**

**This document may be subject to legal privilege - do not disclose without prior  
consultation and approval from MNZ Legal**

## 1 Executive Summary

This Memorandum has been prepared to assist Maritime New Zealand decision-makers and legal advisors in the decision-making process around enforcement action. This includes the decision to prosecute or not for offences under the Maritime Transport Act 1994, Maritime Rules, or the Health & Safety at Work Act 2015.

[Followed by a brief summary of what happened and why it happened.]

*For example:*

*On the 10<sup>th</sup> of January 2020 commercial charter vessel "Nautalis" engaged the engine as the vessel neared the rocks. Divers were in the water and diver, Jean Paul Gaultier was caught in the propellers causing significant injuries to his lower legs.*

*The incident happened approximately twenty miles south of the Greymouth River bar. The victim, Gaultier had to be medivac from the vessel and spent a month in hospital and will require significant rehabilitation to walk unassisted.*

*Nautalis was being driven by Joseph Blogs who is an owner operator Trading under the name 'Safe as Dives'.*

*Gaultier was on a dive holiday in New Zealand and is due to return to France in March 2020. His private insurance covered his medical costs.*

*MNZ were advised of the incident by the RCC and via a s31 notification on the 10<sup>th</sup> of January 2020 and Andrew Scepers was assigned as the lead investigator.*

*This memo outlines the result of inquires conducted and is submitted with a view towards prosecution action.*

## 2 Options considered

*Briefly discuss options that you have considered including safety bulletins warning Infringements*

**3. Recommendations:** *The decision maker is keen to hear from the investigator who has the most knowledge on the file and so wants to consider your recommendations*

*Eg: I recommend filing charges against the Master Joseph BLOGGS under s65 MTA and s XX HSWA .*

## 4. Involved Parties

[Factual information about who the parties are that are allegedly involved]

**PCBU / Organisations** (state full legal name / trading name and PCBU representatives name)

### Persons

Notes: From now onwards refer to people by their name and correct title, such as Mr Smith or Captain Big.

It is natural for there to be inconsistencies between statements. Where the inconsistencies go beyond what would be natural, and relate to a significant or relevant point then highlight these in the memo and weigh them against other independent evidence that has been collected in the analysis section.

The Witness list is a separate document that does not evidence but would include what exhibits they produce or refer to in court. The witness list would also include contact detail in case they are required to be summonsed to court so no need to include them in the body of this report

### Witnesses

*List witness full name role and bullet point why they are relevant and what evidence they contribute (ideally be succinct and try to limit to no more than 6 bullet points.) Only include relevant witnesses (ones that have something of material value to add) you can note a full list of witnesses and exhibits is attached*

*Eg: Rachel Dianne SMITH (Deck Hand / holds CLM ) full statement transcript attached*

- Employed with Dive Charter for 2 years.*
- Outlines poor H&S practices including previous incidents where motors engaged while divers still in the water. Raised concerns with PCBU previously via email - copies attached to file.*
- Saw divers in the water behind the vessel when master started the motor and shouted at him to stop.*
- Helped recover injured diver from the water and administered First Aid till medevac.*

### Victim/s

*Eg : Jean Paul Gaultier (diver taking charter trip with Nautilus) Statement and Medical records attached.*

- Qualified Padi diver but only 4<sup>th</sup> open water dive.*

- *Comments on poor safety briefing prior to dive.*
- *Diving around rocks and was under vessel when engine started.*
- *Fins and lower legs caught in propeller causing significant injuries.*

*Note: Returns to France March 2020. French speaker requires interpreter.*

#### **Interpreter**

**Eg: Jaqui Chand** (NZSTI Certified interpreter) assisted with translation / interview of Gaultier

- Copy of Certification attached.

#### **Persons of interest**

**Eg: Joseph BLOGGS** (Master 'Safe as Dive' Charter "Nautilus") (statement taken under caution)

- *Qualified Skipper owner operator with 6 year experience*
- *Vessel drifting towards rocks in strong swell*
- *Called out to deck hand Smith to confirm divers were clear and thought she said they were*
- *Started engines to stay off the rocks / heard screaming shut engine off*
- *Assisted with First Aid for injured diver / called for medevac*
- *2 previous near miss reports s 31*
- *Denies that Smith ever raised H&S concerns*

#### **Technical Experts**

[Include any technical assessments, testing or key findings of any technical experts engaged by MNZ or any experts that would be required.]

*Eg: might comment on the design of the vessel as being suitable or otherwise for use as a dive platform – ie no prop guards....*

#### **Investigator**

**Eg: Andrew Scheepers Investigator**

- Interviewed parties under caution (interviews recorded and transcribed)
- Scene examination
- Photographs and exhibits (chain of custody)
- Propensity evidence near miss x 2 reported s31

### **5. The Vessel (refer to vessel name in Bold Italics)**

***Nautilus*** is an 18m Fiberglass vessel owned and operated by Big Fishing Company Ltd. The company own three other commercial tourist and dive platforms and generally operate out of the Greymouth area. Barry Big is the sole director of Big Fishing Company Ltd.

*Nautalis was constructed in 1995 and is powered by a 328kw engine, with twin propellers. The vessel is surveyed by XX Ltd and holds a current SSM certificate, which was issued on 10 November 2010.*

## 6. Site Information

[Factual information about the site that's relevant, including any weather reports] Might include a map of scene here if relevant or refer to map in file which is preferred.]

## 7. Loss, Harm, Injuries or Fatalities

[Comment on the loss, harm and injuries or fatalities that has occurred, including ongoing issues with physical and mental health including victim impact]

*For example:*

***Gaultier:***

- *Severe lacerations to lower legs requiring 300 stitches (photos attached)*
- *1 month in hospital*
- *Ongoing rehab and physio to be able to walk again and still using canes to assist walking*
- *Significant depression and seeing a physiologist on medication for depression.*

***Smith:*** *Ongoing trauma counselling and has not been back to work in the Charter since. Her counselling costs for 6 sessions at \$300 per hour are not covered by ACC.*

The MNZ Victim Support Officer has been providing support to the victims. (Full Victim Impact statements will be sought if the matter proceeds to prosecution)

## 8. Investigation

[A factual account of the investigation detailing any evidence obtained during the investigation, Law and Powers used, including a list of the inquiries made and those yet to be completed where relevant.

Notes: All the primary documents relied on in completing this summary should be included in the investigation file. It would assist if footnotes were used to identify which documents have been relied upon.

Refer to the Exhibit Schedule for reference and attach the Exhibit Schedule as an Appendix.

## 9. Scene Examination

[Relay pertinent points / information from the scene examination. Note: limit photos]

## 10. Documentation

[Factual information about any maritime documents, ships documents, operating H&S procedures etc that is relevant to the investigation and state why the document is relevant to this investigation]



## 11. Analysis

*[Draw together your conclusions based on the information above. Analysis of the above evidence written in objective language, without any subjective inferences, including any safety issues. Base analysis on the facts you have alluded to in your report to date. Explain how you know what you know drawing together logical conclusions based on evidence – you may use headings or a diagram to assist]*

*Notes:*

*To ensure statements are supported by evidence, refer to the documents containing the evidence in footnotes, it would be helpful to include the document number that it's referred to in the exhibit table.*

*Where you find yourself including a personal opinion or personal view of a technical matter, then consider referencing an expert to provide evidence to support that opinion.*

*Be Professional and fact based - Colourful or emotive should also be avoided.*

*Then after you have laid out your analysis add comments under the below if relevant*

- Extent of risk / harm*
- Conduct (deliberate reckless serious departure from the law or policy procedures)*
- Attitude to compliance – did they go out of their way to comply with the law*
- Public interest (deter others clarify the law respect to victims)*
- Aggravating Factors (recidivist /propensity evidence / level of harm caused)*
- Mitigating factors willingness to engage / change behaviour*
- Note any potential issues*

In my view, this incident is at the higher/lower end of the scale

## 12. Evidence Considerations

*[Refer to the provision that the possible offending may have occurred under. Complete this analysis for both the Master and the Company where relevant under different headings.]*

*Notes: Use this as an opportunity to discuss the charges that are available and the levels of culpability attached to these.*

*Where it is recommended that a particular person or company are charged ensure you clearly explain:*

### *Evidence Test*

*Who they are (Where a company is involved ensure you have the full and correct company name).*

- The relevant law*
- The offences they may have committed*
- The evidence supporting the proposed charges*

[When Drafting your memo ensure consultation and discussion with legal to agree the appropriate charge and to set out any legal issues or considerations]

The incident took place on [date], therefore this matter is within the limitation period.

Public interest Test

- Public interest factors such as:
- The level of culpability
- Their personal circumstances
- Any special circumstances
- Any relevant previous history with MNZ or Police (If known)
- Their explanation for the alleged offending

Given the Evidence Test has been met, the following Compliance tools are available :

- *Prosecution*
- *Non-Compliance Letter*
- *Infringement Notice*
- *Improvement Notice (HSWA only)*
- *Prohibition Notice (HSWA only)*
- *Safety recommendations such as manufacturer agrees to make change to a product*
- *Educational campaign*
- *Operational steps (e.g. increase the risk rating for the vessel to increase audits)*
- *[Other compliance tools]*

OR

*Given the Evidence Test has not been met, the only Compliance tools available are:*

- *Safety recommendations such as manufacturer agrees to make change to a product*
- *Educational campaign*
- *Operational steps (e.g. increase the risk rating for the vessel to increase audits)*
- *[Other compliance tools]*

Notes:

You only need to talk about the suitable options that you recommend, not every option available.

When considered against the Compliance Intervention framework and compliance intervention options indicate the appropriate option is...

**[Name]**  
[Title]

Released under the Official Information Act 1982

INVESTIGATION	CIP DATE	RECOMMENDATION FROM CIP	DEPUTY CHIEF EXECUTIVE DECISION	Outcome/Last Update



Out of Scope

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