

In Confidence

Office of the Minister of Workplace Relations and Safety

Office of the Associate Minister of Transport

Cabinet Economic Development Committee

Extending Maritime New Zealand's designation under the Health and Safety at Work Act 2015 to include commercial ports

Proposal

- 1 This paper seeks Cabinet agreement to:
 - 1.1 recommend that the Prime Minister extend Maritime New Zealand's (MNZ's) designation under the *Health and Safety at Work Act 2015* (HSWA) to include commercial ports;
 - 1.2 increase MNZ's Health and Safety at Work (HSW) Levy funding for health and safety (H&S) regulatory activity at commercial ports; and
 - 1.3 authorise the Minister of Transport, the Associate Minister of Transport, and the Minister of Finance to make decisions about the use of existing funding available to MNZ within Vote Transport, for MNZ's readiness activities.

Relation to government priorities

- 2 This proposal supports the Government's objectives, as outlined in the Speech from the Throne. Protecting the H&S of workers will help to ensure that the Government's infrastructure investment to accelerate Aotearoa's economic recovery is progressed safely, and without harm to our workers and communities.

Executive Summary

- 3 A recent review of port safety, triggered by two deaths at ports in April 2022, has identified issues with regulator arrangements at ports. Ports are complex, dynamic and high-risk environments. They need targeted regulator attention, with increased resourcing, to support businesses operating on ports to reduce work-related harm.
- 4 There are two H&S regulators at ports: WorkSafe New Zealand (WorkSafe) regulates activities on land, and MNZ regulates work on ships and ships as workplaces. Jurisdictional boundaries mean neither regulator has the legal mandate or resourcing to invest in building a full understanding of port businesses' operations and H&S management. Neither can take the required multifaceted approach to support businesses to address the causes of harm at ports.
- 5 The proposals in this paper are part of a suite of actions aiming to improve H&S at ports. In November 2022, the Port H&S Leadership Group (PHSLG) recommended six initial actions to address the causes of serious harm at ports. On 15 March 2023 we publicly endorsed the PHSLG's report.
- 6 The PHSLG recommended extending MNZ's designation to cover land-based activities at commercial ports.¹ They said having two regulators makes it hard to get an end-to-end sense of how ports and port-focused businesses are developing systems, performing safety operations, and engaging with workers.

¹ 'Commercial port' is defined in [s33B](#) of the MTA.

- 7 We propose that MNZ should become the designated H&S regulator at commercial ports that provide cargo-handling services for containers, logs, and/or bulk cargo. This designation would capture the 13 major import/export ports, including the Cook Strait ferry terminals.
- 8 MNZ has many of the capabilities needed for an extended designation. However, there is a risk of gaps in the capability MNZ will need to effectively regulate a wider scope of work activities. This risk will be managed by MNZ recruiting and training staff, MNZ and WorkSafe agreeing in advance what support WorkSafe can provide, and monitoring by the Ministry of Transport (MoT).
- 9 We also propose to increase MNZ's HSW Levy funding, so it can deliver the multifaceted harm prevention approach needed to support port-based PCBUs to improve their H&S outcomes. We propose new funding, rather than transferring existing funding from WorkSafe, because the harm prevention approach will require an increase in proactive and systemic regulatory activity on ports, above what WorkSafe has been resourced for. Transferring the funding would impact WorkSafe's activities in other priority industries and across the wider H&S system.
- 10 The designation change will take effect from 1 July 2024. MNZ cannot access funding from the HSW Levy until then. MNZ will need up to \$1.2 million in readiness funding for 2023/24, sourced from existing Crown funding available to MNZ within Vote Transport.
- 11 Should you agree to recommend extending MNZ's designation, we will submit a draft designation document to the Prime Minister for approval.

Background

Review into harm at ports

- 12 There were two deaths at ports in April 2022. Prior to that, there were 16 deaths in ports between 2012 and 2021.
- 13 In April 2022, the Minister of Workplace Relations and Safety asked the PHSLG to advise on what actions could be taken to address H&S harms at ports, including what, if any, regulatory standards are needed.
- 14 The PHSLG brought together stakeholders from peak bodies, stevedoring companies, unions and WorkSafe New Zealand. The group has worked to develop practical steps and actions to improve health and safety practice at ports in New Zealand.
- 15 Work for the PHSLG found that there were 397 notifiable injuries at ports between 2012 and 2021. While there was an overall downwards trend over the 10 years, the sector is concerned about a more recent upswing in serious injuries.
- 16 Work undertaken for the PHSLG has found most of the injuries and fatalities over the past ten years relate to the high-risk activity of loading and unloading of cargo. H&S risks are more prevalent at the 13 major ports than at smaller ports, because the larger ports have stevedoring and marshalling operations, cargo-handling infrastructure, and a lot of mobile plant.

Current regulator roles and designations

- 17 WorkSafe is the primary regulator of the HSWA framework, responsible for regulating land-based activities at ports.
- 18 HSWA allows the Prime Minister to designate an agency as a work H&S regulator. A designated agency becomes the primary and accountable regulator for the areas specified in the designation. MNZ is the designated HSWA regulator for work on board

ships, and ships as workplaces (including ship-to-wharf operations). MNZ also has powers and functions under the *Maritime Transport Act 1994* (MTA) and *Maritime Security Act 2004*, and administers Maritime Rules that can relate to port safety.

Analysis

Problem definition

- 19 Ports are complex, dynamic and high-risk environments. Port businesses need targeted regulator attention (supported by more resourcing) to improve safety culture, embed new H&S practices, and reduce harm. But, the current split of regulator responsibilities is a barrier to supporting port businesses to prevent harm.
- 20 Many port businesses operate on land and on ships. For example, crane operators perform essentially the same task operating ship cranes and cranes on wharves. Activities such as loading and unloading cargo, transporting hazardous substances, and working at height pose similar risks on land or on a ship. Businesses must also manage cross-cutting issues like fatigue no matter where the work is done.
- 21 Despite this, many port businesses are regulated by two different agencies depending on the location of their work activity. The PHSLG says that this contributes to:
 - 21.1 a lack of regulator understanding of the entirety of port businesses' operations, and their H&S management systems when they span land and sea – which they consider is likely to be hampering H&S outcomes; and
 - 21.2 duplication of regulator effort to engage with some businesses at ports.
- 22 The PHSLG and sector have also raised concerns about regulator resourcing.
- 23 The situation is complicated by port ownership and operating arrangements, and the need for businesses competing commercially to work together to manage H&S. This can lead to confused accountabilities, and no strong incentive for businesses to communicate openly and work collectively.
- 24 HSWA requires businesses to consult, cooperate and coordinate activities when they have overlapping responsibility for managing risks – this legal framework does not need to be changed. However, neither regulator has the legal mandate nor resources to interact with high-risk port businesses on the whole picture of their H&S risk management, and this is a barrier to tackling the systemic causes of harm at ports.

Extending MNZ's designation to include commercial ports

- 25 We considered several options to respond to these issues. We propose to extend MNZ's designation to cover most work activities at commercial ports that provide cargo-handling services for containers, logs, and/or bulk cargo, including the Cook Strait ferry terminals. This captures the 13 major ports where H&S risks are more prevalent and where there is the greatest need for more regulator activity.
- 26 Maritime NZ's designation will include the area of ports inside their boundary fence where access is restricted by a security gate, and adjacent buildings, installations, structures, or equipment used in connection with the port's operation or administration. We seek your authorisation for the Minister of Workplace Relations and Safety, in consultation with the Associate Minister of Transport, to make decisions on any drafting matters that may arise in the drafting of the designation document.
- 27 The proposed designation scope excludes smaller ports, e.g., small passenger ferry terminals and wharves (except if within one of the 13 major commercial ports), marinas, and regional ports servicing tourism or fishing vessels. At these smaller, low-risk ports, the agencies' current roles will continue.

- 28 Extending the designation to cover the 13 major commercial ports including the Cook Strait ferry terminals will enable Maritime NZ to take a proactive, collaborative and multifaceted harm prevention approach with high-risk port businesses. This is necessary to influence causes of harm that span the current regulatory boundary.
- 29 In all scenarios, WorkSafe will continue to be the regulator for electricity and gas, under the Electricity Act 1992 and Gas Act 1992. By shifting the regulatory boundary so that Maritime NZ has responsibility for most work activity at major ports, we aim to better enable both regulators to make the most of their specialist knowledge to fulfil their roles efficiently and effectively.

Exclusions

- 30 It would be inefficient for MNZ to duplicate WorkSafe's capability in some specialist areas. We propose that major hazard facilities under the Major Hazard Facilities Regulations 2016 continue to be regulated by WorkSafe. MNZ should have all the functions and powers of the regulator under HSWA, with the following exceptions:
 - 30.1 WorkSafe will retain functions and powers relating to authorisations including all functions and powers relating to the authorisation of third parties to authorise others;
 - 30.2 MNZ will monitor compliance with and enforce duties for workplaces, work, workers or things to be authorised, except for the duties relating to the authorisation of third parties to authorise others, which remain with WorkSafe;
 - 30.3 WorkSafe will retain functions and powers relating to exemptions.

Extending the designation will build on MNZ's specialist knowledge

- 31 Section 191 of HSWA allows the Prime Minister to designate an agency as a regulator of HSWA, having regard to the specialist knowledge of that agency. Extending MNZ's designation is appropriate given its specialist knowledge of the maritime sector.
- 32 MNZ has relevant experience and knowledge, and its operational staff already visit ports frequently to carry out their regulatory responsibilities under other legislation. MNZ considers it is well positioned to be the HSWA regulator on ports because of this capability, its mature regulatory practices and systems under existing legislation, and its strong sector relationships.

More resourcing for regulator activity at ports

- 33 We also propose to boost resourcing for regulator activity at ports by increasing MNZ's HSW Levy funding by \$2.0-2.2m annually. This will allow MNZ to implement its extended designation. It will also mean MNZ can take the multifaceted and proactive regulatory approach necessary to support PCBUs at ports to improve their H&S outcomes, which WorkSafe has not been resourced to do.
- 34 The HSW Levy funding can only be used for activities within MNZ's designation. The increase means there is ongoing resource tied specifically to H&S activity at ports.

Process for finalising the designation

- 35 The Ministry of Business, Innovation and Employment (MBIE) will draft the new designation document (with input from other agencies), by June 2023. The Prime Minister will then be asked to sign the designation, by 1 July 2023. The designation would then be published in the *Gazette*, with a commencement date of 1 July 2024.

Implementation

- 36 From 1 July 2024, MNZ will be the primary and accountable regulator in the areas covered by the designation. MNZ has confirmed it will be operationally ready to execute its additional HSWA-related regulatory responsibilities from this date.
- 37 MNZ will need to develop new capabilities. WorkSafe will provide some support before the change and for a period afterwards. WorkSafe says it will need to carefully consider how this work fits with its wider priorities to avoid neglecting its key obligations, particularly in higher-risk sectors. WorkSafe will agree in advance the support it can provide in a refreshed Memorandum of Understanding (MoU) with MNZ, and new designation-specific Schedules.

Risks

Consultation

- 38 Due to timing constraints, we have prioritised engagement with the most affected stakeholders, many of whom are represented on the PHSLG, which supports the proposal. Others may feel their views have not been adequately considered. Agencies will mitigate this risk by engaging with stakeholders about implementation.

Implementation

- 39 The timeframe to implement the extended designation is achievable but challenging. WorkSafe says it would normally take 18-24 months to complete the type of MoU and Schedules required, so agencies will need to prioritise this work.
- 40 If MNZ is not able to hire enough new staff with the right skills, and complete staff training before 1 July 2024, there is a risk it could have gaps in the capability needed to regulate its wider designation scope. MNZ does not believe this is significant and says it has not had difficulty recruiting staff.

Insufficient regulatory activity in new areas

- 41 There is a risk that MNZ may not focus sufficiently on some areas of its extended designation, for example, if new areas are not seen as priorities aligning with its maritime role. This will be mitigated by MNZ developing relevant performance measures and MoT monitoring them.

Fragmentation

- 42 Some businesses (e.g. trucking companies) that work on and off ports will have two regulators, whereas at the moment they mostly deal with WorkSafe. MNZ will need to build relationships with these businesses as part of implementation. Some businesses that operate only at sea and at ports will now only have one regulator.

Financial implications

- 43 For 2022/23 MNZ receives an appropriation of \$10.544 million to meet its HSWA obligations. MNZ needs an additional appropriation of \$2.0-2.2 million per annum to deliver the expanded designation. The funding is for 9 FTE and associated costs.
- 44 The funding will provide MNZ with additional dedicated resources to target work-related harm at ports. MNZ can't take on an extended designation without additional funding; it has other funding pressures which are the subject of a funding review. Neither can it use money levied under the MTA for HSWA activities.
- 45 Additional HSW Levy funding is needed because transferring the funding from WorkSafe's HSW Levy funding would impact its ability to prioritise work in its focus areas and across the wider H&S system. WorkSafe doesn't receive port-specific funding or

have dedicated staff for ports; the work it does at ports now is part of other work (e.g. on hazardous substances). A transfer of funding would mean WorkSafe would need to cut back on overall H&S regulatory activity. Until the designation commences, WorkSafe will continue to be the regulator at ports, and will support MNZ to transition to its expanded role. Once the designation commences, WorkSafe remains the regulator for electricity, gas and major hazard facilities at ports, and authorisations and exemptions functions. WorkSafe will also consider MNZ requests for specialist support, subject to resourcing constraints and prioritisation decisions.

Table 1: Additional funding sought by MNZ, by input

Input – Operating	2024/25	2025/26	2026/27	2027/28
Personnel related costs	0.3	0.3	0.3	0.3
Sector engagement	0.1	0.1	0.1	0.1
FTE-specific Input Information				
New FTE funding	1.3	1.4	1.4	1.4
New contractor funding				
Additional FTE overhead funding	0.3	0.3	0.4	0.4
Total	2.0	2.1	2.2	2.2
# of FTEs (employees and/or contractors)	9.00	9.00	9.00	9.00

Impacts on the HSW Levy

- 46 Funding for MNZ's HSWA-related work can be recovered from the HSW Levy, the dedicated funding source for HSWA regulator activity. HSW Levy revenue is tracked through a memorandum account.
- 47 The proposal for \$2.0-2.2 million per annum is an approximately 18 percent increase to MNZ's draw on HSW Levy funding. MNZ's HSW Levy funding would increase to 10 percent of the total HSW Levy expenditure.
- 48 The HSW Levy is forecast to return a \$32.015 million surplus in 2023/24. The funding sought would not significantly affect the account position. s 9(2)(f)(iv)
- 49 Table 2 shows the impact if all currently invited cost pressure bids for HSW Levy funding in Budget 2023, and the proposed increase for MNZ, were all accepted.

Table 2: Memorandum account with budget bids plus proposed increase (Budget Sensitive)²

	2022/23	2023/24	2024/25	2025/26	2026/27
	Forecast \$000	Forecast \$000	Forecast \$000	Forecast \$000	Forecast \$000
MNZ: designation for ports	0	0	2,000	2,100	2,200
TBC: CAA					
WorkSafe: remuneration, inflationary, and other ICT cost pressures					

² These projected bids are indicative; they reflect cost pressure initiatives invited to submit in December 2022.

s 9(2)(f)(iv)

Funding for preparation

- 50 MNZ estimates that its preparation activities in 2023/24 will cost up to \$1.2m. There is enough flexibility in MNZ's funding arrangements to cover these costs without needing to ask Cabinet to approve additional funding or to submit a late bid into Budget 2023. However, the Minister of Transport, the Associate Minister of Transport, and the Minister of Finance may need to agree to transfer up to \$1.2m between MNZ's appropriations before the 2023/24 financial year.

Legislative Implications

- 51 A designation document is secondary legislation. It does not change the primary Act but does change regulators' legislative responsibilities.

Impact Analysis**Regulatory Impact Statement**

- 52 A Regulatory Impact Statement (RIS) for this proposal is attached. A panel comprised of representatives from MoT, the Civil Aviation Authority, and MBIE has given this RIS a 'partially meets' rating under the quality assurance criteria. The panel felt that the RIS could better support decision-makers through improvements to decision criteria, clarity of message and incorporation of the views of other affected stakeholders. There have been subsequent changes to the stakeholder engagement section to reflect the panel's comments.

Climate Implications of Policy Assessment

- 53 No climate implications have been identified.

Population Implications

- 54 Any H&S improvements resulting from this proposal will benefit Māori and Pacific people, and men. These groups are overrepresented in the port workforce.

Human Rights

- 55 Any H&S improvements resulting from this proposal will advance the International Covenant on Economic, Social and Cultural Rights article 7 (the right to just and favourable work conditions, which includes safe and healthy work conditions).

Consultation*Government*

- 56 The following agencies have been consulted on the draft Cabinet paper, and had no comments, or minor comments that have been addressed: Ministry for the Environment; Land Information New Zealand; Ministry for Primary Industries; Fire and Emergency New Zealand; Department of Conservation; Department of Internal Affairs; Ministry of Defence; MBIE (Immigration Policy); the Environmental Protection Authority; New Zealand Police; the Treasury; Transport Accident Investigation Commission; Ministry of Justice; and Waka Kotahi. The Department of the Prime Minister and Cabinet has been informed.
- 57 New Zealand Customs supports the proposal and said it would benefit from it. The Accident Compensation Corporation noted that while there are still matters that need to be worked through before the designation goes live, they support the proposal.

- 58 MNZ, WorkSafe, and MBIE (H&S Policy) have been involved in developing this paper, and their comments have been incorporated as appropriate.

WorkSafe agency comment

- 59 WorkSafe supports the expanded designation for MNZ described in this paper.
- 60 Once the designation comes into effect, MNZ will be the primary and accountable party for all HSWA regulatory activity within the designation scope, regardless of the type of work or industry. WorkSafe will no longer be the work health and safety regulator in the commercial ports specified in the designation, except for those areas that the designation specifically states WorkSafe will retain.
- 61 WorkSafe supports the 1 July 2024 commencement date, to allow MNZ time to ensure its capacity and capability is fully in place. WorkSafe accepts that MNZ may on occasion request our specialist expertise to support the responses it leads, particularly as it builds its capability.
- 62 WorkSafe will always consider providing that specialist support, balanced against our usual resourcing and prioritisation constraints and decisions. We consider that following the designation, MNZ's requests for additional WorkSafe support would be infrequent and not work that is expected of and resourced by WorkSafe on an ongoing basis.
- 63 WorkSafe considers that the designation instrument must clearly set out the scope of the designation. This will ensure that the designation boundary does not need to be negotiated on a case-by-case basis or further refined through the MoU, which should instead describe how the agencies will support each other within their designated roles.

Ministry of Business, Innovation and Employment, Health and Safety agency comment

- 64 MBIE supports the proposal. However, while it has benefits in increased regulator leadership on port work-related harm and stakeholder buy-in, it broadens MNZ's responsibilities to wider risk areas WorkSafe currently covers (such as transport, warehousing, hazardous substances, manufacturing, asbestos removal). WorkSafe undertakes a range of proactive and reactive activities in these risk sectors. MNZ may choose to carry out a different mix of regulatory activities in line with its own regulatory strategy and approach.
- 65 While MNZ currently covers some of these risks when they occur on ships, they fall outside of MNZ's primary focus as maritime safety regulator. It will need to build capability, capacity and focus for its widened responsibilities. WorkSafe will not hold any ongoing responsibility for these areas on commercial ports. While a longer implementation timeframe will support MNZ to build capability, ongoing monitoring and reporting across the widened designation scope will help ensure the necessary capability and focus.

Sector stakeholders

- 66 The Hazardous Substances Professionals NZ, a group representing compliance certifiers, supported the proposal. They suggested MNZ could authorise them to work at ports, but this idea has been rejected as it would be inefficient and would increase the risk of fragmentation between agencies.
- 67 The National Road Carriers (representing trucking businesses) had concerns about the proposal and said it would add complexity for truck drivers. They questioned the value of MNZ having to build road transport expertise that WorkSafe already has. They asked for a road transport carve-out; this has been rejected because of its complexity.

- 68 Two fumigation companies were consulted. One had no concerns. The other questioned the need for change, and was concerned that MNZ doesn't have the breadth of expertise needed to regulate all the H&S risks at ports. They said it didn't make sense for MNZ to duplicate WorkSafe's capability in areas like traffic management and warehousing, given WorkSafe will still regulate these off ports.
- 69 KiwiRail and Strait Shipping/Bluebridge supported the proposal. They felt it would improve engagement about safety on ports between them, the regulator and unions, and resolve their confusion about which regulator to deal with.
- 70 MNZ and WorkSafe will engage and communicate with all stakeholders, including iwi, about how the designation change should best be operationalised.

Communications and Proactive Release

- 71 Should you decide to recommend extending MNZ's designation into ports, and increase funding for port H&S, the Minister of Workplace Relations and Safety and Associate Minister of Transport will publicly announce these decisions.
- 72 We plan to release this paper and RIS, with appropriate redactions under the *Official Information Act 1982*, when the designation and funding decisions are announced.

Recommendations

The Minister of Workplace Relations and Safety and the Associate Minister of Transport recommend that the Committee:

1. **Note** that under the *Health and Safety at Work Act 2015*:
 - 1.1. WorkSafe New Zealand is the primary work health and safety regulator of the work health and safety regulatory framework, and is responsible for land-based activities at ports;
 - 1.2. Maritime New Zealand is the designated work health and safety regulator for work on board ships, and ships as workplaces;
2. **Note** that the report of the Port Health and Safety Leadership Group (which includes port stakeholders):
 - 2.1. identified that the current split in regulator roles contributes to a lack of regulator understanding of the entirety of port businesses' operations, and of their health and safety management systems when they span activities on both land and sea;
 - 2.2. recommended extending Maritime New Zealand's designation to include commercial ports;
3. **Agree** to recommend to the Prime Minister that he designate Maritime New Zealand, under section 191 of the Health and Safety at Work Act 2015, as the regulator for the maritime sector and ports, specifically for:
 - 3.1. work on board ships and ships as workplaces; excluding naval ships and ships of the Armed Forces (the current designation); and
 - 3.2. work at commercial ports handling containers, logs, and/or bulk cargo, excluding major hazard facilities (the expanded designation); and
 - 3.3. all functions and powers of the regulator under the Health and Safety at Work Act 2015, with the following exceptions:
 - 3.3.1. WorkSafe retains functions and powers relating to authorisations, including all functions and powers relating to the authorisation of third parties to authorise others;

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3.3.2. Maritime New Zealand monitors compliance with and enforces the duties for workplaces, work, workers or things to be authorised, except for the duties relating to the authorisation of third parties to authorise others which remain with WorkSafe New Zealand;

3.3.3. WorkSafe retains functions and powers relating to exemptions;

4. **Note** that the expanded designation will take effect by notice in the *New Zealand Gazette*, with a commencement date of 1 July 2024;
5. **Authorise** the Minister for Workplace Relations and Safety, in consultation with the Associate Minister of Transport, to make decisions, consistent with the proposals in recommendation 3 above, on any issues that arise during the drafting of the designation;
6. **Note** the expanded scope of Maritime New Zealand's designation will be funded by the Health and Safety at Work Levy, the dedicated funding source for the Health and Safety at Work Act 2015 regulator activity;
7. **Approve** the following changes to appropriations to give effect to the policy decision in recommendation 3 above, fully offset by revenue from the Health and Safety at Work Levy and so fiscally neutral with no impact on the operating balance and net debt:

	\$m – increase / (decrease)				
Vote Transport: Minister of Transport	2022/23	2023/24	2024/25	2025/26	2026/27 and outyears
Non-Departmental Output Expenses					
MNZ: HSWA obligations	0	0	2.000	2.100	2.200

8. **Note** that Maritime New Zealand can't access the Health and Safety at Work Levy until the designation is in effect;
9. **Agree** that up to \$1.2 million for MNZ's operational readiness activities, will be funded by the Crown through existing Crown funding available to MNZ within Vote Transport;
10. **Authorise** the Minister of Transport, Associate Minister of Transport, and the Minister of Finance to jointly agree changes to appropriations, including establishing new appropriations as necessary, to give effect to the reprioritisation in recommendation 9;
11. **Invite** the Minister of Workplace Relations and Safety and the Associate Minister of Transport to publicly announce the decisions in this paper.

Authorised for lodgement

Hon Michael Wood

Minister of Workplace Relations and Safety

Hon Kiri Allan

Associate Minister of Transport

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