

# Regulatory Impact Statement: Reducing harm in New Zealand's Commercial Ports through extending Maritime New Zealand's health and safety designation

## Coversheet

Purpose of Document	
Decision sought:	<p>Cabinet agreement to:</p> <ol style="list-style-type: none"><li>1 recommend to the Prime Minister that he extend Maritime New Zealand's designation under the <i>Health and Safety at Work Act 2015</i> to include commercial ports, and</li><li>2 increase Maritime New Zealand's Health and Safety at Work levy funding for health and safety regulatory activity at commercial ports.</li></ol>
Advising agencies:	Ministry of Transport; Ministry of Business, Innovation, and Employment (MBIE), Maritime New Zealand (Maritime NZ), and WorkSafe New Zealand (WorkSafe)
Proposing Ministers:	Minister of Workplace Relations and Safety; Associate Minister of Transport
Date finalised:	6 March 2023
Problem Definition	
<p>Port work is inherently risky, and people continue to be harmed working at ports. Ports are complex, dynamic and high-risk environments.</p> <p>Port businesses need targeted regulator attention (supported by increased resourcing) to support them to improve safety culture, embed new health and safety practices, and reduce harm.</p> <p>But, the current split of regulator responsibilities is a barrier to interacting with port businesses to support them to prevent harm.</p>	
Executive Summary	
<p>Harm at ports arises from inherently risky work, taking place on ships, wharves, and the wider port area.</p> <p>PCBs have duties under the Health and Safety at Work Act (HSWA) to manage the risks created through their work activities. At ports, responsibility for managing this risk is often fragmented across multiple persons conducting a business or undertaking (PCBs).</p> <p>Regulators' designation boundaries cut through the middle of this already complicated situation.</p>	

PCBUs that carry out high-risk activities at ports, such as stevedoring, need targeted regulator attention to support them to improve safety culture, embed new health and safety practices, and reduce harm.

These PCBUs would be better supported by a systematic harm prevention approach to tackle the causes of harm. But, designation boundaries prevent either WorkSafe or Maritime NZ from doing this.

This RIS considers 4 options:

- The status quo
- A closer working relationship between the regulators, without a designation change
- Extending Maritime NZ's designation to cover loading and unloading of ships at the major commercial ports
- Extending Maritime NZ's designation to include work at commercial ports that provide cargo-handling services for containers, bulk cargo and/or logs.

All of the options concern health and safety regulator arrangements under HSWA. Regulators have a range of functions under HSWA, including monitoring and enforcing compliance, providing guidance and information about work health and safety, and promoting and coordinating the implementation of work health and safety initiatives through partnerships and collaboration with others.<sup>1</sup>

The existing duties that HSWA places on PCBUs are sufficient, so we have not included any options that would change the legislation.

All but one of the options (the status quo) involves extra resourcing. Without extra resourcing, agencies would need to make cuts to other high-priority activities.

The recommended option, option 4, would extend Maritime NZ's designation as follows:

- Maritime NZ would be responsible for work at commercial ports that provide cargo-handling services for containers, bulk cargo, and/or logs (in practice, this is the 13 major import/export ports including the Cook Strait ferry terminals).
- WorkSafe would retain responsibility for major hazard facilities (a highly specialist area) at ports, functions and powers relating to authorisations (including all functions and powers relating to the authorisation of third parties to authorise others), and all functions and powers relating to exemptions.

Only option 4 fully meets the policy objective to enable a systemic harm prevention approach to health and safety in ports, to improve health and safety outcomes. The Port Health and Safety Leadership Group (PHSLG), a group including key port stakeholders, supports this option.

But, this option is complex and involves some risk:

- There could be gaps in capability if Maritime NZ cannot upskill in time to regulate areas it has not previously had responsibility for.

<sup>1</sup> HSWA s190

- Authorisations functions split between WorkSafe and Maritime NZ could become disjointed; and this could lead to poor regulatory decisions.
- Core port stakeholders support the proposal. But, due to the pace of the work, we have prioritised engagement with the most affected stakeholders. We have had limited engagement with some other affected stakeholders, and there are some who have not yet been consulted. They may feel that their views have not been adequately considered.

This analysis assumes that these risks will be mitigated by:

- A bedding-in period in which Maritime NZ leads, but WorkSafe provides some support; the support and length of the period it would be provided would be agreed in advance through a Memorandum of Understanding (MoU) and Schedules between the agencies.
- Maritime NZ and WorkSafe building strong systems to share information and coordinate their work.
- Consulting all affected stakeholders on how the change should best be operationalised.

The preferred option will require new funding:

- Maritime NZ will require additional appropriation of \$2.0-2.2 million per annum to allow for effective regulation of ports. This funding will cover 9 new FTE and sector engagement costs.

### Limitations and Constraints on Analysis

**There has been significant engagement with the core port sector; and limited engagement with other stakeholders**

Due to timing constraints, we have prioritised our engagement with stakeholders, concentrating on those who are most affected.

All port companies, stevedoring companies, unions and workers, and some marshalling companies gave their insights for a Port Sector Insights Picture, where they raised the issues and extension of the Maritime NZ designation which has underpinned development of port safety advice and actions by the PHSLG for Ministers.

There has been some informal targeted engagement with some affected stakeholders, including road transport operators and compliance certifiers. There is a risk that they may feel they weren't consulted in enough depth about the proposal. Iwi and some other businesses that work at ports, such as manufacturing and construction companies, have not yet been consulted. This constrains our understanding of the impacts on these groups, and could affect their buy-in to the change.

Officials have not consulted the public on the options in this RIS.

### Data limitations

Both the fatality and injury data are likely to underrepresent harm from work-related health risks. This is a common limitation with data about work-related harm. It's because work-

related health issues can take a long time to become apparent, and may be difficult to link to an exact cause.

The harm data we do have is not broken down in a way that aligns neatly with the four options considered in this paper.

#### Quantification of gains

We acknowledge that it is difficult to quantify efficiency gains, so we rely on day to day experience with the current Maritime NZ designation and the advice of key stakeholders in considering that a single primary regulator for these stakeholders would improve the current situation.

#### Responsible Manager(s) (completed by relevant manager)

#### Quality Assurance (completed by QA panel)

Reviewing Agency:

Panel Assessment & Comment: A panel comprised of representatives from the Te Manatū Waka Ministry of Transport, the Civil Aviation Authority, and the Ministry of Business, Innovation and Employment has reviewed this regulatory impact assessment and given 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.

# Section 1: Diagnosing the policy problem

## Background

### People are being harmed at ports

- 1 There were two deaths at ports in April 2022. Prior to the April 2022 fatalities, there were 16 deaths in ports between 2012 and 2021.<sup>2</sup>
- 2 Of these 18 fatalities:<sup>3</sup>
  - 7 related to work on ships, including one that was caused by exposure to hazardous substances on a ship [these fall within the current Maritime NZ designation]
  - 7 deaths related to wharf-side activity such as loading or unloading ships, or moving cargo around at a port [within the current WorkSafe designation]
  - 2 deaths were indirectly related to ship loading activity [within the current WorkSafe designation]:
    - One was caused by a truck sliding off a wharf left slippery after fertiliser was spilled on it during ship loading/unloading
    - The other was related to maintenance of plant used for loading ships
  - There were 2 deaths from other causes [within the current WorkSafe designation].
- 3 The most common causes of fatalities to port workers are falls from height, including falls from vessels, and being crushed by or between vehicles or other machinery, or cargo. These risks are more prevalent at the 13 large import/export ports than at smaller ports. That's because the larger ports have stevedoring and marshalling operations, cargo-handling infrastructure, and a lot of mobile plant.
- 4 Stevedore<sup>4</sup> fatalities occur at a rate of approximately 20.2 per 100,000 ports workers, and a rate of 13.3 per 100,000 personnel in port and water transport terminal operations. Fatalities for these two groups occur at the second and third highest rates of any subsector in New Zealand.<sup>5</sup>
- 5 The work for the PHSLG found that there were 397 notifiable injuries<sup>6</sup> at ports between 2012 and 2021. Figure 1 below shows the notifiable injuries reported in this timeframe. While the reported notifiable injuries over this period have an overall downwards trend, six of the ten years have seen approximately 40-50 notifiable

<sup>2</sup> Source: WorkSafe.

<sup>3</sup> Source: MoT analysis of data provided by WorkSafe. In addition to these data, we have identified one other fatality at a port not counted by the PHSLG because it was on a cruise ship, whereas the work for the PHSLG focused on international cargo shipping.

<sup>4</sup> Workers who load and unload ships.

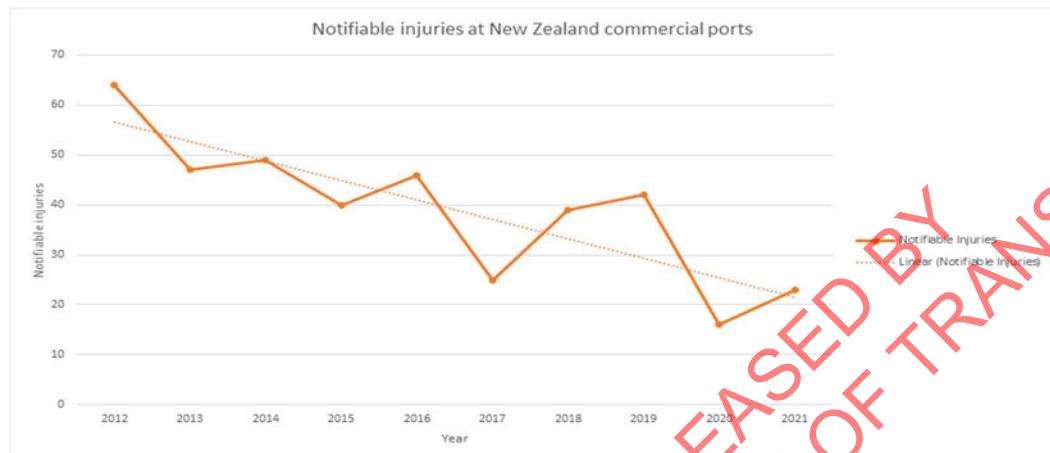
<sup>5</sup> Source: WorkSafe. Stevedoring and Port and Water Transport Terminal Operations are industry sub-sectors (ANZSIC industry classification level 4) meaning they are small part of the wider sector grouping, of Transport, Postal and Warehousing. When viewed at a wider sector level, Manufacturing, Agriculture, Forestry and Construction present greater risk of harm and accordingly are priority sectors for WorkSafe.

<sup>6</sup> Notifiable injuries are defined in s23 of HSWA. It is unclear whether this data captures all notifiable injuries.

injuries reported. There is concern from unions and the wider commercial port sector that apart from a fall in 2017 and again in 2019, largely due to COVID 19 impacts, there has been a more recent upswing in serious injuries.

- 6 The fatalities data shown in Figure 2 demonstrates a more up and down picture but together with serious harm data, present a sector that compared to the Australian port sector for example is less safe. Analysis from the Port Insights Picture notes that while Australia has a similar fatality average, Australian ports move significantly more cargo and have a much larger port workforce than New Zealand ports.

**Figure 1 – Notifiable injuries (reported) at NZ's commercial ports 2012 - 2021**



**Figure 2 – Fatalities at NZ's commercial ports 2012 - 2022**



- 7 While some health issues were identified in the data, it's likely that both the fatality and injury data underreports harm from work-related health risks. That's because work-related health issues can take a long time to become apparent, and may be difficult to link to an exact cause. Research indicates that port workers are exposed to a range of health risks including fumigants, dust, carbon monoxide, and diesel engine exhausts.<sup>7</sup>

<sup>7</sup> Source: WorkSafe.

## **What we know about the causes of this harm**

- 8 Health and safety risks are most prevalent at the 13 large import/export ports, where there are stevedoring and marshalling operations, cargo-handling infrastructure, and a lot of mobile plant.
- 9 The Port Sector Insight Picture identified:
  - The three areas of port activity where harm is occurring is through work involving: person vs machine; working at height; and suspended loads.
  - The cross-cutting causes of this harm are: worker fatigue; lack of sharing of information and good practice; issues with training; inconsistent standard operating procedures, responding, reporting and notifying of incidents; poor quality of infrastructure, equipment, and ships; and a lack of communication between PCBUs working on ports.
- 10 In its report, the PHSLG stated its view that the current regulator arrangements are likely to be hampering safety outcomes because it is difficult for the regulators to get an end-to-end sense of PCBUs' safety-related activities, and it is inefficient to have both regulators working at ports.
- 11 The Port Sector Insight Picture found that most of the injuries and fatalities over the last 10 years relate to the internationally known high-risk activity on ports of loading and unloading of cargo.

## **Ports are complex operations with fragmented management of risk**

- 12 New Zealand's 13 major ports are complex and dynamic operations, with numerous daily vessel arrivals. Servicing these vessels involves multiple PCBUs operating heavy machinery, working at height, moving suspended loads, and often working in close proximity to each other.
- 13 On ports, marshalling operations consolidate loads, such as logs, containers or bulk cargo, ready for loading onto vessels or vehicles. This activity requires multiple heavy vehicle movements (trains, trucks and heavy machinery) operating within a clear and understood traffic management plans (TMP). At times, there can be several TMPs operating at once, eg if a port company and stevedoring companies have separate TMPs in operation.
- 14 Ports can have multiple marshalling operators with differing business arrangements. This places health and safety, and traffic management responsibility onto different, and sometimes multiple, parties.
- 15 On ships, stevedores load and unload vessels, using either shore- or ship-based cranes. Some stevedoring companies also run port-side marshalling operations.
- 16 Each port-based PCBU manages risks differently. Some PCBUs for example, prefer to use their own wharf cranes while some are happy to use a ship's crane. Some use other machinery such as a log grapple or grab to lift the load, and/or use wire 'slingers' to secure the load and hook them onto the crane hook. Each method has different safety benefits or implications for port workers.

## *Wider contextual challenges in the sector*

- 17 The port sector also faces the following contextual challenges that influence health and safety risks and how they are managed:

- Demands from international shipping companies, which often require ships to be loaded and unloaded within tight timeframes
- Worker shortages, leading to:
  - Workers becoming fatigued (a known contributor to health and safety incidents)
  - Increased costs to recruit, train and supervise new workers
- Ageing infrastructure both at ports, and on visiting internationally-flagged ships
- Complex and overlapping roles and responsibilities (e.g. a variety of port ownership and operating arrangements<sup>8</sup>).

## Current regulator arrangements

- 18 WorkSafe is the primary workplace health and safety regulator of the HSWA regulatory framework,<sup>9</sup> and is responsible for regulating land-based activities at ports. WorkSafe is also the regulator of electricity and gas safety, under the *Electricity Act 1992* and *Gas Act 1992*.
- 19 Health and safety regulators have a range of functions, including monitoring and enforcing compliance, providing guidance and information about work health and safety, and promoting and coordinating the implementation of work health and safety initiatives through partnerships and collaboration with others.<sup>10</sup>
- 20 HSWA allows the Prime Minister to designate an agency as a work health and safety regulator. Under the Health and Safety at Work (Maritime New Zealand) Agency Designation 2015, Maritime NZ is the regulator under HSWA for work on board ships, and ships as workplaces (effectively ships and ship-to-wharf operations).
- 21 Maritime NZ also has a range of other powers under the *Maritime Transport Act 1994*, and it carries out security functions on ports as authorised under the *Maritime Security Act 2004*. Maritime NZ also administers Maritime Rules (secondary legislation) that can impact on port safety.
- 22 The two regulators execute their responsibilities differently because each has different priorities and incentives. Maritime NZ has a strong focus on and interest in ports because ports are a critical part of the wider maritime domain, which is its main area of regulatory responsibility.
- 23 WorkSafe, as New Zealand's main health and safety regulator, has many competing priorities. It has regulatory responsibilities for approximately 350,000 PCBsUs that operate across several higher risk industries than the port sector, such as forestry,

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<sup>8</sup> For example, 'landlord' ports where the port company owns the core port infrastructure of land and wharves, while equipment and services are provided by private independent operators; full-service ports where the port company owns and exclusively operates all port activities; and mixed ports where port services are provided by both the port company and private companies.

<sup>9</sup> This includes enforcing regulations and other instruments, for example: the Health and Safety at Work (Asbestos) Regulations 2016, the Health and Safety at Work (Major Hazard Facilities) Regulations 2016, the Health and Safety at Work (Hazardous Substances) Regulations 2019, and the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016.

<sup>10</sup> HSWA s190

construction, manufacturing, agriculture, and transport. Its main regulatory efforts are focused on addressing harm where the risk is greatest.

- 24 With finite resources, WorkSafe often needs to prioritise other sectors, like construction and forestry, ahead of ports. However, WorkSafe still has a presence on ports, and carried out 212 assessments (proactive inspections), 15 duty-holder reviews, 15 investigations, and 3 prosecutions at ports between January 2017 and December 2022. During this time WorkSafe also issued 143 notices, and carried out various compliance activities relating to hazardous substances at ports.

## Reviews into port safety

- 25 In April 2022, following two fatalities at ports:

- The Minister of Workplace Relations and Safety asked the Port Health and Safety Leadership Group<sup>11</sup> (PHSLG) to provide advice on what actions could be taken to address health and safety harms at ports, including what, if any, regulatory standards are needed; and
- The Minister of Transport asked the Transport Accident Investigation Commission (TAIC) to undertake an independent review into the two recent deaths to provide system insights and recommendations by an independent party that has a good working knowledge of the sector. Their report is forthcoming.

- 26 To inform the Ministerial advice on what actions could be taken to reduce harm on ports, the PHSLG:

- Developed a Port Sector Insights Picture (cited earlier) about the causes and drivers of harm in the port sector using a range of information from: company anonymised accident, incident and near miss data; analysis of fatalities and serious injury notifications to regulators over the last 10 years; focused interviews and feedback from sector workshops; Maritime NZ and WorkSafe Port Assessments, and analysis of 1,590 sector responses to a national “Worker Voice” survey.
- Reviewed domestic and international examples of good practice that may have been successful in other jurisdictions or other New Zealand industries including on some ports in achieving improved health and safety objectives or commensurate outcomes.

- 27 In November 2022, the PHSLG advised<sup>12</sup> the Minister of Transport/Workplace Relations and Safety on a set of six priority actions that if taken would reduce the risks of harm on ports. One of these actions is to request that Government consider the extension of the Maritime NZ designation.<sup>13</sup> The six priority actions are all

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<sup>11</sup> Port Health and Safety Leadership Group membership: Chief Executives of Maritime NZ (Chair), WorkSafe, Ports of Auckland, Northport, C3 Ltd and ISO Ltd, Port Industry Association Chair, National Secretary of the Maritime Union of NZ, and the National President of the Rail and Maritime Union.

<sup>12</sup> Port Sector Insights Picture and Action plan – November 2022.

<sup>13</sup> The other recommended actions are:

- Guidance and Standards - Develop and implement an Approved Code of Practice (ACOP) for Stevedoring (Lead: Maritime NZ)
- Fatigue Management Implementation - Implement the Fatigue Risk Management System Best Practice (Lead: Ports Industry Association)
- Workforce sustainability and skills - Support the work of the Port Industry Association to improve training/career pathways, and recommend a taskforce to consider workforce and skills issues in the

interrelated and are interdependent. Addressing issues with the regulator arrangements on ports would support this work, as it would enable one regulator to take a lead role in working with the PHSLG and others to implement the priority actions.

- 28 The report also committed the PHSLG to develop a multi-year harm prevention programme for ports that, along with the six priority actions, will design and implement other solutions in partnership with the sector that targets the key driver of harm. The harm prevention programme will have scale, pace and make measurable impact, and include clear outcomes and milestones that will be monitored and evaluated.

## What is the policy problem or opportunity?

### *Problem definition*

- 29 Port work is inherently risky, and people continue to be harmed working at ports. Ports are complex, dynamic and high-risk environments. Port businesses need targeted regulator attention (supported by increased resourcing) to support them to improve safety culture, embed new health and safety practices, and reduce harm. But, the current split of regulator responsibilities is a barrier to interacting with port businesses to support them to do this.
- 30 Many port businesses, and their workers, operate both 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 and storing hazardous substances, and working at height create similar risks whether they are done on land or on a ship. PCBUs must manage cross-cutting issues, such as impairment risks (eg fatigue) no matter where the work is done.
- 31 Despite this, many port businesses engaged in high-risk activity such as stevedoring are regulated by two different agencies depending on the location of the work activity.
- 32 It's not possible to directly attribute the persistent harm at ports to the current split of regulator responsibilities. But, the PHSLG report has identified that the current split in roles contributes to:
- 32.1 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: there is no regulator with an end-to-end view of port businesses' activities
  - 32.2 Duplication of regulator effort to engage with some businesses at ports.
- 33 The PHSLG and sector have also raised concerns about a lack of regulator resourcing.

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broader maritime sector and develop short and medium-term solutions be established. (Lead: Maritime NZ and Ports Industry Association)

- Incidents, Notifications, Insights and intelligence - develop a suite of initiatives to encourage incident reporting; pool and share data and information on unsafe ships and other sector insights (including potential use of an Maritime NZ data lake); and improve notifications processes and systems (Lead: Sector Working Group, facilitated by Maritime NZ)
- Good Practice - Develop a repository where current and future examples of good health and safety practice can be stored, accessed and added to by the sector and regulators. (Lead: Sector Working Group, facilitated by Maritime NZ)

- 34 The situation is further complicated by the variety of port ownership and operating arrangements, and the need for PCBUs that are competing with one another commercially to work together to manage health and safety risks. This can lead to some cases of confused accountabilities for health and safety, and no strong incentive for companies to communicate openly and work collectively.
- 35 Under HSWA, PCBUs are required to consult, cooperate and coordinate activities where they have overlapping responsibility for managing risks, for example where stevedoring companies working alongside one another need to work together to manage risks of moving plant. We do not think regulatory change is required; the issue is with the arrangements for how the regulators are able to apply the law.
- 36 Because the risks are systemic and spread across PCBUs, a systemic harm prevention approach across both port and ship-based risks and PCBUs is required to ensure the risks are managed appropriately and work-related harm on ports is reduced.
- 37 The main issue is that the risks that arise across ports and on ships, and the PCBUs that must manage those risks collectively, are both spread across the current designation boundary between WorkSafe and Maritime NZ. While these agencies can and do work together at the boundary, neither has been (or is likely to be), able to take the systemic harm prevention approach required to support the port sector to address the interconnected causes of harm.
- 38 Although agencies may step outside their designation with the consent of the other relevant agency<sup>14</sup>, it is not desirable for agencies to act outside the scope of their designation over the long term. The designation of regulators places boundaries around where each can exercise its functions and powers and apply resources. For Maritime NZ for example, this limits its reach in addressing risks that arise outside of ships but affect the safety of the work on board ships. The agencies can also only apply their HSWA resourcing (derived from the Health and Safety Levy) to functions within their designation.
- 39 In summary, inherently risky work at ports is being managed by multiple PCBUs and regulated by two regulators. Neither regulator has the legal mandate nor resources to work with high-risk port businesses on the whole picture of their health and safety risk management at ports. This is a barrier to tackling the systemic causes of harm at ports.

### What objectives are sought in relation to the policy problem?

*Enable systemic harm prevention*

- 40 The key policy objective sought is to enable a systemic harm prevention approach to health and safety in ports, to improve health and safety outcomes.
- 41 A systemic harm prevention approach is required to address the fragmented risks and health and safety responsibilities across ports and ships. It would identify and address harms and risks across businesses and workplaces that, to be addressed effectively, need to be tackled systemically in a coordinated manner.

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<sup>14</sup> HSWA s192

- 42 Harm prevention is an approach underpinning programmes of work that are designed and delivered in partnership with the sector to ensure the problem and solutions are jointly owned.
- 43 These programmes use integrated intelligence and insights to build an understanding of the drivers of harm (safety, security environmental) across sectors at a system level to inform the decisions around the use of interventions in a programme. A harm prevention approach often includes interventions aimed both at targeting the causes of harm and at increasing the capability, opportunity and motivation for sector participants to do the right thing. They also have an enduring monitoring and evaluation programme in place to review the impacts interventions are having.

*Best use of agencies' expertise*

- 44 A secondary objective is to ensure a division of responsibilities that allows agencies to best use their expertise and relationships to tackle health and safety issues. This is the purpose of the designation mechanism, and HSWA requires the Prime Minister to have 'regard to the specialist knowledge of the agency' when designating agency roles under HSWA.<sup>15</sup>
- 45 Maritime NZ has strength in regulating maritime activities; WorkSafe has the greater expertise at regulating generic activities that take place on ports and elsewhere.
- 46 In practice, it is difficult to draw a clear line that would perfectly divide their roles. The agencies have overlapping skill sets, and it is hard to define where core port activities begin and end in a way that would be easy for everyone to understand and apply. All options involve some compromises in how expertise is applied.

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<sup>15</sup> HSWA s 191 (1)

## Section 2: Deciding upon an option to address the policy problem

### What criteria will be used to compare options to the status quo?

- 47 The following criteria will be used to assess options in this RIS:
- **Effectiveness:** will the option meet the policy objective of enabling a systemic harm prevention approach in ports, by best addressing the fragmented risks arising across ports, ships and PCBUs?
  - **Efficiency:** will this option best take advantage of the technical expertise and sector knowledge and relationships the agencies hold, minimise duplication of regulator functions and effort, and minimise compliance costs for duty holders?
  - **Clarity and simplicity:** will it be relatively straightforward to implement the option, and will it be clear for regulated parties and regulators?
  - **Buy-in from key stakeholders:** Is the option likely to meet the expectations of key stakeholders, as expressed in the PHSLG report? Their buy-in is necessary to successfully implement any change to the designation.

### What scope will options be considered within?

- 48 The scope of options considered in this RIS is limited to options relating to regulatory agency arrangements in ports.
- 49 We analyse four options for regulator arrangements, including maintaining the status quo. All of the options (other than the status quo) require extra funding. That's because the options require one or both agencies to step up their regulatory activities at ports. Extra resource is necessary to avoid compromising the agencies' other high-priority activities. Funding cannot be transferred from WorkSafe to Maritime NZ, as that would impact negatively on other parts of the system.
- 50 See [Annex I](#) for a diagram representing the scope of the 4 options considered.
- 51 The RIS also identifies two options for regulator arrangements which have been discounted for various reasons.

### What options are being considered?

#### Option 1 – Status Quo

##### *Description*

- 52 Under this option, Maritime NZ and WorkSafe would retain their existing HSWA designations in ports. Specifically, WorkSafe would remain the work health and safety regulator on land, and Maritime NZ would remain the regulator for ships and ship-to-shore operations. No specific additional steps would be made to further improve coordination between the two regulators beyond their existing working relationship.

### *Impacts*

- 53 This option would not achieve the policy objective of enabling a systemic harm prevention approach to health and safety in ports, to improve health and safety outcomes.
- 54 There would be no change to how the agencies' respective technical and sector expertise and relationships are used. There would be no impact either way on duplication of agency effort, and no change to compliance costs for regulated parties.
- 55 On the plus side, agencies would not face any costs to develop new programmes, improve information-sharing systems, hire new staff, or upskill their staff to take on new roles or responsibilities.
- 56 This option would not meet the expectations of key stakeholders as expressed in the PHSLG report. It would be a missed opportunity to build on recent efforts in the sector to improve health and safety at ports, and may cause stakeholders to become disengaged from other work underway on port safety.

### *Costs*

- 57 This option would not require additional resources or funding.

## **Option 2 – A closer working relationship between WorkSafe and Maritime NZ in the port environment, without a designation change**

### *Description*

- 58 This option would see the regulators work more closely to jointly understand and manage health and safety risks in ports. This option would go as far as possible, without a designation change, to take a systemic approach to addressing the risks at ports. This option could be set in motion by Ministers giving designated agencies a joint policy direction under s 194 of HSWA.
- 59 This option could involve, for example:
- 59.1 setting up information sharing systems
  - 59.2 joint engagement with PCBUs
  - 59.3 joint inspections
  - 59.4 coordinated guidance development for the sector
  - 59.5 shared strategic planning for regulatory engagement in ports
  - 59.6 more communication with the sector about how the agencies' regulatory roles work.
- 59.7 This option could be implemented by refreshing the Memorandum of Understanding (MoU) between agencies.

### *Impacts*

- 60 Maritime NZ and WorkSafe already work together responding to incidents on ports, and some ad hoc activities such as port assessments. Further deliberate and planned coordination however, could deliver benefits that would mitigate some of the issues associated with the status quo.

- 61 For example, further information sharing and collaboration between the regulators could provide some of the information needed to develop a more complete picture of risks across a complex port environment. This could improve health and safety outcomes, as risks of harm and their underlying drivers could be better understood and communicated more effectively.
- 62 This option would partially mitigate, but not remove, the fragmentation of risks and regulator responsibilities across the regulatory boundary. It could enable systemic harm prevention programmes to take place, but only if both agencies were involved and fully committed to the work over the medium to long term.
- 63 WorkSafe would continue to have significant competing priorities, and a focus on ports may be difficult for it to sustain in the long term as other pressures in other sectors arise. As now, Maritime NZ would be unable to step outside the boundaries of its designation,<sup>16</sup> so could not act alone to lead a systemic approach to harm prevention at ports.
- 64 There would be no change to agencies' designated responsibilities, and therefore no change to how technical expertise is applied.
- 65 There would be some duplication of regulator effort as both would need to engage with the same businesses, but better coordination could improve role clarity for regulators and regulated parties. Some complexities could arise from two regulators with different internal structures, policies, etc. trying to take a unified approach to their operations in ports.
- 66 The effort required to implement this option could vary, depending on the specific actions taken. However, it is likely to be significant, especially if the goal is to build a close working relationship and cohesive approach to engagement with PCBUs. Agencies would need to invest the most effort during the transitional phase, but some effort would be needed on an ongoing basis to maintain the coordination.
- 67 This option would not meet the expectations of key stakeholders as expressed in the PHSLG report.

#### Costs

- 68 This option would require an additional \$2m per annum to resource the increased effort agencies would put into coordination. The funding would be split between WorkSafe and Maritime NZ.

### Option 3 – Extending Maritime NZ's designation to cover loading and unloading of ships at the major commercial ports

#### Description

- 69 This option would involve extending Maritime NZ's HSWA designation to cover loading and unloading of ships. As for option 4, it would be limited to the 13 major commercial ports including the Cook Strait ferry terminals. But, overall this option would be narrower than option 4, because it covers fewer work activities.
- 70 Most of the injuries and fatalities at ports over the last 10 years relate to the internationally known high-risk activity on ports of loading and unloading of cargo

<sup>16</sup> Except with consent from WorkSafe, as allowed under s192 of HSWA. This is not a desirable long-term solution.

(stevedoring). This option would bring these high-risk activities into Maritime NZ's remit. It would allow Maritime NZ to take a stronger role in regulating stevedoring activity, where it already has expertise and relationships with PCBUs, but would not require it to upskill in less familiar topics.

- 71 Once a container or other cargo unit had been landed, coverage would pass from Maritime NZ to WorkSafe, while WorkSafe coverage prior to loading would cease when the cargo loading operation commenced.
- 72 WorkSafe would continue to be the regulator for other landside port operations like marshalling, container stacking, and truck or rail loading/unloading. WorkSafe would also continue to regulate other activities not specific to ports but that may take place there, e.g. construction, manufacturing, and management of hazardous substances at ports.
- 73 More work would be required to confirm exactly how to word this option in the designation document.

#### *Impacts*

- 74 Loading and unloading of ships (stevedoring) is one of the highest-risk activities on ports. This option would allow for harm prevention efforts focused on loading and unloading to be led by one regulator (Maritime NZ), but these programmes would be limited to wherever on the port stevedoring took place – not the whole port. Therefore, this option would go only partway to achieving the policy objective of enabling a systemic harm prevention approach to health and safety in ports.
- 75 There would be no change to the way that risks beyond ship loading and unloading were regulated. WorkSafe would need to be involved in developing any harm prevention programmes seeking to address risks and drivers across the wider port area. As noted in the discussion on the previous option, WorkSafe would continue to have significant competing priorities, and a focus on ports may be difficult for it to sustain in the long term as other pressures in other sectors arise.
- 76 This option would make better use of Maritime NZ's existing expertise and relationships at ports. It would not require them to significantly upskill to take on new areas of responsibility.
- 77 Stevedoring businesses would interact with one primary regulator, and this could reduce their compliance costs. Businesses that carry out both stevedoring and other activities, such as marshalling, would continue to interact with both Maritime NZ and WorkSafe.
- 78 There would be no change for businesses at ports that aren't involved in stevedoring activity. WorkSafe would retain responsibility for other activities at ports, including marshalling, construction, warehousing, hazardous substances and manufacturing. WorkSafe already has technical expertise in these areas.
- 79 Defining the boundaries of this option would require some more work, but as this option is a smaller change than option 4, it could be simpler to implement. It would require some ongoing effort from both regulators to coordinate their efforts. It could be fairly simple for stakeholders to understand, however given the varied arrangements at ports this could look different in practice in each location.
- 80 This option would go only partway towards meeting the expectations of key stakeholders as expressed in the PHSLG report. Stakeholders may be disappointed that the designation hadn't been extended further.

## Costs

- 81 This option would require \$2m per annum, largely for Maritime NZ, but with a portion provided to WorkSafe to help fund improved coordination activities and allow WorkSafe to participate in joint activities spanning the wider port area. More work would be needed to determine the exact split of resourcing between the agencies.

## Option 4 – Extending Maritime NZ’s HSWA designation to include work at commercial ports that provide cargo-handling services for containers, bulk cargo and/or logs

### Description

- 82 This option would extend Maritime NZ’s designation to cover all work activities at commercial ports<sup>17</sup> that provide cargo-handling services for containers, logs, and/or bulk cargo. This scope captures the 13 major import/export ports<sup>18</sup> where the greatest health and safety risks are found and where there is the greatest need for increased, targeted regulator activity. It would also include the Cook Strait ferry terminals.
- 83 Maritime NZ’s designation would encompass the ports’ secure operational area, plus any adjacent buildings, installations, other structures, or equipment that are used in connection with the port’s operation or administration. For example, this could include a mechanical workshop just outside the operational zone of the port, where mobile plant used for port operations is serviced.
- 84 As part of finalising the designation document, agencies will do more work to further define what adjacent buildings, installations, other structures or equipment are included. This would be communicated to stakeholders before the implementation date so that everyone knows where the regulatory boundary is.
- 85 WorkSafe would retain responsibility for<sup>19</sup> major hazard facilities (MHFs) at ports.
- 86 WorkSafe would also retain:
- functions and powers relating to authorisations, including all functions and powers relating to the authorisation of third parties to authorise others
  - functions and powers relating to exemptions.
- 87 Maritime NZ would monitor compliance with and enforce 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 would remain with WorkSafe.

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<sup>17</sup> ‘Commercial port’ is defined in s33B of the Maritime Transport Act 1994 as:

- a port operated by a port company; or
- any other port that services commercial ships (whether or not it also services ships that are not commercial ships); and
- includes the buildings, installations, other structures, or equipment on or adjacent to a port and used in connection with the port’s operation or administration.

A ‘commercial ship’ is any ship that is not a pleasure craft, solely powered manually, or solely powered by sail.

<sup>18</sup> Northport, Ports of Auckland, Port of Tauranga, Eastland Port, Port Napier, Port Taranaki, Centreport, Port Marlborough, Port Nelson, Lyttelton Port, Prime Port (Timaru), Port Otago, Southport. The Cook Strait ferry terminals are also included.

<sup>19</sup> Under all scenarios, WorkSafe will continue to regulate energy safety on ports under the *Electricity Act 1992* and *Gas Act 1992*.

88 As part of the extended designation, Maritime NZ would also take on responsibility for any other work activities taking place at ports, including:

- Vehicle and rail transport
- Warehousing
- Manufacturing
- Construction
- Work with hazardous substances
- Other occupational health risks such as exposure to dust, silica, asbestos, or noise
- Managing on-shore safety of Cook Strait ferry passengers.

#### *Impacts*

89 This option would achieve the policy objective, as it would enable one regulator to take a systemic view of many high-risk activities at ports. But, it is likely it would also introduce greater fragmentation for other risks, and for PCBUs that operate both on and off ports.

90 It would make much better use of Maritime NZ's expertise and relationships on ports and allow Maritime NZ to take a lead role in working with the port sector to reduce harm.

91 Maritime NZ has experience and knowledge relevant to key health and safety risks at ports. For example, their maritime sector expertise covers loading and unloading of ships, working at height, use of plant (including lifting plant and mobile plant), hazardous substances on ships, airborne contaminants<sup>20</sup>, and impairment<sup>21</sup> and psychosocial<sup>22</sup> risks.

92 However, this option would still involve upskilling to extend Maritime NZ's existing capability into other sectors and risks where WorkSafe currently has more expertise, eg transport, warehousing, manufacturing, and a wider range of issues and requirements for hazardous substances. If implementation is not well managed there is a risk that Maritime NZ could become overextended, with gaps in the capability needed to perform the full range of regulatory activities within its new designation.

93 This option would be complex to implement. With WorkSafe retaining responsibility for authorisation decisions, and Maritime NZ in charge for enforcement of duties relating to authorisations at ports, the two agencies would need to put in place robust systems to prevent any disconnect that could affect the quality of their regulatory decision-making. This could require investment in IT systems.

94 Some of this risk will be mitigated by a bedding-in period following the commencement date, during which Maritime NZ leads but WorkSafe provides some

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<sup>20</sup> WorkSafe at times provides technical expertise to add to Maritime NZ's expertise in some of these areas. For example, WorkSafe currently has 3 staff supporting Maritime NZ to develop the Approved Code of Practice on Stevedoring. WorkSafe is contributing advice on airborne contaminants, hazardous substances, work at heights, and cranes.

<sup>21</sup> E.g. fatigue, use of drugs and alcohol.

<sup>22</sup> Factors in design or management of work that increase the risk of work-related stress, psychological or physical harm.

support. The level of support WorkSafe can provide will need to be agreed beforehand in the MoU and Schedules.

- 95 In relation to work carried out within the operational area of the port, this option is simple and easy to understand. But, agencies need to define, for inclusion in the designation document, which adjacent buildings, installations, other structures, or equipment used in connection with the port's operation or administration are to be included in Maritime NZ's designation. This could add complexity, and could mean that the implementation of this option looks different from port to port. However, the PCBUs who work at ports regularly will become familiar over time with which areas fall in and out of Maritime NZ's designation scope.
- 96 Compliance costs for some stakeholders (those changing from having two regulators to one) would reduce, but compliance costs for other stakeholders (those changing from having one regulator to two) could rise. For example, the National Road Carriers (a group representing trucking businesses) thought that the proposal would add a layer of complexity for truck drivers.
- 97 This option would meet expectations of key stakeholders, as expressed through the PHSLG report.

#### *Costs*

- 98 We estimate that the funding requirements associated with enabling Maritime NZ to effectively pick up this expanded designation would be \$2.0-2.2m per annum.
- 99 The funding is for 9 FTE plus associated costs such as overheads to ensure the organisation maintains appropriate levels of business support. There is also funding for vehicle lease frontline workers, travel, phones and publications. The 9 FTE would include:
- 99.1 7 FTE in front line roles – these are inspectors/investigators focussed on compliance, operational improvements, and frontline delivery
  - 99.2 One practice advisor – to guide the delivery of the investigation and inspection work
  - 99.3 One senior technical advisor.
- 100 The funding would provide Maritime NZ with the additional dedicated resource necessary to take a harm prevention approach in the port sector. As part of that approach, Maritime NZ would have a stronger presence in commercial ports, and therefore a holistic view of the operations and causes of harm, and strong relationships with stakeholders. This would underpin its ability to apply a variety of regulatory tools, to support PCBUs in ports to develop and implement better health and safety systems, processes, and culture. This operational capacity will also support the implementation of a consistent compliance approach encompassing ship, ship to shore, and land-based activities in ports.
- 101 If Maritime NZ were to have an extended HSWA designation to include ports without sufficient additional funding, its existing HSWA funding and regulatory workforce would need to cover its regulatory oversight of both ships and ports. Maritime NZ's resources would be stretched, and it would not have the capacity to perform its existing regulatory commitments to a minimum standard. This would include international obligations such as the port and flag state inspections that ensure ships are safe to operate in New Zealand waters and regulatory activity relating to port security.

- 102 Further, the lack of funding would undercut the effectiveness of this option. Without additional capacity, Maritime NZ would have a very limited ability to act on its new regulatory role in ports, making it difficult to take a harm prevention approach and realise the associated health and safety benefits.

## What options have been discounted?

### Discounted Option – Extending Maritime NZ's designation to include commercial ports and inland ports

- 103 Some commercial ports use inland ports to move goods, and some stakeholders, including members of the PHSLG, have suggested that the Maritime NZ designation be extended to these too.
- 104 There are varying meanings of inland port. Definitions range from a traditional ship-focussed port but on a river or lake, through to an inland logistics centre with no direct relationship to ships or water. Although there are some inland ports with close connections to ports (e.g. with the same owners or operators) and some similar safety risks, it cannot be assumed that inland ports are connected to ships or water.
- 105 We considered including this further extension under Option 4. However, the complexities of defining inland ports in a way that met the policy objectives above, without introducing undue complexities and risking unintended consequences, mean that this option has been discounted.
- 106 If Maritime NZ, however, undertakes work on a port – for example best practice guidance on stacking of containers or traffic management – that would equally be applicable to inland ports. Maritime NZ could work with WorkSafe to consistently implement that for inland ports as well as traditional ports.

### Discounted Option – Removing Maritime NZ's designation for ships, so that WorkSafe would have responsibility for ships

- 107 Under this option, Maritime NZ's designation for ships and ship-to-wharf operations would be removed. This would make WorkSafe the single regulator for ports. This option is not feasible for a number of reasons.
- 108 This option would require a change in primary legislation. Maritime NZ's safety role on ships is prescribed by the Maritime Transport Act as well as HSWA. For example, it is not currently legal for WorkSafe to perform safety inspections on foreign ships; only maritime-qualified Port State inspectors can operate on internationally-flagged vessels. Such a legislative change would likely take several years to implement, and would be significantly misaligned with stakeholder expectations.
- 109 Inspections of ships in port contribute to health and safety on ports, but also occur as part of a wider system to ensure safety and environmental outcomes are met at sea. This new designation boundary would be inefficient and even unworkable. WorkSafe staff would need to significantly upskill, as they currently have no maritime functions or expertise.

## How do the options compare to the status quo/counterfactual?

	Option 1 – Status Quo	Option 2 - A closer working relationship between WorkSafe and Maritime NZ in the port environment, without a designation change	Option 3 – Extending Maritime NZ's designation to cover loading and unloading of ships at the 13 major ports	Option 4 – Extending Maritime NZ's HSWA designation to include commercial ports that provide cargo-handling services for containers, bulk cargo, and/or logs
<b>Effectiveness</b>	<p><b>0</b></p> <p><i>This option would not enable a harm prevention approach for ports.</i></p>	<p><b>+1</b></p> <p><i>This option allows greater and more coordinated regulator effort and activity, across designation boundaries. The fragmentation of risks and regulator responsibilities across the regulatory boundary remains, despite mitigating efforts.</i></p>	<p><b>+1</b></p> <p><i>Allows for better harm prevention activities for ship loading and unloading, carried out by one regulator. But, harm prevention activities spanning the whole port would require involvement by two regulators.</i></p>	<p><b>+2</b></p> <p><i>Enables one regulator to take a systemic view of certain risks at ports. But, likely to introduce greater fragmentation for other risks and PCBUs operating at ports (eg transport, warehousing, manufacturing, hazardous substances).</i></p>
<b>Efficiency (efficient use of technical and sector expertise and relationships, minimise duplication and compliance costs)</b>	<p><b>0</b></p> <p><i>No change to how technical expertise is used. This option would not increase or decrease the likelihood of duplication. No impact on compliance costs.</i></p>	<p><b>+1</b></p> <p><i>This option leaves agency responsibilities as they are so there is essentially no change. Better coordination takes effort and time, but could potentially reduce compliance costs.</i></p>	<p><b>+2</b></p> <p><i>Better utilises Maritime NZ's expertise and relationships on ports. Reduces compliance costs for stevedoring businesses. No change for other businesses.</i></p>	<p><b>+1</b></p> <p><i>Better utilises Maritime NZ's expertise and relationships on ports. But, it requires Maritime NZ to significantly develop its capability into other sectors where WorkSafe currently has more expertise, eg transport, warehousing, manufacturing, hazardous substances.</i></p>

	Option 1 – Status Quo	Option 2 - A closer working relationship between WorkSafe and Maritime NZ in the port environment, without a designation change	Option 3 – Extending Maritime NZ's designation to cover loading and unloading of ships at the 13 major ports	Option 4 – Extending Maritime NZ's HSWA designation to include commercial ports that provide cargo-handling services for containers, bulk cargo, and/or logs
				<i>Lower compliance costs for some PCBUs but greater compliance costs for others.</i>
<b>Clarity and simplicity – for regulated parties and regulators</b>	<b>0</b> No change	<b>+1</b> <i>Better agency coordination and role clarity; this would be communicated to regulated parties.</i>	<b>+2</b> <i>Defining the boundaries of this option would require some more work, but as this option is a smaller change than option 4, it could be simpler to implement. It could be fairly simple for stakeholders to understand.</i>	<b>+1</b> <i>This option would be complex to implement. This analysis assumes some of the risks arising from this complexity would be mitigated by a bedding-in period in which WorkSafe would provide support, and ongoing interagency coordination.</i>
<b>Buy-in from key stakeholders (as expressed in the PHSLG report)</b>	<b>-1</b> <i>Key stakeholders would be disappointed if no action is taken in response to their recommendation set out in the PHSLG report.</i>	<b>0</b> <i>This option would not meet stakeholders' preference for a designation change.</i>	<b>0</b> <i>This option would not meet stakeholders' preference for a designation change.</i>	<b>+2</b> <i>This option is one of six priority actions in the PHSLG's Action Plan and is supported by the broad group of stakeholders represented on the PHSLG.</i>
<b>Overall assessment</b>	<b>-1</b>	<b>3</b>	<b>5</b>	<b>6</b>
<b>Costs</b>	<b>Nil.</b>	<b>\$2m per annum, split between the two agencies.</b>	<b>\$2m per annum, largely for Maritime NZ.</b>	<b>\$2.0-\$2.2m per annum for Maritime NZ.</b>

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

- 110 Only option 4 fully meets the policy objective to enable a systemic harm prevention approach to health and safety in ports, to improve health and safety outcomes. This option makes better use of agencies' technical expertise in some areas, but also requires upskilling in others.
- 111 The costs and benefits of option 4 are assessed below. We have also assessed option 3, because it is the next highest scoring option.

**What are the marginal costs and benefits of option 3?**

Affected groups	Comment	Impact	Evidence Certainty
<b>Additional costs of this option compared to taking no action</b>			
PCBUs in ports	Stevedoring companies would only need to deal with Maritime NZ as the regulator. Other businesses operating both on ports and elsewhere would still only have one regulator in WorkSafe.	N/A	High  Based on analysis and stakeholder engagement
Regulators	Increased funding to resource the initiative is likely to be required. The intent of this extension in designation cannot be realised effectively without funding to support it. This cannot be transferred from WorkSafe as that would impact negatively on other parts of the system.	\$2m per annum, recovered from the Health and Safety at Work levy.	High  Based on internal expertise in resourcing compliance activity and discussions with the current regulator
Others (e.g., wider government, consumers, etc.)	No specific costs to others.	N/A	High
<b>Total monetised costs</b>		\$2m per annum	High
<b>Non-monetised costs</b>	Regulatory changes for stevedoring PCBUs in ports	N/A	High
<b>Additional benefits of this option compared to taking no action</b>			
PCBUs in ports	Stevedoring businesses would deal with one main regulator providing greater clarity and certainty. PCBUs would get more attention and engagement	N/A	Medium to high  Short term benefits will be

	from Maritime NZ. Potentially some productivity savings for ship owners and ports from reduced stevedoring incidents.		dependent on implementation.
Port workers	Increased regulator presence on ports and development of a harm prevention approach across the port environment should deliver better safety outcomes, including fewer incidences of acute, chronic and catastrophic harm for stevedoring workers and others affected by stevedoring work.	Medium to high	Medium
Regulators	Increased capability, capacity, knowledge and expertise in Maritime NZ about the drivers of harm in stevedoring and clearer accountabilities. WorkSafe would benefit from less overlap with Maritime NZ at the wharf-side, more able to focus on priority industries that operate at ports, e.g. transport etc. This benefit is small because the level of activity at ports now is not high, and only a subset of port activities would move out of WorkSafe's designation.	Medium to high	Medium  Short term benefits will be dependent on implementation.
Others (e.g., wider government, consumers, etc.)	No specific benefits to others.	N/A	N/A
<b>Total monetised benefits</b>	N/A	N/A	N/A
<b>Non-monetised benefits</b>	Benefits to regulated parties and regulators from simpler arrangements at ports.		Medium

## What are the marginal costs and benefits of option 4?

Affected groups	Comment	Impact	Evidence Certainty
<b>Additional costs of this option compared to taking no action</b>			
PCBUs in ports	<p>Port-specific companies would only need to deal with Maritime NZ as the regulator. Businesses operating both on ports and elsewhere eg transport, warehousing, construction - would go from having one regulator to having two, increasing compliance costs and uncertainty.</p>	N/A	<p>High</p> <p>Based on analysis and stakeholder engagement</p>
Regulators	<p>Funding to resource the initiative would be required. The intent of this extension in designation cannot be realised effectively without funding to support it. This cannot be transferred from WorkSafe as that would impact negatively on other parts of the system.</p> <p>WorkSafe will use part of its existing levy resource (staff time, etc) to support Maritime NZ to build capability. It is not possible to quantify this cost to WorkSafe until the agencies have agreed the level of support that will be provided.</p> <p>Maritime NZ would take on more responsibility for areas outside its primary focus, eg transport, manufacturing,</p>	<p>\$2m per annum, recovered from the HSW Levy.</p>	<p>High</p> <p>Based on internal expertise in resourcing compliance activity and discussions with the current regulator</p>

	warehousing, hazardous substances.		
Others (e.g., wider government, consumers, etc.)	No specific costs to others.	N/A	High
<b>Total monetised costs</b>		\$2m per annum	High
<b>Non-monetised costs</b>	Regulatory changes for PCBUs in ports	WorkSafe staff time to support Maritime NZ to build capability.	High

**Additional benefits of this option compared to taking no action**

PCBUs in ports	Most port businesses would deal with one main regulator providing greater clarity and certainty. PCBUs would get more attention and engagement from Maritime NZ, which they have asked for through PHSLG.	N/A	Medium to high  Short term benefits will be dependent on implementation.
Port workers	Increased regulator presence on ports and development of a harm prevention approach across the port environment should deliver better safety outcomes, including fewer incidences of acute, chronic and catastrophic harm on ports.	Medium to high	Medium
Regulators	Increased capability, capacity, knowledge and expertise in Maritime NZ about harm on ports and clearer accountabilities. WorkSafe would benefit from less overlap with Maritime NZ at ports, more able to focus on priority industries. This benefit is modest because the level of activity at ports now is not high.	Medium to high	Medium  Short term benefits will be dependent on implementation.

Others (e.g., wider government, consumers, etc.)	No specific benefits to others.	N/A	N/A
<b>Total monetised benefits</b>	N/A	N/A	N/A
<b>Non-monetised benefits</b>	Benefits to port-specific regulated parties and regulators from simpler arrangements at ports.		Medium

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## Risks of the preferred option (option 4)

### *Consultation*

- 112 Due to the speed of this work, there has not yet been an opportunity to consult the public on the proposal to extend Maritime NZ's designation. However there has been significant engagement with the PHSLG, which includes representatives from many of the main stakeholders at the major ports. The group includes representation from port businesses, the main unions, and the key stevedoring companies. This group supports the proposed extension of the designation to include the 13 commercial ports.
- 113 There has been some informal targeted engagement with some affected stakeholders. The next section includes a summary of stakeholder views.
- 114 There is a risk that some stakeholders may feel they weren't consulted in enough depth about the proposal. Other stakeholders, such as iwi, and manufacturing and construction companies who work at ports, have so far not been consulted. Maritime NZ and WorkSafe will mitigate these risks by engaging with a wide range of stakeholders about how the change should best be implemented.

### *Implementation*

- 115 The timeframe of 1 July 2024 for Maritime NZ to take on an extended designation is achievable but challenging. There is a lot of work to be completed before then, including refreshing the MoU between WorkSafe and Maritime NZ, developing Schedules under it, and Maritime NZ hiring and upskilling staff.
- 116 The extended designation will require Maritime NZ to become more involved in regulating health and safety matters that are not specific to ports (e.g. hazardous substances, manufacturing, or asbestos removal, when these activities take place at ports).
- 117 If Maritime NZ is not able to hire sufficient new staff with necessary skill sets, and complete staff training before the designation change takes effect, that could lead to gaps in the capability needed to effectively regulate a wider scope of activities under HSWA. It can be difficult to hire people with specialist knowledge (eg about hazardous substances), and it takes time to train people as HSWA inspectors.<sup>23</sup>
- 118 WorkSafe has some ability to provide ongoing technical support to fill any gaps in Maritime NZ's capability, but this is limited. The Schedules under the MoU between WorkSafe and Maritime NZ will set out the specifics about how the two agencies will work together, and what support WorkSafe can provide to Maritime NZ during the transitional period as Maritime NZ builds its capability.
- 119 The required timeframe for refreshing the MoU and developing the Schedules is compressed and it will be challenging to complete all of this before the implementation date. Based on previous experience, and the likely complexity of the work (given the number of Schedules that will need to be developed), WorkSafe estimates an agreement of this type would normally require 18-24 months to complete. It's important that this work is completed before the implementation date, so that there is no confusion about agency roles. WorkSafe and Maritime NZ will

<sup>23</sup> It takes up to a year for WorkSafe's inspectors to be fully trained and warranted under HSWA. Training in specialist areas such as hazardous substances takes longer.

prioritise this work and will mitigate the risk of confusion by completing the most essential Schedules first.

- 120 WorkSafe has noted that it will need to carefully consider the prioritisation of delegation-related work over any other key areas, to avoid the risk of neglecting its key obligations, particularly in higher risk sectors.
- 121 Maritime NZ, as it does for other HSWA activity, will develop performance measures that cover the scope of its extended designation. It will do this in consultation with the Minister and Ministry of Transport as the monitoring agency, and report regularly on these..

*Insufficient regulatory activity in new areas*

- 122 In becoming the HSWA regulator for almost all work at ports, Maritime NZ will take on a wide range of responsibilities. Maritime NZ will have flexibility to prioritise its efforts towards the highest risk areas within its designation. But, there is a risk that Maritime NZ may not focus sufficiently on some areas. This could happen if some areas new to Maritime NZ are not seen as priorities aligning with its maritime role.
- 123 This will be mitigated by:
  - 123.1 Maritime NZ developing performance measures (as described above) about operating effectively across the full scope of its designation
  - 123.2 The Ministry of Transport monitoring Maritime NZ's performance against these expectations over the long term.

*Fragmentation*

- 124 With Maritime NZ taking on an extended role under HSWA, there is a risk that the two agencies may miss connections between their HSWA activities. For example, the two agencies could interact with the same transport or construction business about the same health and safety issue, if that issue is arising both at a port and elsewhere.
- 125 The risk of the agencies missing connections between their work exists to some extent under the current regulatory boundary too. The risk will be mitigated by the two agencies proactively cooperating and sharing information – as they do now.
- 126 The recommended designation scope splits responsibility for authorisation functions between agencies. There is a risk that their activities could become disjointed, leading to agencies acting without full information and potentially making poor regulatory decisions.<sup>24</sup>
- 127 This risk will be mitigated through proactive and regular information sharing, e.g. Maritime NZ providing information to feed in to WorkSafe's authorisation decisions. It's likely that agencies will need to invest in IT capability to enable rapid and more regular sharing of information (including notifications). Both agencies are currently putting in place new ICT platforms for regulatory activity that can share information with other regulators. This should provide an opportunity to consider seamless

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<sup>24</sup> For example, WorkSafe authorises compliance certifiers to issue compliance certificates under the Health and Safety at Work (Hazardous Substances) Regulations 2017. If, through its enforcement activity on ports, Maritime NZ were to become aware of issues with a compliance certifier's performance at a port, they would need to inform WorkSafe. WorkSafe could then decide whether to investigate, and if there should be any changes (eg suspension, cancellation) to the compliance certifier's authorisation.

sharing of not only authorisations but incidents and other insights. Information-sharing systems will need to be addressed in the MOU and Schedules.

### **Stakeholder views on the preferred option (option 4)**

- 128 The Hazardous Substances Professionals NZ, a group representing compliance certifiers<sup>25</sup>, supported the proposal. They noted that it would be particularly beneficial for transit depots (when hazardous substances are transferred to a wharf for a short time before being put back on a ship) because the rules applying to these are the same as for hazardous substances on ships.
- 129 They also suggested that Maritime NZ should authorise compliance certifiers to carry out work at ports. This suggestion is not able to be accommodated though, because it would be inefficient for Maritime NZ to have to build the administrative capability to authorise a portion of compliance certifiers' work, and it would increase the risk of fragmentation between the agencies.
- 130 The National Road Carriers (a group representing trucking businesses) had concerns about the proposal. They said that what trucks do on ports is not different to what they do anywhere else. They noted that WorkSafe has expertise in road transport, and questioned the value of Maritime NZ also having to build that expertise. The group said the proposal would add a layer of complexity for truck drivers.
- 131 They asked if there could be a carve-out so that road transport could continue to be regulated entirely by WorkSafe. This suggestion has been rejected because it would make the proposal more complex.
- 132 Two companies involved in fumigation work at ports were consulted. They had differing views about the proposal. One had no concerns with the proposal and felt that interacting with a different regulator at ports would not pose any difficulties for them.
- 133 The other business questioned the need for a change. This business was concerned that Maritime NZ did not have the necessary breadth of expertise to regulate the full range of health and safety risks at ports. They felt it did not make sense for Maritime NZ to take on responsibility for issues such as traffic management and warehousing, noting that WorkSafe already had relevant expertise, and would continue to be responsible for the same matters off ports.
- 134 Maritime NZ has discussed the proposal with KiwiRail and Strait Shipping/Bluebridge. Both expressed complete support for Maritime NZ to take on the extended responsibilities. Both organisations felt having Maritime NZ as the responsible regulator would make engagement on ports between them, regulator and unions to improve safety more effective and resolve the current confusion about which regulator they need to deal with.

### **WorkSafe's views**

- 135 WorkSafe supports the expanded designation for Maritime NZ. WorkSafe has been involved in discussions with the Ministry of Transport, MBIE, and Maritime NZ leading to these proposals.
- 136 WorkSafe's view is that once the designation comes into effect, Maritime NZ will be the primary and accountable party for all HSWA regulatory activity within the

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<sup>25</sup> Third parties who certify people, locations and equipment under the Hazardous Substances Regulations 2017.

designation scope, regardless of the type of work or industry. This would include, but not be limited to, areas such as construction, manufacturing, asbestos and hazardous substances. From that point, 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 (i.e. major hazard facilities, functions and powers relating to authorisations and exemptions).

- 137 WorkSafe supports the proposed date of 1 July 2024 for the commencement of the designation, to allow Maritime NZ sufficient time to ensure its capacity and capability is fully in place. WorkSafe accepts that from time to time Maritime NZ may request our specialist expertise to support the responses it leads, particularly as it builds its capability. WorkSafe will always consider providing that support, in the best interests of the health and safety system, but in deciding our response must take into account our usual resourcing and prioritisation constraints and decisions. While it is possible that in providing this support we may find that we are the best placed to lead a response, we consider this unlikely. We also consider that any additional support would be ‘at the margins’ of the relationship between the two regulators following the designation, rather than work that is expected of and resourced by WorkSafe on an ongoing basis.
- 138 WorkSafe considers that the designation instrument must set out in detail the scope of the designation, and that this should be reflected in the associated Cabinet paper and regulatory impact statement. This will ensure that the designation boundary does not need to be negotiated on a case-by-case basis or further refined through the memorandum of understanding (MOU). The refreshed MOU between WorkSafe and Maritime NZ and designation-specific schedules will set out how the agencies work together to support each other within the roles that have been defined in the designation. They will also set out how the transition will be managed, including WorkSafe support for training Maritime NZ inspectors, information sharing, and procedures for incidents requiring a response from both agencies.

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## Section 3: Delivering an option

### What activities might Maritime NZ carry out under the new designation?

- 139 With its extended designation, Maritime NZ will become the work health and safety regulator for most work at ports. WorkSafe staff will still visit ports for MHF and energy safety matters.
- 140 WorkSafe has provided data that illustrates the workload and skill set involved for them to regulate landside HSWA activity at the 13 major ports. WorkSafe's activity at these ports between January 2017 and December 2022 included:
- Receiving and assessing 373 notifications
    - 18 of these notifications originated from Maritime NZ, with 11 relating to stevedoring and marshalling
  - 212 assessments
    - Based on discussions with General Inspectorate staff, a basic assessment for one inspector could be completed within a day. A more complex assessment can take between five and seven days, usually involving: 1 x Senior Inspector, 1 x Principal Inspector and a Manager<sup>26</sup>
  - Issuing 143 notices
  - 15 investigations
    - 5 of these related to fatalities within WorkSafe's jurisdiction
    - 13 resulted in further enforcement action being taken (a notice being issued, or a prosecution)
  - 3 prosecutions
  - 15 duty-holder reviews
  - 112 hazardous substances certifications
  - 42 hazardous substances location compliance certificates, and
  - 70 hazardous substances stationary container systems compliance certificates
  - Analysis, research and evaluation activity relating to ports
  - Developing online information and resources, including an interactive port health and safety tool developed with ACC.
- 141 No relevant enforceable undertakings were implemented during this period.
- 142 WorkSafe also provides technical advice to industry in response to their questions about hazardous substances matters (both at ports and on ships), including about explosive transhipment, handling, and storage.
- 143 In recent years WorkSafe has supported Maritime NZ with 2 prosecutions, by providing technical support about ship cranes. WorkSafe is currently contributing technical expertise on a range of topics to help Maritime NZ develop an Approved Code of Practice for Stevedoring.

<sup>26</sup> 27 Jan 22 – Discussion with General Inspectorate manager.

- 144 The level of activity listed above should be considered lower than normal.<sup>27</sup> Covid-19 lockdowns during this period prevented WorkSafe staff from interacting with businesses in they way they normally would.
- 145 The WorkSafe activities had a wide scope, relating to:
- Company risk profiling
  - Fatalities at ports (within WorkSafe's jurisdiction)
  - Logging sector focused work in a joint agency approach
  - Incidents of workers falling from heights, falling logs and containers
  - Incidents of other work-related injury
  - Mobile plant and vehicles
  - Safe use of machinery
  - Chemical leaks and spills
  - Hazardous substances
  - Occupational health monitoring: use of drugs/alcohol, air quality / carbon monoxide, chemicals, noise, silica, asbestos, dust, body stressing and welding fumes
  - Emergency response
  - Health and safety systems
  - Site conditions
  - Excavation
  - Worker engagement, participation, and representation (WEPR)
  - COVID compliance, and
  - Cross-sector focus areas (agriculture, forestry and construction).
- 146 Maritime NZ may choose to carry out a different mix of regulatory activities, in line with its own regulatory strategy and approach. On top of picking up the broad scope of regulatory responsibilities illustrated above, Maritime NZ intends to work with the sector to develop systemic harm prevention programmes (as discussed earlier).

### How will the new arrangements be implemented?

- 147 Maritime NZ will be responsible for implementation of the designation change, which will involve:
- 147.1 Maritime NZ developing a communications and engagement plan, by September 2023

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<sup>27</sup> The data also does not include work carried out by the high hazards unit or adventure activities teams.

- 147.2 refreshing the existing MoU between Maritime NZ and WorkSafe, and developing designation-specific Schedules under it, as soon as possible
- 147.3 Maritime NZ recruiting and training 9 new staff to support the extension of the designation, and upskilling frontline operations, by 1 July 2024
- 147.4 Maritime NZ's expanded designation would come into effect on 1 July 2024.

#### *Capability building*

- 148 Maritime NZ already largely has the capabilities in place to take on the expanded designation, but would seek additional capacity and, in turn, additional training to further strengthen capacity and capability.
- 149 Maritime NZ and WorkSafe staff undergo the same basic HSWA inspector training course. This initial week-long course is currently administered and examined by WorkSafe, although it may be preferable for Maritime NZ to recommence administering this process, as it did in the recent past.
- 150 There will be additional industry-specific training provided afterward, followed by on-the-job training.<sup>28</sup>
- 151 Maritime NZ has worked with WorkSafe regularly in areas such as incident reporting, prosecution, and enforceable undertakings, and has many former WorkSafe employees on staff. Staff have also left Maritime NZ for WorkSafe and returned, bringing WorkSafe knowledge. Many Maritime NZ staff have experience as stevedores, port managers, or other port-based roles.

#### *Communications*

- 152 Maritime NZ will keep key stakeholders (such as those represented on the PHSLG) informed as changes occur and continue discussions with affected parties throughout the change period. Maritime NZ will also engage with iwi and Māori about the approach to implementation.
- 153 Implementation will be supported by guidance and targeted communication to stakeholders including through the PHSLG. More general communication will occur through maritime industry bodies and events, industry publications, and the Maritime NZ website.

#### *Funding the new arrangements*

- 154 Maritime NZ will require additional appropriation of \$2.0-2.2 million per annum to allow for effective regulation of ports. This funding will cover 9 additional FTE to ensure the organisation maintains appropriate levels of business support:
  - 154.1 7 FTE in frontline roles – inspectors and investigators focussed on compliance, operational improvements and frontline delivery.
  - 154.2 1 FTE for a practice advisor, to guide the delivery of the investigation and inspection work.
  - 154.3 1 FTE for a senior technical advisor.

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<sup>28</sup> Following their basic training, WorkSafe's foundational training for inspectors takes 15 weeks, followed by 15 weeks on the job before they get their warrant. Inspector training for more specific topics (i.e. asbestos, hazardous substances) takes 1 year.

- 155 This funding will also be used for vehicle lease for frontline workers, travel, phones and publications. The below table sets out funding sought through the Work Health and Safety levy.

Funding sought by input				
Input – Operating	2024/25	2025/26	2026/27	2027/28
<b>Input Information</b>				
Personnel related costs	0.3	0.3	0.3	0.3
Sector engagement	0.1	0.1	0.1	0.1
<b>FTE-specific Input Information (if applicable)</b>				
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
<b>Total</b>	<b>2.0</b>	<b>2.1</b>	<b>2.2</b>	<b>2.2</b>
# of FTE's (employees and/or contractors)	9.00	9.00	9.00	9.00

- 156 To ensure it is ready to execute its extended regulatory responsibilities at ports from 1 July 2024, Maritime NZ will need to recruit and train operational staff, work closely with WorkSafe on the Memorandum of Understanding outlining the parameters of their ongoing support, and engage with a range of Port based PCBUs on the change in regulator arrangements.
- 157 MBIE have advised that the HSW Levy cannot be used to fund this readiness activity. This is because the HSW Levy funding can only be collected and allocated for regulatory responsibilities and activities once the designation is in effect, making it legal for the agency to perform its regulatory responsibilities.
- 158 Whilst it is hard to confirm the exact costs of these activities because of current labour market uncertainties, and it is difficult to estimate the effort required to establish the Memorandum of Understanding and engage with affected stakeholders, Maritime NZ estimates they will not exceed \$1.2m.
- 159 There is enough flexibility in Maritime NZ funding arrangements to meet their readiness costs throughout the 2023/24 financial year, without needing to ask Cabinet to approve additional funding or to submit a late bid into Budget 2023.

### How will the new arrangements be monitored, evaluated, and reviewed?

- 160 As mentioned in part 1, Maritime NZ is looking to take a harm prevention approach to address the drivers and causes of serious harm in the sector, through a programme dedicated to ports and harbours.

- 161 As part of this enduring, multi-year harm prevention programme, Maritime NZ will include measures to monitor and evaluate the efficacy of the range of interventions currently being deployed to achieve this effect, including the expansion in designation. This will also allow Maritime NZ to identify where more effort or resource is required.
- 162 Maritime NZ will use the insights and intelligence gained from its harm prevention programme to target its resources to the right areas (focusing on where the data indicates the most harm is occurring). This will ensure Maritime NZ is prioritising effort where the sector needs it the most.
- 163 WorkSafe and Maritime NZ will work together to ensure the sector knows who to talk to, when, and how to do so. The MoU and Schedules between WorkSafe and Maritime NZ can address these matters, including making sure systems are in place to ensure any notifications to the incorrect agency are passed on to the right place.
- 164 During the bedding-in phase WorkSafe will support Maritime NZ, as detailed beforehand in the MoU and Schedules.
- 165 The regulatory change would reflect in Crown entity monitoring of, and reporting by, Maritime NZ. Performance measures could relate to (for example) Maritime NZ developing and maintaining capability, and carrying out sufficient regulatory activity across the scope of its designation.

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## Section 4: Impacts on the Health and Safety at Work Levy

- 166 Funding appropriated for work undertaken under Maritime NZ's HSWA designation can be recovered by the Crown from the HSW Levy, the dedicated funding source for HSWA regulator activity.
- 167 The HSW Levy is paid by all businesses at a rate of 8c per \$100 of leviable earnings. The HSW Levy is managed by the Ministry of Business, Innovation and Employment (MBIE), with revenue tracked through a memorandum account and used to recover the costs of the HSWA-related work of WorkSafe, MBIE, the CAA and MNZ.
- 168 In 2023/24, a total of \$133.838 million will be recovered from the memorandum account for the HSWA activities of the aforementioned agencies. Of this, \$10.794 million will be recovered for MNZ's HSWA activities – meaning this proposal for \$2.0-2.2 million per annum would equate to an approximate 18 percent increase to MNZ's draw on HSW Levy funding, and an approximate 1.5 percent increase in total HSW Levy expenditure in 2023/24. Maritime NZ's HSW funding would increase to 10 percent of the total HSW Levy expenditure.
- 169 The HSW Levy is currently forecast to return a \$32.015 million surplus in 2023/24. The memorandum account's positive balance is such that recovery of funding sought through this initiative would not significantly affect the account position. s 9(2)(f)(iv)

Table 3 details the state of the memorandum account both currently and forecast without additional spending.

s 9(2)(f)(iv)

**Table 3: HSW Levy Memorandum Account Forecast**

	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
	Actual \$000	Forecast \$000				
Opening Balance	22,369	45,024	32,180	32,105	40,836	56,210
Levy Revenue	149,372	125,376	132,673	139,514	146,067	152,997
Expenditure	126,717	138,220	132,838	130,693	130,693	130,693
WorkSafe	118,013	123,906	116,714	114,099	113,809	113,809
MNZ	6,194	10,544	10,814	11,124	11,244	11,244
CAA	1,641	1,201	1,201	1,201	1,201	1,201
MBIE H&S Policy	0	1,700	3,240	3,400	3,570	3,570

Closing Balance	45,024	32,180	32,015	40,836	56,210	78,514
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## Annex I: Scope of the 4 proposals and how they would apply to work done at ports

