

Chair  
Cabinet Finance, Infrastructure and Environment Committee

## **Change to the Health and Safety in Employment Act: Coverage Issues: Maritime sector**

### **Executive Summary**

1. On 25 July 2001, the Cabinet Finance, Infrastructure and Environment Committee (FIN) invited the Minister of Labour and the Minister of Transport to report to FIN, after Cabinet had indicated the amendments to the Health and Safety in Employment Act 1992 (HSE Act) they agreed to, on how the agreed changes might be most effectively applied to the maritime sector.<sup>1</sup>
2. On 30 July 2001, Cabinet agreed that the occupational health and safety legislative framework that applies to maritime workers should be consistent with the HSE Act.<sup>2</sup>
3. The purpose of this paper is to make recommendations on how a health and safety framework for maritime workers consistent with the HSE Act, can be achieved. The issues to resolve for maritime workers are which Act is most appropriate to provide health and safety coverage for them and which enforcement agency is most appropriate to administer that coverage.
4. Officials from the Department of Labour and the Ministry of Transport undertook consultation with key employer groups and trade unions from the maritime sector.
5. During the consultation process, three other issues were identified that could be addressed by the HSE Act review. They are:
  - how best to administer existing legislative health and safety coverage for maritime pilots and non-crew working aboard ships;
  - how best to provide cover for workers on foreign flagged ships on demise charter to New Zealand based operators<sup>3</sup> and
  - how best to address issues of fatigue and stress among maritime workers.
6. The paper identifies two possible health and safety coverage options and recommends that the Committee approve either of the options. Option one is preferred by the Ministry of Transport. Option two is preferred by the Minister of Labour and the Department of Labour. The two options are:
  - Amend the Maritime Transport Act (MT Act) so that it contains the amendments already agreed to for the HSE Act by Cabinet and retain the present enforcement agency.
  - Amend the HSE Act so that maritime workers are covered by it, and retain the present enforcement agency, (the Maritime Safety Authority) as an agency designated for the enforcement of health and safety in the maritime sector.
7. A briefing paper containing analysis of the maritime sector consultation was provided to the Minister of Labour with a copy forwarded to the Minister of Transport.<sup>4</sup> Findings from the

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<sup>1</sup> FIN Min (01) 15/5.2, paragraph 1.7.

<sup>2</sup> CAB Min (01) 23/13B paragraph 7 refers.

<sup>3</sup> This means: New Zealand crew on ships chartered by New Zealand based operators. These ships are registered to overseas owners. Note that the MT Act applies to "New Zealand ships". Demise chartered foreign registered ships operated by New Zealand based operators have been treated under the Act as coming within this definition but a recent Crown Law Office opinion on the meaning of "New Zealand ship" advises that this is not a correct interpretation. This means that seafarers on such ships, trading in New Zealand, are not covered by the health and safety provisions of the MT Act and coverage needs to be restored by legislative amendment.

<sup>4</sup> Briefing paper 1/004125, 10 August 2001.

submissions received from the maritime industry during consultation on the options, are contained in this paper.

8. The operating costs for implementing option one are:

<b>Maritime (Option one)</b>	<b>2001/02</b>	<b>2002/03</b>	<b>2003/04</b>	<b>Outyears</b>
	\$m	\$m	\$m	\$m
Department of Labour Operating costs (GST incl)	0.066	0.189	0.024	0.024
Maritime Safety Authority Operating costs (GST incl)	0.016	0.144	-	-
<b>Totals</b>	<b>0.082</b>	<b>0.333</b>	<b>0.024</b>	<b>0.024</b>

9. The operating costs for implementing option two are:

<b>Maritime (Option two)</b>	<b>2001/02</b>	<b>2002/03</b>	<b>2003/04</b>	<b>Outyears</b>
	\$m	\$m	\$m	\$m
Department of Labour Operating costs (GST incl)	0.066	0.204	0.024	0.024
Maritime Safety Authority Operating costs (GST incl)	0.012	0.092	-	-
<b>Totals</b>	<b>0.078</b>	<b>0.296</b>	<b>0.024</b>	<b>0.024</b>

### **Background on maritime worker occupational health and safety coverage**

10. The HSE Act provides health and safety coverage for all New Zealand workers except crew working aboard ships.<sup>5</sup> Health and safety protection for crew aboard ships, is provided by the MT Act.
11. The duties of employers under the MT Act relating to the health and safety of crew aboard ships largely mirror the equivalent health and safety provisions contained in the HSE Act. The compliance and enforcement regimes under both Acts are also similar.
12. The MT Act is currently administered and enforced by the Maritime Safety Authority (MSA). The MSA is headed by the Director of Maritime Safety (the appointed chief executive), who has statutory powers under the MT Act, independent of both the Minister and the Authority. The MSA investigates all maritime accidents, incidents and mishaps on commercial ships in New Zealand.
13. The MSA inspectorate is composed of fourteen full-time inspectors operating at branch offices located at New Zealand's major ports. These inspectors are trained by the MSA and are fully qualified in all aspects of ship inspection. All are either Master mariners, or Class 1 engineers. The MSA also employs 3 full-time accident investigators.
14. Prosecution rates between the Occupational Safety and Health Service (OSH) and the MSA are similar. In the year ending June 2001, the MSA prosecuted 24 cases for breaches of the MT Act, and two cases of those prosecutions were specifically related to breaches of the Part II health and safety provisions of the Act. (Approximately 1.2% of maritime employers, excluding self-employed). For the same period, OSH prosecuted 118 cases for breaches of the HSE Act. (Approximately 0.07 % of all employers excluding self-employed).

<sup>5</sup> Aircrew and rail workers, currently not covered by the HSE Act, will be so covered, following the introduction of the HSE Act amendments agreed to by Cabinet. CAB Min (01) 23/13B paragraphs 2-3 and 6 refer respectively.

15. The maritime sector employs approximately 9,500 workers at sea, in three principal sectors. Fishing, the largest sector, employs approximately 5,500 workers.

### **Options for maritime worker occupational health and safety coverage**

16. Officials considered a range of options to deal with occupational health and safety legislative coverage and administration in the maritime sector. Following consideration of the full range of options, it was decided the most practicable elements could be distilled into two options. These two options are discussed below.
17. Three other options that were considered and discounted are discussed in the Regulatory Impact Statement attached. Of particular note was the option to extend the coverage of the HSE Act to maritime workers and for OSH to enforce the Act in the maritime context (i.e. adoption of the one Act/one authority model). This option was rejected primarily because it would involve the establishment of two safety authorities for the maritime sector: the MSA who would be responsible for vessel safety and OSH who would be responsible for occupational health and safety. This arrangement would involve additional administration costs as well as compounding the inter-agency boundary issues identified in the consultation process.

### **Option One**

18. Adoption of this option would mean that the MT Act would continue to provide health and safety coverage for maritime workers and the MT Act would be consequentially amended in line with the amendments already agreed to by Cabinet for the HSE Act.
19. To implement this option, there would need to be legislative amendment to:
- Introduce the consequential amendments to the MT Act that have been agreed to by Cabinet for the HSE Act;
  - Introduce an accountability mechanism creating a link between the Minister of Labour and the MSA on health and safety policy;
  - Amend the MT Act so that workers aboard foreign flagged ships on demise charter to New Zealand based operators are covered by the health and safety provisions of the MT Act and
  - Amend MT Act to give the MSA legal jurisdiction over maritime pilots when they are working at sea and non-crew when working aboard a ship.

### *Consequential amendments*

20. The health and safety duties, offences, enforcement, compliance and penalty regimes of both Acts are very similar. Consequential amendments to the MT Act following the HSE amendments therefore, would not substantially alter the statutory framework or purpose of the MT Act as regards its health and safety provisions.

### *Accountability Link*

21. To ensure that occupational health and safety policy was aligned between enforcement agencies, the MT Act would be amended to include a formal accountability link to the Minister of Labour as regards health and safety policy directives. This link would be strengthened by a memorandum of understanding between the enforcement agencies.

### *Workers on foreign flagged ships on demise charter to New Zealand based operators*

22. The MT Act would be amended so that its Part II health and safety provisions applied specifically to workers aboard foreign flagged ships on demise charter to New Zealand based operators.

*Administrative boundary issues for maritime pilots and non-crew working aboard ships*

23. Legislative amendment would be needed to address administrative boundary issues that exist for particular groups of workers. These are (a) maritime pilots and (b) non-crew working aboard a ship.
24. Maritime pilots are covered by the HSE Act. However, during consultation some submitters noted that for these workers, HSE coverage and its enforcement by OSH is not practical. This is because, realistically, the most dangerous part of a maritime pilot's job occurs during the time spent at sea and working aboard a ship. Although these workers are not crew and therefore not covered by the MT Act, the MSA, as an enforcement agency, is nevertheless perceived as more logically placed than OSH, to administer health and safety coverage for these workers.
25. Under this option the MT Act would be amended to provide that it applies to maritime pilots while they are at sea and working aboard a ship. The HSE Act would continue to apply to them while they are working on land. An administrative arrangement between OSH and MSA would need to be set out in a memorandum of understanding or similar.
26. As with maritime pilots, non-crew working aboard a ship are covered by the HSE Act. However during consultation, some submitters noted that the practical administration of the non-crew coverage arrangement can be ineffective. In short, the legislative and enforcement agency boundary that exists when crew and non-crew work together on board a ship, at times creates confusion and can result in neither agency taking responsibility for an accident.
27. The legislative amendment recommended to address the maritime pilot issue, would also be used to address the non-crew administrative coverage issue. The MT Act's coverage would be extended to include non-crew while they are working aboard a ship and the MSA's jurisdiction extended to include non-crew while they are working aboard a ship. An administrative arrangement between OSH and MSA would be set out in a memorandum of understanding or similar.

*Summary of submissions on option one*

28. Participants questioned on this option, were asked whether they supported consequential amendments to the MT Act in accordance with the changes proposed for the HSE Act. The majority of submitters, (ten in total, nine employers and one union) wanted no change to the current occupational health and safety regime. Of those that did want change, (six in total, five unions and one employer) considered that the HSE Act review amendments should be applied to the maritime sector whether health and safety coverage remains under the MT Act, or is transferred to the HSE Act. Almost all submitters noted the expertise of the MSA in the administration and enforcement of maritime matters.

*Advantages and Disadvantages of option one*

29. The advantages of this option are:
  - The existing statutory framework for health and safety in the maritime sector would be enhanced all and aspects of safety at sea would be managed under one Act;
  - An enhanced accountability mechanism would ensure that there are similar policy directives on health and safety between enforcement agencies;
  - The effective utilisation of existing expertise in the maritime sector;
  - Boundary, coverage and fatigue and stress issues identified during consultation would be addressed;
  - The current funding mechanism for health and safety in the maritime sector would continue to operate unaffected.
30. The disadvantages of this option are:

- Two Acts would continue to provide health and safety coverage in the maritime sector, which may not be the most effective way to strategically deliver government health and safety policy;
- To maintain a consistent legislative health and safety framework for maritime workers, future consequential amendments would be required to the MT Act (if the HSE Act is amended).

### **Option Two**

31. Adoption of this option would mean that Part II of the MT Act would be repealed and the HSE Act would be amended to remove its legislative coverage exclusion of crew aboard a ship. The HSE Act would be amended to designate the MSA as the agency responsible for the administration and enforcement of the HSE Act in the maritime sector.
32. To implement this option, there would need to be legislative amendment to:
  - Repeal Part II and all other relevant health and safety provisions of the MT Act and amend the HSE Act to remove its exclusion for crew aboard a ship. The HSE Act would then cover maritime workers;
  - Introduce an empowering mechanism to the HSE Act that allows either the Prime Minister or the Minister of Labour to designate that the MSA is the agency responsible for the administration and enforcement of the HSE Act in the maritime sector;
  - Introduce a provision recognising that workers aboard foreign flagged ships on demise charter to New Zealand based operators are covered by the health and safety provisions of the HSE Act.

#### *Designated enforcement agency*

33. There is a similar precedent for the designated agency approach under the Hazardous Substances and New Organisms Act 1996 (the HSNO Act).
34. The HSNO Act establishes the Environmental Risk Management Authority (ERMA) and part of ERMA's responsibility is to monitor and co-ordinate compliance with the HSNO Act and ERMA decisions.
35. The HSNO Act places mandatory requirements on designated government departments and agencies to enforce the HSNO Act in accordance with their usual designated legislative responsibilities.
36. If this option were adopted, the HSE Act would be amended to provide that the Department of Labour is the agency responsible for administering and enforcing the provisions of the HSE Act in all places of work, but for the purposes of a place of work that is a ship, the MSA would be the responsible administration and enforcement agency.

#### *Accountability Link*

37. This approach would align the MSA's health and safety policies with those of OSH and the Department of Labour. It would enhance the employee health and safety focus aspect of the MSA's overall responsibility for safety at sea.
38. The responsibilities of the designated enforcement agency (MSA) would be set out in the HSE Act but the Department of Labour would set MSA's policy and operational direction for enforcing the provisions of the HSE Act.
39. A memorandum of understanding would be used to enhance alignment of outcome delivery from both agencies.

40. Issues as to how health and safety would be funded in the maritime sector would require close analysis of both the Department of Labour and the MSA's current funding mechanisms, viz the HSE levy on all employers, and the industry specific levy on maritime operators.

*Workers on foreign flagged ships on demise charter to New Zealand based operators*

41. The HSE Act would be amended so that its health and safety provisions applied to workers aboard foreign flagged ships on demise charter to New Zealand based operators.

*Administrative Boundary Issues for maritime pilots and non-crew working aboard ships*

42. Legislative amendment would not be needed to address administrative boundary issues that exist for (a) maritime pilots and (b) non-crew who are required to work aboard a ship, as OSH and MSA would both have jurisdiction under this option. An administrative arrangement between OSH and MSA would be set out in a memorandum of understanding or similar.

*Summary of submissions on option two*

43. All employee submitters except for one (six in total) supported the proposal that the HSE review changes be applied to the maritime sector. Almost all of those consulted referred to the particular expertise of the MSA in the administration and enforcement of maritime matters. As noted in paragraph 17, using OSH as the sole enforcement agency for the maritime industry has been discounted. If OSH was to administer health and safety control over ships, it would need for itself some of the same powers that the MSA has for general maritime purposes. The end result would be the duplication of powers, division of responsibility and the involvement of an extra agency in health and safety matters.

*Advantages and Disadvantages of option two*

44. The advantages of this option are:

- One legislative health and safety framework would apply to all New Zealand workers;
- Government policy on health and safety would be transparent to all employers;
- The effective utilisation of existing expertise in the maritime sector;
- An enhanced health and safety focus for maritime workers;
- A single legislative focus for health and safety outcomes is consistent with the Government's wider injury prevention goals;
- Boundary, coverage and fatigue and stress issues identified during consultation would be addressed.

45. The disadvantages of this option are:

- Some transitional uncertainty for the maritime sector as this is a new delivery model for health and safety services;
- The funding mechanism for health and safety services in the maritime sector will need to be reviewed;
- The accountability mechanism linking health and safety delivery from the MSA to the Minister of Labour will need to be developed.

**Conclusion**

46. Two options have been identified. Both would provide a health and safety framework consistent with the HSE Act following its amendments agreed to by Cabinet and address the issues raised during consultation. The key points of difference between the two options are the Act that provides health and safety coverage in the maritime sector and the accountability link in relation to government health and safety policy.

*Ministry of Transport comment*

47. Option one would address the particular problems identified in consultation and relatively speaking, would do so with the minimum level of legislative change. It is favoured by the Ministry of Transport for reasons of effective and practical application.
48. Option one also retains the simplicity of dealing with all aspects of maritime safety under a single statute. This is an important consideration because occupational safety and health is not readily isolated from other aspects of ship safety that will continue to be handled under the MT Act. The health and safety of seafarers is heavily dependent on the same maritime safety factors that govern the integrity and operational safety of the ship, which is both the workplace and, often the place where a seafarer lives during a voyage.
49. Regulating maritime occupational health and safety under a different statute from those other safety factors will introduce an element of regulatory complexity that does not currently exist (and would not exist under option one).

*Minister of Labour and Department of Labour preferred option*

50. Option two would also address the particular problems identified in consultation. It would also mean the same legislative framework would apply across all industry sectors. This approach would allow for the potential to establish an overarching economy-wide strategy in workplace health and safety, encompassing comprehensive data management indicators. Option two is preferred by the Minister of Labour and the Department of Labour for these wider contextual reasons.

**Financial Implications**

51. On 30 July 2001, due to pressure on the 2001/02 contingency fund, Cabinet<sup>6</sup> approved that:
  - the Health and Safety in Employment Amendment Act timeline will be delayed, with the Amendment Act being passed in April 2002, and coming into force in September 2002;
  - any costs associated with the HSE Amendment Act that are incurred in the 2001/2002 financial year, will be funded from within the Vote Labour existing baseline through reprioritisation; and
  - funding for costs associated with the implementation of the HSE Amendment Act will be considered as part of the 2002 Budget round.
52. The specific costs associated with the proposals in this paper are:
  - initial and ongoing training for HSE Inspectors and Maritime inspectors and investigators;
  - a publicity campaign to notify all those affected by the changes; and
  - operational policy development and evaluation.
53. Under both options, both the MSA and the Department of Labour would incur costs. Cost efficiencies would be gained by enabling the MSA to “piggy back” on Department of Labour implementation initiatives, for example, training for inspectors. The main differences between which agency incurs the costs for options one and two are indicated in the table below:

	<b>Option One</b>	<b>Option Two</b>
<b>Evaluation</b>	MSA	DoL
<b>Project Management</b>	MSA & DoL	DoL
<b>Communications</b>	MSA	DoL

<sup>6</sup> CAB Min (01) 23/13A paragraphs 7-9 refer. Cabinet ratified this decision which was made by the Acting Minister of Finance and the Minister of Labour at a bilateral meeting on 9 July 2001.

54. The following table summarises the estimated costs of option one:

Maritime (Option one)	2001/02	2002/03	2003/04	Outyears
	\$m	\$m	\$m	\$m
Department of Labour Operating costs (GST incl)	0.066	0.189	0.024	0.024
Maritime Safety Authority Operating costs (GST incl)	0.016	0.144	-	-
Totals	0.082	0.333	0.024	0.024

55. The following table summarises the estimated costs of option two:

Maritime (Option two)	2001/02	2002/03	2003/04	Outyears
	\$m	\$m	\$m	\$m
Department of Labour Operating costs (GST incl)	0.066	0.204	0.024	0.024
Maritime Safety Authority Operating costs (GST incl)	0.012	0.092	-	-
Totals	0.078	0.296	0.024	0.224

## Human Rights

56. The proposals are intended to comply with the Human Rights Act 1993.

## Legislative Implications

57. The legislative implications for option one are:

- Amendment of the MT Act to introduce the consequential amendments that have been to agreed to by Cabinet for the HSE Act;
- Amendment of the MT Act to introduce a provision creating an accountability link between the Minister of Labour and the MSA as regards health and safety policy;
- Amendment of the MT Act to introduce a provision that recognises that workers aboard foreign flagged ship on demise charter to New Zealand operators are covered by the health and safety provisions of the MT Act and
- Amendment of the MT Act giving the MSA jurisdiction over maritime pilots when they are working at sea and non-crew when they are working aboard a ship.

58. The legislative implications for option two are:

- Repeal of Part II and all other relevant health and safety provisions of the MT Act and amendment of the HSE Act to remove its exclusion of cover for crew aboard a ship;
- Introduction to the HSE Act of an empowering mechanism that allows either the Prime Minister or Minister of Labour to designate the MSA as the agency responsible for the administration of the HSE Act for the maritime sector;
- Introduction to the HSE Act of a provision that recognises that workers aboard foreign flagged ships on demise charter to New Zealand based operators are covered by the HSE Act.

## Regulatory Impact and Compliance Cost Statement

59. A Regulatory Impact Statement is attached to this paper.

## Recommendations

60. It is recommended that the Committee:

### Policy Content

EITHER: Option one (Ministry of Transport's preferred recommendation)

1. **agree** to:

1.1. retain the occupational health and safety provisions in the MT Act;

1.2. extend the MSA's jurisdiction to cover maritime pilots when they are at sea and non-crew when they are working aboard ships;

1.3. amend the MT Act to cover workers on foreign flagged ships on demise charter to New Zealand based operators and

1.4. link health and safety policy application with an accountability mechanism from the MSA to the Minister of Labour.

2. **note** that option one will satisfactorily address the particular issues identified during consultation with the maritime sector.

OR: Option two (Minister of Labour and Department of Labour's preferred recommendation)

3. **agree** to:

3.1. amend the HSE Act so that its coverage exclusion of crew is removed;

3.2. amend the HSE Act to cover workers on foreign flagged ships on demise charter to New Zealand based operators and

3.3. amend the HSE Act to authorise the MSA to enforce the HSE Act in the maritime sector.

4. **note** that option two will also address the particular issues identified in the consultation with the maritime sector, but it will also place the coverage of all occupational health and safety issues in New Zealand under a single piece of legislation. This will provide a stronger strategic policy focus for workplace health and safety but it will require a number of funding and accountability issues to be worked through prior to implementation.

5. **note** that whichever of the two options is chosen, officials will report back to the Minister of Labour and the Minister of Transport concerning the form of the accountability mechanism to be implemented.

### Drafting Instructions

6. **agree** that the decision arising from the agreed recommendations will be incorporated into the amendments to the HSE Act currently being drafted by the Parliamentary Counsel Office.

### Financial recommendations

7. **note** that the following table summarises the estimated costs of option one:

Maritime (Option one)	2001/02	2002/03	2003/04	Outyears
	\$m	\$m	\$m	\$m
Department of Labour Operating costs (GST incl)	0.066	0.189	0.024	0.024
Maritime Safety Authority Operating costs (GST incl)	0.016	0.144	-	-
Totals	0.082	0.333	0.024	0.024

8. **note** the following table summarises the estimated costs of option two:

<b>Maritime (Option two)</b>	<b>2001/02</b>	<b>2002/03</b>	<b>2003/04</b>	<b>Outyears</b>
	\$m	\$m	\$m	\$m
Department of Labour Operating costs (GST incl)	0.066	0.204	0.024	0.024
Maritime Safety Authority Operating costs (GST incl)	0.012	0.092	-	-
<b>Totals</b>	<b>0.078</b>	<b>0.296</b>	<b>0.024</b>	<b>0.024</b>

9. **note** that any costs associated with the HSE Act amendments that are incurred in the 2001/02 financial year, will be funded within the Department of Labour baselines as applicable through absorption or reprioritisation, and within existing Maritime Safety Authority third party revenue;
10. **note** that as regards the Department of Labour, this approach carries a number of risks and will therefore will be closely monitored by the Department of Labour, with progress reported to Ministers on a regular basis;
11. **note** that funding of the remainder of the HSE Act amendments costs, including any fiscally neutral transfer of resources between Votes, will be considered as part of the 2002/03 Budget round.

Hon Margaret Wilson  
Minister of Labour

## Regulatory Impact Statement

### Statement of the public policy objective

61. The public policy objective is to:

- provide consistency of occupational health and safety legislative cover for maritime workers; and
- ensure consistent application of that legislation across all workers in New Zealand.

### Statement of the problem and the need for action

62. On 30 July 2001 Cabinet agreed that the occupational health and safety legislative framework that applies to maritime workers should be consistent with the Health and Safety in Employment Act (HSE Act).<sup>7</sup> The coverage of maritime workers under the MT Act was raised during the consultation process on the review of the HSE Act. The issue to address was how the agreed changes to the HSE Act might be most effectively applied to the maritime sector.<sup>8</sup>

63. The issues to resolve as part of the HSE Act Review for maritime workers are, which Act is most appropriate to provide coverage to maritime workers and which enforcement agency is most appropriately placed to administer that coverage. Other key issues to be resolved by legislative amendment are gaps in coverage of particular groups of maritime workers (crew on foreign flagged ships on demise charter to New Zealand based operators); enforcement of health and safety coverage for maritime pilots and non-crew working aboard ships and the fatigue and stress of seafarers.

### Other options considered

#### *Option one*

64. Making no legislative change to the MT Act and remaining with the current level of health and safety cover for maritime workers. This option would not deliver a consistent legislative occupational health and safety framework for maritime workers.

#### *Option two*

65. Making consequential changes to the MT Act to mirror the HSE Act amendments with no further recommendations for change. Although the legislative framework would be similar this option would not ensure the implementation of the legislation was administered in a consistent manner. Further, it would not address the issues raised during the consultation process. These are:

- how best to administer existing legislative health and safety coverage for maritime pilots and non-crew working aboard ships
- how best to provide cover for workers on foreign flagged ships on demise charter to New Zealand based operators
- how best to address fatigue and stress of maritime workers

#### *Option three*

66. This option is described as option one in the body of the paper. It makes consequential changes to the MT Act to reflect the HSE Act amendments. It addresses the coverage of maritime pilots and non-crew working aboard ships by providing for an overlap in jurisdiction between OSH and

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<sup>7</sup> CAB Min (01) 23/13B paragraph 7 refers.

<sup>8</sup> FIN Min (01) 15/5.1, paragraph 1.7 refers.

MSA and would allow for closer administrative links between OSH and MSA to ensure consistent application of the legislative framework.

67. The Ministry of Transport prefers this option because it resolves all identified issues.

*Option four*

68. This option is described as option two in the body of the paper. It amends the HSE Act so that it provides health and safety coverage to maritime workers and provides a mechanism to allow for the MSA to enforce the HSE Act in the maritime sector.

69. This option resolves all the identified issues. This approach would allow for the potential to establish an overarching economy-wide strategy in workplace health and safety, encompassing comprehensive data management indicators. For these wider contextual reasons, the Minister of Labour and the Department of Labour prefers this option.

*Option five*

70. Increase the coverage of the HSE Act to include the maritime sector and for OSH to administer the HSE Act in respect of maritime. This option resolves the identified issues but is thought to be difficult to operate and potentially costly. If OSH was responsible for maritime it would still be necessary for inspections of vessels for public and environmental safety to be undertaken. This role would have to be undertaken by OSH or, the MSA would have to continue to run an inspectorate for this purpose. This would be a potential duplication of resources that would see an increase of cost for maritime safety services.

**Statement of the benefits and costs of the recommended proposals**

71. The main implication for costs of both options are:

- updating existing systems to take account of the amendments to the HSE Act that will flow on to the maritime sector;
- training of the inspectorate on the implementation of the amendments;
- developing operational policy links between OSH and MSA; and
- developing operational policy to ensure seamless delivery of occupational health and safety service to maritime pilots and non-crew working aboard ships.

72. The overall benefits of both options are:

- ensuring maritime workers have the same level of legislative protection for health and safety while at work as **all** employees and those at work in New Zealand;
- ensuring existing legislative health and safety coverage for maritime pilots and non-crew working aboard ships is administered seamlessly;
- providing cover for workers on foreign flagged ships on demise charter to New Zealand based operators; and
- addressing fatigue and stress of maritime workers.

73. Under both options, both the MSA and the Department of Labour would incur costs. Cost efficiencies would be gained by enabling the MSA to “piggy back” on Department of Labour implementation initiatives, for example, training for inspectors. The main differences between which agency incurs the costs for options one and two are indicated in the table below:

	<b>Option One</b>	<b>Option Two</b>
<b>Evaluation</b>	MSA	DoL
<b>Project Management</b>	MSA & DoL	DoL
<b>Communications</b>	MSA	DoL

74. The following table summarises the estimated costs of option one:

<b>Maritime (Option one)</b>	<b>2001/02</b>	<b>2002/03</b>	<b>2003/04</b>	<b>Outyears</b>
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Maritime Safety Authority Operating costs (GST incl)	0.016	0.144	-	-
Totals	0.082	0.333	0.024	0.024

75. The following table summarises the estimated costs of option two:

<b>Maritime (Option two)</b>	<b>2001/02</b>	<b>2002/03</b>	<b>2003/04</b>	<b>Outyears</b>
	\$m	\$m	\$m	\$m
Department of Labour Operating costs (GST incl)	0.066	0.204	0.024	0.024
Maritime Safety Authority Operating costs (GST incl)	0.012	0.092	-	-
Totals	0.078	0.296	0.024	0.024

### **Business compliance cost statement**

76. The benefit of the proposed changes to the occupational health and safety regime in the long term is that the expected result of would be a decrease in the cost and incidence of workplace injury and illness. In the short term a better delivery of occupational health and safety services and consistent application of the legislation would provide more certainty for employers.

77. The main implication for compliance cost to employers in the maritime sector is some additional compliance costs in updating existing systems to take account of the employee participation amendments. Employee participation is currently required under international obligations therefore the cost would relate to ensuring compliance with the proposed regime in the HSE amendments.

78. The cumulative cost implications of increasing enforcement deterrents is likely to be reflected in increased costs of health and safety compliance for those employers and others with duties who currently do not take all practicable steps to prevent harm to employees at work.

79. Employers consulted during the consultation process in developing this paper identified that the increase in costs would be in ensuring the proposed changes to the health and safety framework were included in their existing safety system regime. The specific costs are outlined in paragraphs 74 and 75 above.

80. The recommendations in this paper would impose compliance costs on the following groups:

- employers who currently do not involve employees in workplace health and safety management;
- employers whose employees are currently not covered or adequately covered by occupational health and safety legislation;
- employers who currently do not comply with the occupational health and safety legislation but perceive a greater risk if non-compliance is detected; and
- employers who currently insure against risk of fine for occupational health and safety legislation.

81. The costs to employers will be for the following activities:

- establishing and maintaining systems for employee participation compliant with the employee participation regime;
- (where applicable) releasing health and safety representatives on paid leave for health and safety education;
- (where applicable) responding to hazard notices by either complying with the notice, or calling an inspector to advise on the notice;
- responding when an employee exercises the right to refuse dangerous work; and
- increased awareness of stress and fatigue and the possibility of enforcement action being taken.

### **Consultation programme undertaken**

82. Those consulted in the development of this paper were:

- 33 submitters to the consultation on occupational health and safety coverage of maritime workers, including all sector unions, employer organisations and most large maritime employers; and
- ACC, Department of the Prime Minister and Cabinet, the Treasury, Ministry for Economic Development, Ministry of Health, Ministry of Justice, Ministry of Agriculture and Forestry (Rural Affairs division), Ministry for the Environment, Ministry of Fisheries, Ministry of Foreign Affairs and Trade, Ministry of Women's Affairs, Department for Courts and Te Puni Kōkiri.