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In-confidence

Maritime NZ feedback on the *Health and Safety at Work Amendment Bill* and draft Cabinet LEG paper

Tēnā koutou,

We thank you for the opportunity to provide our feedback on the *Health and Safety at Work Amendment Bill* and the draft Cabinet LEG paper.

Health and safety is at the heart of everything Maritime NZ does every day. We see this workstream, as important to help our sector, and us, deliver health and safety outcomes more efficiently and effectively, as well as for the broader system.

We thank the Ministry of Business, Innovation and Employment for the staff who have reached out and kept us engaged on the drafting and timeline. As Maritime NZ has been engaged throughout the drafting process our comments will reflect a high-level overview of the Bill and draft Cabinet LEG paper.

Draft Cabinet LEG paper: *Health and Safety at Work Amendment Bill: approval for introduction*

The LEG paper summarises the content of the Bill and any additional decisions that have been made in addition to prior Cabinet decisions.

Maritime NZ notes that the Maritime Labour Convention (MLC) is of relevance under *International obligations* (paragraphs 62-64). However, the responsibility of the MLC primarily sits with the Ministry of Business, Innovation and Employment.

Health and Safety at Work Amendment Bill – Version 4

As noted above, we have had extensive opportunity to comment on the Bill as it has been developed so points we have wished to raise have already been made. However, we acknowledge that the Bill we are currently reviewing is not the final version intended for Cabinet consideration.

Part 3 (Schedule 1 of the Bill), clause 29

Proposed new Part 3 (in Schedule 1 of the Bill), clause 29 would benefit from clarification. It is not clear what process would be needed to confirm that a pre-existing code of practice (other than the two that are noted in clause 30) comes under the “safe harbour” provision in clause 226(2)(a). The reference to section 222(2) suggests that the relevant code must be (re)submitted to the Minister for approval – however, the wording casts some doubt and this may lead to confusion.

Part 3 (Schedule 1 of the Bill), clause 30

Maritime NZ notes that in clause 30 the full wording for our ACOP is required. This is as follows “Approved Code of Practice for Loading and Unloading Cargo at Ports and on Ships approved on 27 June 2024 and published by Maritime New Zealand in the Gazette and available on an internet site maintained by Maritime New Zealand”.

Clause 35

Clause 35 is an important part of the Bill and we support the policy intent. However, we have concerns about how it is drafted in version 4. The scope appears too broad / ambiguous and may not achieve the policy intent. We understand that amendments are being made prior to introduction to address these concerns.

‘Risk or type of risk’ is a very broad statement. Risk is a possibility of a loss or harm. It can be described at many different levels of granularity. For example, it could be argued that “the potential harm from suspended or falling loads” is a type of risk. However, at a more detailed level we might be addressing the more specific risk of falling logs while loading ships. The controls that will be relevant to loading ships may be different from those

appropriate or effective on a particular construction site, despite the valid argument that the risk is of the same type.

Most risks are managed through multiple controls, including engineering, isolation and procedures. In most cases, one of the controls on its own won't effectively manage a risk or type of risk. It is rare that a risk or type of risk can be fully managed with a single control.

As currently drafted, implementing a single control specified by a regulation or rule could be considered as managing a risk or type of risk, so far as is reasonably practicable.

We understand that you are proposing to remove subsection 3 of the current draft. This will certainly help to mitigate the concern we have identified above, at least in part. Subsection 3 as drafted would appear to mean that a control set in external legislation would satisfy the HSWA duty in relation to a risk or type of risk, regardless of whether it addressed that risk as a whole.

Other changes could be made that more clearly frame the role of external legislation more precisely in specifying controls (ensuring that regulated parties are not required under HSWA to implement a different or higher level of control); rather than necessarily addressing all aspects of risks or types of risk. This would be consistent with Maritime NZ's existing position statement *How Maritime NZ will regulate health and safety issues under the MTA and HSWA*. We are happy to provide suggestions for drafting.