

Authorisations and Exemptions

INTRODUCTION

1. This Schedule is produced under the Memorandum of Understanding between Maritime NZ and WorkSafe, dated 20 February 2024.
2. Under the Health and Safety at Work (Maritime New Zealand) Agency Designation 2023 (the Designation), Maritime NZ may perform all functions and exercise all the powers under HSWA in respect of ships, ships as workplaces, and Major Ports.
3. Under the Designation, WorkSafe retains the power, in relation to Major Ports, to grant, issue, renew, vary, suspend, cancel, and replace Authorisations, and the power to grant, vary and revoke Exemptions.
4. WorkSafe retains responsibilities that relate to the regulation of Authorisations and Exemptions in relation to Major Ports where WorkSafe is specifically named in regulation.
5. This Schedule does not alter Maritime NZ's existing powers under HSWA or the Maritime Transport Act 1994, to regulate Authorisations and Exemptions on ships and ships as workplaces.

PURPOSE

6. This Schedule outlines, in relation to Major Ports:
 - a. the powers retained by WorkSafe with respect to regulating Authorisations and Exemptions
 - b. the Parties' roles with respect to Authorised Third Parties carrying out authorised activities
 - c. the Parties' roles in General Regulatory Activities that relate to Authorisations and Exemptions, and
 - d. joint activities, notifications, and cooperation.

DEFINITIONS

7. The following definitions apply to this Schedule:
 - a. **Application** is when WorkSafe receives a request for an Authorisation or Exemption, or a request to vary an Authorisation or Exemption. For the purposes of this Schedule it also includes situations where WorkSafe proactively reassesses a current Authorisation or Exemption.
 - b. **Application Decision** is WorkSafe's decision in respect of an Application.
 - c. **Authorisation** is an approval required by regulation to enable an activity to happen. An Authorisation can take the form of a licence, permit, recognition, registration, consent or

approval, certificate, or other authority as required by regulations. An Authorisation can relate to a person, organisation, activity, place, or piece of equipment.¹

- d. **Authorised Third Party** is a person or body separate to WorkSafe that is authorised to carry out functions under HSWA.
- e. **Duty Holder** is a person who has a duty under HSWA. Duty Holders can be officers, workers, other persons at workplaces, and PCBUs (a 'person conducting a business or undertaking').
- f. **Exemption** is the legal permission for a Duty Holder to not comply with a particular legal requirement for a specified period granted under section 220 of HSWA.
- g. **General Regulatory Activities** are activities that are specifically relevant to the regulation and administration of Authorisations and Exemptions and the performance of WorkSafe's and Maritime NZ's functions in relation to them.
- h. **Major Port** is defined in the Designation.

AUTHORISATIONS AND EXEMPTIONS

- 8. Under the Designation in respect of Major Ports, WorkSafe retains some powers in relation to regulating Authorisations and Exemptions. These powers can be grouped into stages:
 - a. receiving and assessing Applications
 - b. reaching Application Decisions, and
 - c. suspending or cancelling an Authorisation, and revoking an Exemption.

Receiving and Assessing Applications

- 9. In relation to Major Ports, WorkSafe is responsible for receiving and assessing all Applications relating to Authorisations or Exemptions under HSWA.
- 10. If Maritime NZ receives any such Application, it will refer the applicant to WorkSafe.
- 11. If WorkSafe assesses an Application for an Exemption that relates to work in respect of a Major Port, it will seek and have regard to information from Maritime NZ about the applicant and in particular, the adequacy or otherwise of the risk controls an applicant is proposing in their application, before making an Application Decision.
- 12. Maritime NZ may, given its operational role on ports:
 - a. direct a Duty Holder to contact WorkSafe for the purposes of seeking an Exemption
 - b. support a Duty Holder through the process to apply for an Exemption, and
 - c. provide information to WorkSafe on the compliance history of the applicant, and any other relevant information including the adequacy of the risk controls being proposed in an application, to support WorkSafe's Application Decision.

¹ Appendix 1 has a list of Authorisations, Authorisation-adjacent permissions, prohibitions and restrictions.

13. WorkSafe may request further information, and Maritime NZ may provide further information, on more than one occasion for the purposes of assessing an Application for an Exemption.
14. If WorkSafe assesses an Application for an Authorisation that relates to work in respect of a Major Port, it will consult with Maritime NZ where appropriate. This will occur in line with the *Operational Cooperation Schedule*.
15. Where held, Maritime NZ will provide WorkSafe with the data and information it needs to assess an Application within five working days of WorkSafe requesting it.

Application Decisions

16. While the terms may vary, all Application Decisions fall into one or more of the following categories:
 - a. *Granted (in part or in full)*. This outcome covers similar terms like issued, registered, approved, and others. An Authorisation granted by WorkSafe may be called a license, permit, recognition, registration, certificate, consent, approval, or other as required by regulations. WorkSafe can grant an Authorisation or Exemption with or without conditions.
 - b. *Declined (in part or in full)*. This covers similar terms like refused and denied.
 - c. *Varied*. WorkSafe can amend the scope of an existing Authorisation or Exemption.
17. For all Applications where work will occur, or is suspected to occur, in respect of a Major Port, WorkSafe is responsible for making an Application Decision.
18. WorkSafe will advise Maritime NZ about Application Decisions as soon as possible after notifying the applicant.
19. If WorkSafe is not required to make an Application Decision (for example, because the Application is withdrawn), it will advise Maritime NZ of this outcome.

Suspending or Cancelling an Authorisation, and Revoking an Exemption

20. In relation to Major Ports, WorkSafe is responsible for suspending and cancelling Authorisations, and revoking Exemptions.
21. Where held, Maritime NZ will provide WorkSafe with the data and information it needs to decide whether to suspend or cancel an Authorisation within five working days of WorkSafe requesting it.
22. Where held, Maritime NZ will provide WorkSafe with the data and information it needs to decide whether to revoke an Exemption within five working days of WorkSafe requesting it.
23. If WorkSafe suspends or cancels an Authorisation that relates to work in respect of a Major Port, it will notify Maritime NZ within five working days.
24. If WorkSafe revokes an Exemption that relates to work in respect of a Major Port, it will notify Maritime NZ within five working days.

AUTHORISED THIRD PARTIES

25. WorkSafe is responsible for activity that may result in granting, issuing, varying, renewing, suspending, cancelling, or replacing a Third Party Authorisation.
26. Maritime NZ is focused on addressing harm on Major Ports including situations arising from or related to the functions of an Authorised Third Party.
27. If Maritime NZ, when performing its regulatory role under its Designation, has concerns relating to an Authorised Third Party or the performance of their functions, it will inform WorkSafe as soon as practicable.
28. Where held, within five working days of it being requested, the Parties will provide each other with the data and information needed relating to Authorised Third Parties.
29. If either Party is unsure of its role in relation to an Authorised Third Party, it will discuss the matter with the other.

GENERAL REGULATORY ACTIVITIES

30. General Regulatory Activities help ensure that the Parties' Authorisation and Exemption functions work well, meet legal requirements, and remain fit for purpose. They include work that:
 - a. implements or changes an Authorisation regime or Exemption (for example, establishing a new Authorisation regime for a specific type of work)
 - b. enables or supports Applications for an Authorisation or an Exemption (for example, changes to processes or outcomes for Applications)
 - c. applies to Authorisation or Exemption activities nationwide (for example, reviews or audits of authorised activity in a sector), and
 - d. responds to complaints, concerns, or disputes that relate to an Application or Application Decision (for example, formal complaints, informal complaints, and reviews of a reviewable decision).
31. Nothing in this Schedule restricts the Parties' ability to perform General Regulatory Activities as needed to perform their functions, and exercise their powers, as a regulator.
32. WorkSafe will inform Maritime NZ when a General Regulatory Activity performed by WorkSafe occurs on or affects work in respect of a Major Port.
33. The Parties agree that any data or information shared that relates to General Regulatory Activities will be shared in line with the *Data and Information Sharing* Schedule.

JOINT ACTIVITIES, NOTIFICATIONS AND COOPERATION

34. Joint activities and cooperation will occur in line with the *Operational Cooperation* Schedule.
35. When Maritime NZ finds non-compliance relating to an Authorisation or Exemption, it will notify WorkSafe within five working days. This includes when work takes place without the required Authorisation, or when a Duty Holder does not meet the conditions of an Authorisation or Exemption.

36. From time to time, a Duty Holder may need to update or notify WorkSafe about matters relating to an Authorisation or Exemption (for example, when this is required by regulation). In such cases, Maritime NZ will refer the Duty Holder to WorkSafe.
37. The Parties will in good faith, and at the earliest opportunity, attempt to resolve all disputes about interpreting or applying this Schedule, including any of its appendices.
38. If disputes arise about the interpretation or performance of this Schedule, the Parties will follow the process for resolving disputes set out in the MOU.

DATA AND INFORMATION SHARING

39. The Parties will share relevant information, data or intelligence when a Party considers that it may assist the other Party in the performance or exercise of its functions, duties or powers under or in relation to any enactment, and when doing so is consistent with the law, including the Official Information Act 1982, the Privacy Act 2020 and the Criminal Disclosure Act 2008.
40. The Parties agree that sharing data and information will occur in line with the *Data and Information Sharing Schedule*.
41. The Parties agree to communicate any statutory timeframes when requesting data or information that relates to Authorisations and Exemptions.
42. Where data and information needs to be shared urgently, the Parties agree to communicate the need for urgency, and to outline the relevant timeframes for the situation. The Parties agree to endeavour to respond to urgent data and information sharing situations within the timeframe specified.

PUBLICATION

43. This Schedule has been produced to provide clarity for both internal and external audiences. The Parties agree this Schedule can be published externally.

TERM, REVIEWING, VARIATION AND TERMINATION OF THIS SCHEDULE

44. The Parties will review this Schedule twelve months after the date of signing, or earlier by mutual agreement. Thereafter, the Parties will review the Schedule every three years.
45. Either Party can request a review of this Schedule at any time.
46. Amendments to this Schedule will be made in writing by mutual agreement of the Parties.

COSTS

47. The cost of meeting the provisions of this Schedule will be met by the Party incurring the cost.

DESIGNATED COORDINATORS

48. The Parties' designated coordinators for the purposes of this Schedule are listed below by title/s. The full names and contact details for the people in these roles in the *Designated Coordinators Schedule*. The roles of the designated coordinators are:

WorkSafe

Authorisations contact: Manager, Authorisations

Exemptions contact: Manager, Certifications and Exemptions

Triage contact: Manager, Triage

Maritime New Zealand

All matters: Manager, HSWA Inspections

Signed 	Signed 
Kirstie Hewlett Chief Executive and Director Maritime New Zealand	Kane Patena Deputy Chief Executive Operations WorkSafe New Zealand
Date 7/6/2024	Date 6/6/2024

APPENDIX 1 – Authorisations, Authorisation-adjacent permissions, prohibitions, and restrictions under HSWA.

Authorisations under HSWA

REGIME NAME	DESCRIPTION OF ACTIVITY
ADVENTURE ACTIVITIES	<p>Registering adventure activity operators (reg 7)</p> <p>Recognising safety auditors to conduct audits of adventure activity operators (reg 9)</p> <p>Recognising a third-party registrar for adventure activities (reg 13)</p>
AMUSEMENT DEVICES	<p>Registering amusement devices (reg 8)</p>
ASBESTOS	<p>Licensing asbestos removalists (Class A and Class B) (reg 64)</p> <p>Licensing asbestos assessors (reg 64)</p> <p>Recognising additional accredited laboratories (reg 3(1)(c))</p> <p>Approving methods for managing the risk associated with asbestos in the workplace (reg 8)</p>
GEOTHERMAL	<p>Granting consent to commence or suspend drilling, abandon a bore, or use explosives (reg 30)</p> <p>Apply for a Grade A or Grade B Bore manager certificate</p>
HAZARDOUS SUBSTANCES	<p>Permitting transhipments of Class 1 hazardous substances (reg 1.10)</p> <p>Recognising Inspection Agencies (reg 15.1)</p> <p>Determining reduced separation distances for hazardous substances (reg 13.43A)</p> <p>Granting an extension of time for a compliance certificate needing renewal (reg 8.2)</p> <p>Issuing certificates for importation of sodium fluoroacetate (reg 13.6)</p> <p>Approving alternative locations for class 6 or 8 substance storage (reg 13.35(1)(a))</p> <p>Approving alterations to the design of a gas container (reg 15.4A)</p> <p>Licensing Controlled Substance holders (reg 7.1)</p> <p>Authorising Compliance Certifiers (reg 6.8)</p> <p>Authorising test stations (reg 15.52)</p> <p>Approving tank wagon fabricators (reg 16.35)</p> <p>Granting an extension of time for the term of an in-service compliance certificate (for tank wagons) (reg 16.36(6))</p> <p>Approving disused below ground stationary tanks (reg 17.39)</p> <p>Approving dispensers for retail sale of class 2.1.1, 3.1A, 3.1B and 3.1C substances (reg 17.48)</p> <p>Approving vapourisers (reg 17.53)</p> <p>Approving burners of class 3.1 substances (or hazardous substances approved by EPA for use as fuels in burners) (reg 17.67)</p> <p>Determining validity periods for compliance certificate for stationary container system (reg 17.92)</p> <p>Approving reduced secondary containment capacity (reg 17.100)</p> <p>Approving increased tank capacity in secondary containment systems (reg 17.103)</p> <p>Approving increased aggregate capacity for groups of stationary tanks (reg 17.104)</p> <p>Authorising alternative locations for class 1 substances (reg 9.10(1)(e))</p> <p>Approving a stationary container system compliance plan (clause 44, Schedule 1)</p> <p>Designating Major Hazard Facilities (reg 19)</p>

MAJOR HAZARD FACILITIES	Approving safety cases for upper tier Major Hazard Facilities (reg 48) Conducting a review of a facility (to move lower tier to upper tier) (reg 16) Consenting to operator conducting activity otherwise than in accordance with safety case (reg 58)
MINING/QUARRYING	Issuing Certificates of Competence for Mining/quarrying ⁵ (for multiple roles) (reg 35) Authorising a mining or tunnelling operation to operate for longer than 28 days without a mine surveyor (reg 28(5)) Approving alternative seals for an underground coal mining operation (reg 183A) Approving an approval system for hot work (reg 161) in underground coal or metalliferous mines with methane – mine/tunnels Approving an approval system for live electrical work in ERZ0 or ERZ1 (reg 195)
OCCUPATIONAL DIVERS	Issuing Certificates of Competence for occupational diving (multiple types) (reg 27) Recognising third party/s to issue Certificates of Competence for occupational diving (reg 28)
PETROLEUM	Approving safety cases for upper tier Petroleum exploration/extraction installations (reg 27) Consenting to operator conducting activity otherwise than in accordance with safety case (reg 37) Recognising inspection bodies (reg 42) Recognising verification schemes (reg 49)
PIPELINES	Recognising inspection bodies (reg 9)
POWDER ACTUATED TOOL OPERATORS	Recognising third party/s to issue Certificates of Competence for Powder Actuated Tool operators (reg 28) Issuing Certificates of Competence for Powder Actuated Tool operators (reg 27)
PRESSURE EQUIPMENT, CRANES AND PASSENGER ROPEWAYS	Recognising Qualification Issuing Agencies to issue Certificates of Competence to Design Verifiers and Equipment Inspectors (reg 29) Recognising Inspection bodies to issue Certificates of Inspection (reg 25) Issuing Certificates of Competence to Design Verifiers and Equipment Inspectors (reg 35)
SCAFFOLDERS	Recognising third party/s to issue Certificates of Competence for Scaffolders (reg 28) Issuing Certificates of Competence for scaffolders (multiple types) (reg 27)

Authorisation-adjacent permissions under HSWA

REGIME NAME	DESCRIPTION OF ACTIVITY
HAZARDOUS SUBSTANCES	Allocating record numbers to verified cylinder designs and maintaining the register of design verified cylinders (reg 15.13(6))
	Allocating record numbers to LPG cylinder fittings certified by compliance certifiers and maintaining the register of approved LPG cylinder fittings (reg 15.37 (6))
	Allocating record numbers to tank wagon designs approved by compliance certifiers and maintaining the register of approved tank wagon designs (reg 16.33)
	Allocating record numbers to stationary container system designs and fabricators certified by compliance certifiers (reg 17.95)

	Maintaining the register of Compliance Certificates (as issued by Compliance Certifiers) (reg 6.26)
PRESSURE EQUIPMENT, CRANES AND PASSENGER ROPEWAYS	Recognising documents containing requirements (for recognition of inspection bodies, QIAs, design verification etc) (reg 22)
	Recognising documents containing standards relating to the operational safety of any equipment (reg 17)

Prohibitions and restrictions under HSWA

REGIME NAME	DESCRIPTION OF ACTIVITY
HAZARDOUS SUBSTANCES	Setting restricted entry intervals for pesticides (reg 13.23)
	Maintaining a register of burners (of class 3.1D or 3.1C substances) not permitted for use (reg 17.66)